

# **GUIDELINE ANSWERS**

## **EXECUTIVE PROGRAMME**

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**GROUP 1**



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**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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

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

**CS Examinations**

December Session

June Session

**Applicability of Amendments to Laws**

upto 31 May of that Calendar year

upto 30 November of previous Calendar Year

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# JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

## GROUP 1 PAPER 1

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### Question 1

- (a) The distribution of powers is an essential feature of federalism. The object for which a federal State is formed involves a division of authority between the National Government and the separate States. The tendency of federalism to limit the actions of the Government and to split up the strength of the States, is specially noticeable, because it forms the essential distinction between a federal system and a unitary system of Government. A Federal Constitution establishes the dual polity with the Union at the Centre and the States at a periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. That one is not subordinate to the other in its own field, the authority of one is to co-ordinate with that of the other. In fact, the basic principle of federalism is that the legislative, executive and financial authority is divided between the Centre and States, not by any law passed by the Centre but by the Constitution itself. This is what Indian Constitution does.

The Constitution of India makes two-fold distribution of legislative powers – (I) with respect to territory; and (2) with respect to subject matter.

As regards territory, Article 245(1) provides that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India. According to clause (2) of Article 245, a law made by Parliament shall not be deemed to be invalid on the ground that it has extra-territorial operation, i.e., takes effect outside the territory of India.

Our Constitution-makers have followed the Canadian scheme opting for a strong Centre. However, they added one more List—the Concurrent List. The Government of India Act, 1935, introduced a scheme of three-fold enumeration, viz., Federal, Provincial and Concurrent.

The present Constitution adopts the method followed by the Government of India Act, 1935, and divides the powers between the Union and the States in three Lists— Union List, the State List and the Concurrent List.

Article 246 is related to subject-matter of law-making power of Parliament and State Legislatures. Parliament has exclusive power to make laws with respect to any of the matters enumerated in List-I in the Seventh Schedule. Parliament, subject to clause (1) and Legislature to any State, have power to make laws with respect to any of the matters enumerated in List-III in the Seventh Schedule. Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule. However, our Constitution makes a few exceptions to this general rule by authorising Parliament to make law even on the subjects enumerated in the State List.

As it is seen that the powers between the Centre and States are divided and they cannot make laws outside their allotted subjects. It is also true that a scientific division is not possible and questions constantly arise whether a particular subject falls in the sphere of one or the other government. This duty in the federal Constitution is vested in the Supreme Court of India. The Supreme Court has evolved various principles of interpretation in order to determine the respective power of the Union and the States under the three Lists.

In reference to the above statements answer the following questions :

- (i) 'It is almost a universal rule in all the Constitutions, where distribution of legislative powers is provided, that in the concurrent field the Central law prevails, if it conflicts with a State law.' However, our Constitution recognizes an exception to this general or universal rule. Discuss.

(2 marks)

- (ii) A newspaper was published and printed at Bangalore in Karnataka State. It contained crossword puzzles and engaged in prize competitions. It had wide circulation in the State of Maharashtra and most of its activities such as the standing invitations, the filling up of the forms and the payment of money took place within that State. The State of Maharashtra imposed a tax on the newspaper. The publishers challenged the validity of the law on the ground that it was invalid in so far as it covered a subject matter falling beyond the territory of that State, because the paper was published in another State. Discuss the validity of the actions of the State of Maharashtra referring to the case law.

(2 marks)

- (iii) On a particular item included in the State List, the States of Haryana and Rajasthan requested the Parliament to make laws for them on that particular subject. Discuss the legality of this statement referring to the relevant Article of the Constitution of India. What happens, if any of the consenting States later makes a law on that particular subject.

(2 marks)

- (iv) Discuss the principle of harmonious construction in the interpretation of legislative lists under the Indian Constitution.

(2 marks)

- (v) If it is necessary or expedient in the national interest that Parliament should make a law on a matter enumerated in the State List, can Parliament do so ? Explain.

(2 marks)

- (b) Shyam Jewels, one of Mumbai's biggest jewelry stores, contract with Gold leaf Wholesalers in electronic form. Gold leaf specializes in High-quality Gold and Diamond Jewelry. Under the contract, the gold leaf was supposed to provide jewelry amounting to ₹ 25 lakh on credit to Shyam Jewels, with payment due in 90 days. To fulfill this financial obligation, X, the friend of owner of Shyam Jewels, signed a personal guarantee and Y, business partner of Shyam Jewels secured the transaction with a lien on his expensive car. Upon receiving the consignment, Shyam Jewels defaulted on its payment obligations within the stipulated period. Despite multiple legal notices, the payment remained due, which entitles the aggrieved party to compensation for loss or damage caused by this act.

As X had provided a personal guarantee, Gold Leaf Wholesalers initiated recovery proceedings against him. There is an agreement in which a surety undertakes liability in the event of the principal debtor's default.

Y's luxury car had been pledged as security for the debt. Upon default, Gold Leaf exercised its statutory right, which empowers the Gold Leaf to sell the pledged goods after providing reasonable notice to the Y. The proceeds from the sale were appropriated towards the outstanding liability.

During the course of legal proceedings, it was ascertained that Shyam Jewels had engaged A, as an agent to procure jewelry from Gold Leaf.

The commercial transaction between Shyam Jewels and Gold Leaf falls within the ambit of the Sale of Goods Act, 1930, as it involved the transfer of ownership of goods in exchange for monetary consideration.

In view of the above details, answer the following questions with reasons :

- (i) Discuss the liability of X, as a guarantor.

(2 marks)

- (ii) Can Gold Leaf sell the luxury car of Y and appropriate the proceeds toward the outstanding liability ? Discuss the rights of a pawnee.

(3 marks)

- (iii) Under which provisions of the Sale of Goods Act, 1930, Gold Leaf can initiate legal actions for recovery of price and damages ?

(2 marks)

- (iv) Under what circumstances an agent can be held personally liable ?

(3 marks)

### Answer 1(a)(i)

Article 254(2) of the Constitution of India provides an exception to the general rule of repugnancy in the Concurrent List. It states that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

However, nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

### Answer 1(a)(ii)

A State Legislature may make laws that have extraterritorial operation only if there exists a "territorial nexus" between the State and the subject matter of the legislation. That is, if there is sufficient nexus or connection between the State and the subject matter of the law which falls beyond the territory of the State, the law will be valid. The sufficiency of the nexus is to be seen on the basis of the test laid down by the Supreme Court in the *State of Bombay v. R.M.D.C., A.I.R. 1957 S.C. 699*, according to which two conditions, must be fulfilled:

- (a) the connection must be real and not illusory; and
- (b) the liability sought to be imposed by that law must be pertinent to that connection.

If both the conditions are fulfilled by a law simultaneously then only it is valid otherwise not.

In the given situation, applying the doctrine laid down in *State of Bombay v. R.M.D.C. (AIR 1957 SC 699)*, the Maharashtra law is valid as the majority of the newspaper's activities such as revenue generation and participation in competitions took place within Maharashtra, thereby establishing a sufficient territorial nexus.

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

Article 252 of the Constitution of India enumerates the Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State. This Article provides that, if two or more States are desirous that on any particular item included in the State List there should be a common legislation applicable to all such States then they can make a request to Parliament to make such law on that particular subject.

Such request shall be made by passing a resolution in the legislatures of the State concerned. If request is made in that form, then Parliament can make law on that subject as regards those States. The law so made may be adopted by other States also, by passing resolutions in their legislatures.

According to Article 252(2), any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

Therefore, if a consenting State subsequently enacts a conflicting law on the same subject, such a State law would not be valid to the extent of inconsistency with the law made by the parliament.

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

The position in the Indian Constitution is different from other Federal Constitutions in respect of distribution of legislative powers. There is no clear-cut division of powers between the Union and States. Thus, in case of conflict, the judiciary has to make reconciliation attempts between the conflicting entries. Different entries in the different lists are to be interpreted in such a way that a conflict between them is avoided and each of them is given effect.

It must be accepted that the Constitution does not want to create conflict and make any entry nugatory. Therefore, whenever there appears a conflict between the two entries in two different lists, it is the court's duty to reconcile entries and to bring harmony between them, so that each of them is given effect and, for that purpose the scope and meaning of one may be restricted so as to give meaning to the other also. This can be achieved by applying the principle of harmonious construction in such cases.

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

According to Article 249 of the Constitution of India, Parliament can make a law with respect to a matter enumerated in the State List if the Council of States declares by a resolution supported by two-thirds of its members present and voting, that it is necessary or expedient in the national interest that Parliament should make a law on that matter. By such declaration Parliament gets the authority to legislate on that matter for the whole or part of the country so long as the resolution of the Council of States remains in force. But such resolution shall remain in force for a period not exceeding one year. However, a fresh resolution can be passed at the end of one year to give extended lease to the law of Parliament and that way the law of Parliament can be continued to remain in force for any number of years.

The laws passed by Parliament under the provision cease to have effect automatically after six months of the expiry of the resolution period. Beyond that date, such Parliamentary law becomes inoperative except as regards the thing done or omitted to be done before the expiry of that law.

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

According to Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless the contract provides otherwise.

A creditor is not bound to proceed against the principal debtor. He can sue the surety without suing the principal debtor. As soon as the debtor has made default in payment of the debt, the surety is immediately liable. But until default, the creditor cannot call upon the surety to pay. In

this sense, the nature of the surety's liability is secondary. Section 128 only explains the quantum of a surety's obligation when terms of the contract do not limit it. Conversely, it does not follow that the surety can never be liable when the principal debtor cannot be held liable. Thus, a surety is not discharged from liability by the mere fact that the contract between the principal debtor and creditor was voidable at the option of the former, and was avoided by the former. Where the agreement between the principal debtor and creditor is void as for example in the case of minority of principal debtor, the surety is liable as a principal debtor; for in such cases the contract of the so-called surety is not collateral, but a principal contract. [*Kashiba v. Shripat (1894) 19 Bom. 697*].

In view of the above discussion it may be said that the Gold Leaf Wholesalers are legally entitled to initiate recovery proceedings against Mr. X.

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

By virtue of section 173 of the Indian Contract Act, 1872, no property in goods pawned passes to the pawnee, but the pawnee gets a "special property to retain possession even against the true owner until the payment of the debt, interest on the debt, and any other expense incurred in respect of the possession or for preservation of the goods pledged". The pawnee must return the goods to the pawnor on the tender of all that is due to him. The pawnee cannot confer a good title upon a bona fide purchaser for value. Upon default by the pawnor in payment or performance, the pawnee may exercise the following remedies:

- file a suit for the recovery of the amount due to him while retaining the goods pledged as collateral security; or
- sue for the sale of the goods and the realisation of money due to him; or
- himself sell the goods pawned, after giving reasonable notice to the pawnor, sue for the deficiency, if any, after the sale.

Thus, Gold Leaf Wholesalers can sell the luxury car of Mr. Y after giving reasonable notice to Mr. Y and appropriate the proceeds toward the outstanding liability.

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

According to section 55(1) of Sale of Goods Act, 1930, where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods.

Further, according to section 61(1), nothing in this Act shall affect the right of the seller or the buyer to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover the money paid where the consideration for the payment of it has failed.

Moreover, according to section 61(2)(a), in the absence of a contract to the contrary, the Court may award interest at such rate as it thinks fit on the amount of the price to the seller in a suit by him for the amount of the price – from the date of the tender of the goods or from the date on which the price was payable.

Therefore, Gold Leaf can sue for recovery of the price under Section 55 and claim damages and interest under Section 61 of the Sale of Goods Act, 1930.

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

An agent is personally liable in the following cases:

- Where the agent has agreed to be personally liable to the third-party.
- Where an agent acts for a principal residing abroad.

- When the agent signs a negotiable instrument in his own name without making it clear that he is signing it only as agent.
- When an agent acts for a principal who cannot be sued (e.g., he is minor), the agent is personally liable.
- An agent is liable for breach of warranty of authority. Where a person contracts as agent without any authority there is a breach of warranty of authority. He is liable to the person who has relied on the warranty of authority and has suffered loss.
- Where authority is one coupled with interest or where trade, usage or custom makes the agent personally liable, he will be liable to the third-party.
- The agent is also liable for his torts committed in the course of agency.

## Question 2

- (a) Anand could not clear his Civil Services interview, yet he falsely pretended that he had cleared it. He intentionally deceived Param and dishonestly induced him to provide goods on credit, despite having no intention to pay for them. Discuss the offence committed by Anand under the Bharatiya Nyaya Sanhita, 2023.

(5 marks)

- (b) Ram filed a suit for recovery of certain sum against Raj who was a minor. Later, an ex-parte decree was passed against Raj. In execution of decree, the house of Raj was sold to Prabhu and sale certificate was also issued in favour of Prabhu. However, Raj continued living in the house and later on died, leaving no legal heir, and the property by escheat, passed to the State. Prabhu filed for possession of the house. Discuss the legality of Prabhu's claim to the possession of the house.

(5 marks)

- (c) Aman contracts to sell to Bharat, 50 bighas of land situated in his village, for ₹ 1,00,000. It, however, turned out that only 25 bighas of land belonged to Aman. Here 25 bighas are substantial part of the contract. The general principle under Section 12 of the Specific Relief Act, 1963 is that, except as otherwise hereinafter provided in this section, the Court shall not direct the specific performance, then what are the reliefs available to the parties of this contract ? Discuss.

(5 marks)

## Answer 2(a)

Section 318 of Bharatiya Nyaya Sanhita, 2023 states that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

*Explanation.* - A dishonest concealment of facts is a deception within the meaning of this section.

The main ingredients of cheating are as under:

1. Deception of any person.
2. (a) Fraudulently or dishonestly inducing that person:
  - (i) to deliver any property to any person; or
  - (ii) to consent that any person shall retain any property; or

- (b) Intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

In the given situation, Anand, by falsely pretending to have cleared the Civil Services examination, intentionally deceives Param and dishonestly induces him to provide goods on credit. Therefore, the act of Anand may fall within the purview of the offence of cheating as defined under Section 318 of the Bharatiya Nyaya Sanhita, 2023.

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

In suits by or against minors, Order XXXII of the Civil Procedure Code, 1908 lays down the mandatory procedure for proper representation of minors through a guardian ad litem.

Where the defendant is a minor, the Court, upon being satisfied of such fact, shall appoint a proper person to be the guardian for the suit on behalf of the minor [Order 32, Rule 3(1)]. Such appointment may be made on the application of the minor or by the plaintiff [Order 32, Rule 3(2)]. A person appointed as guardian for the suit shall, unless removed or deceased, continue to represent the minor throughout all proceedings arising out of the suit, including appellate, revisional, and execution proceedings [Order 32, Rule 3(5)].

All applications and orders concerning a minor in a suit must be made through the minor's next friend or guardian. Any orders made without such representation can be set aside if it is shown that the pleader knew or should have known about the minor's status. This provision safeguards their legal rights and ensures proper representation in Court. (Order 32, Rule 5)

In this case, the decree was passed in contravention of Order XXXII of the Code of Civil Procedure, 1908. Raj was a minor at the time when the suit was instituted as well as when the house was sold in execution of the decree. It is well-settled that a decree passed against a minor without the appointment of a guardian is null and void, being passed without jurisdiction. As there was no guardian ad litem appointed for Raj, the decree stands vitiated and unenforceable in law.

Consequently, no valid title could pass to Prabhu under a void decree. Therefore, Prabhu's claim for possession of the house is not legally tenable.

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

Section 12 of the Specific Relief Act, 1963 deals with specific performance of a part of a contract. Section 12(1) lays down the general principle that except as otherwise hereinafter provided in this section, the Court shall not direct the specific performance of a part of a contract. Sections 12(2) to 12(4) lay down the exceptions to this general rule.

Section 12(3) lays down that where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either:

- a. forms a considerable part of the whole, though admitting of compensation in money; or
- b. does not admit of compensation in money;

he is not entitled to obtain a decree for specific performance; but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the party:

- in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), pays or has paid the consideration for the whole of the contract without any abatement; and

- in either case, relinquishes all claims to the performance of the remaining part of the contract and all rights to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

For the purposes of this section, a party to the contract shall be deemed to be unable to perform the whole of his part of it, if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.

In the given situation, since Aman owns only 25 bighas out of the agreed 50 bighas, he is unable to perform the whole contract. As 25 bighas is a substantial part of the total land, Bharat, being the non-defaulting party, may seek specific performance of the part Aman can perform – i.e., the 25 bighas, provided he is willing to: (i) accept that portion without abatement in price or claim for compensation, and (ii) waive all rights to the remaining portion. If Bharat agrees to these conditions, the Court may, under Section 12(3), direct Aman to specifically perform the contract to the extent of the 25 bighas."

If Bharat refuses, the whole contract may be rescinded, and he can claim compensation. Thus, the relief depends on Bharat's choice, whether he wants partial performance or rescission with damages.

### Question 3

- (a) Rakesh entered into a bond with a company to serve for a period of five years. As per the terms of the bond, if Rakesh leaves the job earlier, and joins a competitor within five years, he would be liable to pay damage. After receiving necessary training, Rakesh left the job within the stipulated period and joined a competitor. The former employer filed a suit for damages against him. Is this agreement valid under the Indian Contract Act, 1872 ? Discuss.

(5 marks)

- (b) Neelam had a property situated in Prayagraj. She was in urgent need of money for business purposes and therefore approached the creditor, showed her documents and borrowed money. She delivered the title deed in the city of Lucknow. Is this a valid mortgage ? Discuss in detail the requisites for this kind of mortgage.

(5 marks)

- (c) Neeresh draws a cheque of ₹ 50,000 on his own account payable to Gukesh, but he only has ₹ 20,000 in his account. Gukesh presents the same to the bank with in the time allowed. Cheque got bounced due to insufficiency of funds in Neeresh's account. Discuss the remedy available to Gukesh under the Negotiable Instruments Act, 1881, and what are the requirements which have to be complied with under section 138 of the said Act, before initiating action.

(5 marks)

### Answer 3(a)

According to section 27(1) of the Indian Contract Act, 1872, every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

However, an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else is not in restraint of lawful profession and is valid.

The facts of the given situation are similar to the case of *Niranjan Shanker Golikari v. The Century Spinning and Manufacturing Co. Ltd.*, AIR 1967 S.C. 1098. In this case, the Supreme Court upheld a similar clause, ruling that a contractual restraint during the term of employment, especially after specialized training, is not void if it protects the employer's legitimate interests.

In the given situation, the bond restrains Rakesh only during the employment term and aims to protect the company's investment in his training. Such a clause, being reasonable and in line with the above mentioned ruling, would not be void under Section 27. Therefore, the agreement is valid, and the company may be entitled to damages for breach.

In view of the above, it may be said that this agreement is valid as the restraint was necessary for the protection of the company's interests.

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

The mortgage referred to in the question is Mortgage by deposit of title deeds. This type of mortgage is called equitable mortgage in English law. In this transaction, a person delivers to the creditor or his agent documents of title of his immoveable property with an intention to create a security, and obtains a loan. The requisites of such a mortgage are (i) a debt, (ii) deposit of title deeds, and (iii) an intention that the deeds shall be security for the debt.

In order that a valid mortgage on an immoveable property should be effected, it must be in writing and attested by two witnesses and the document must be registered. But in case of a mortgage by deposit of title deeds, it need not be registered and an oral agreement between the person and the creditor followed by the delivery of the documents of title to the property is enough. The creditor will have the possession of the documents and he will advance the money at the stipulated rate of interest. In case the mortgagor does not repay the loan, the creditor on the basis of having the title deeds in his possession can sue the debtor to recover the money. This type of mortgage has been recognized due to expediency. Many persons, especially the business people, may need money urgently and they cannot wait till a formal document is written, signed, attested and then registered. So, they will simply approach the creditor and hand over the title deeds of their property and borrow money. This avoids delay and other formalities for effecting a valid mortgage.

It should be noted that this type of mortgage can be created only in certain towns and not everywhere in India. By virtue of this case, it is clear that the facility to create a valid mortgage is available in the following towns in India: Calcutta, Madras, Bombay, Adoni, Ajmer, Allahabad, Alwar, Bangalore, Bellary, Cochin, Coimbatore, Delhi, Jaipur, Jodhpur, Kanpur, Rajahmundry, Udaipur, Vellore, Ellora, Pali, Bhilwara, Bikaner, Kakinada, Narayanganj, Mysore, and Madurai. Though this type of mortgage is limited to specific cities it is at par with any other legal mortgage (*K.J. Nathan v. S.V. Maruthi Rao*, A.I.R. 1965 S.C. 443).

Title deeds should be delivered in these areas, the property of the person may be situated elsewhere. If the deposit of title deeds has taken place in any other town, it will not be a valid mortgage. Similarly, if the property is situated in any one of the towns mentioned above, but the deposit of title deeds is made in other towns or areas then again it will not be a valid mortgage.

Neelam had a property situated in Prayagraj. She was in urgent need of money for business purposes and therefore approached the creditor, showed her documents and borrowed money. But she delivered the title deed in the city of Lucknow. This is not a valid mortgage by deposit of title deeds because title deeds should be delivered in the above-mentioned areas, the property of the person may be situated elsewhere. If the deposit of title deeds has taken place in any other town, it will not be a valid mortgage.

### **Alternate Answer**

The mortgage referred to in the question is a Mortgage by deposit of title deeds, governed by Section 58(f) of the Transfer of Property Act, 1882. This type of mortgage is also referred to as an equitable mortgage in English law.

In this transaction, a person delivers to the creditor or his agent documents of title of his immoveable

property with an intention to create a security, and obtains a loan. The requisites of such a mortgage are (i) a debt, (ii) deposit of title deeds, and (iii) an intention that the deeds shall be security for the debt.

However, an exception is carved out under Section 58(f) of the Transfer of Property Act, allowing a mortgage without registration where the title deeds are deposited in notified towns.

But in case of a mortgage by deposit of title deeds, it need not be registered and an oral agreement between the person and the creditor followed by the delivery of the documents of title to the property is enough. The creditor will have the possession of the documents and he will advance the money at the stipulated rate of interest. In case the mortgagor does not repay the loan, the creditor on the basis of having the title deeds in his possession can sue the debtor to recover the money. This type of mortgage has been recognized due to expediency. Many persons, especially the business people, may need money urgently and they cannot wait till a formal document is written, signed, attested and then registered. So, they will simply approach the creditor and hand over the title deeds of their property and borrow money. This avoids delay and other formalities for effecting a valid mortgage.

It should be noted that this type of mortgage can only be created by depositing title deeds in certain notified towns as specified by the State Government through a Gazette Notification under Section 58(f) of the Transfer of Property Act.

The facility to create such a mortgage is available only in towns that have been officially notified by the State Government in the Gazette. Merely being a large or important city is not sufficient unless it is a notified town.

Title deeds should be delivered in these areas, the property of the person may be situated elsewhere. If the deposit of title deeds has taken place in any other town, it will not be a valid mortgage. Similarly, if the property is situated in any one of the towns mentioned above, but the deposit of title deeds is made in other towns or areas then again it will not be a valid mortgage.

Though this type of mortgage is limited to specific cities it is at par with any other legal mortgage (*K.J. Nathan v. S.V. Maruthi Rao*, A.I.R. 1965 S.C. 443).

Neelam had a property situated in Prayagraj, which is a notified town under Section 58(f). However, she delivered the title deed in the city of Lucknow. If it is shown that Lucknow is a notified town under Section 58(f), then the mortgage will be valid even though the property is situated in Prayagraj. Thus, the validity of this mortgage depends on whether Lucknow is a notified town under the relevant notification.

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

Section 138 of the Negotiable Instruments Act, 1881 provides that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.

Provided that nothing contained in this section shall apply unless-

- (a) the cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier;

- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Gukesh has a clear remedy under Section 138 of the Negotiable Instruments Act, 1881, provided he follows the below mentioned procedural steps:

1. Present the cheque within 3 months.
2. Send a demand notice within 30 days of dishonour.
3. Wait 15 days for payment.
4. File a complaint within 1 month after expiry of 15 days.

If Neeresh fails to pay despite notice, Gukesh can proceed to file a criminal complaint, and also seek civil remedies like recovery of the cheque amount with interest.

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

**Question No. 4**

- (a) A is accused of forging B's signature on a gift deed of property. The prosecution relies on the opinion of a handwriting expert, who confirms that the signature is forged. Discuss the relevancy of the opinion of a handwriting expert under the Bharatiya Sakshya Adhiniyam, 2023.

(5 marks)

- (b) Raj has been wrongfully detained in custody by Yogesh, a police officer. What remedy is available to Raj's family in such a case under Indian Constitution ? Discuss.

(5 marks)

- (c) Sohan Singh, aged sixty-two, was working as an Information Commissioner. In the midst of his tenure, after serving one year as an Information Commissioner, he was appointed as the Chief Information Commissioner. Discuss in detail, whether he can be appointed as the Chief Information Commissioner, and explain the terms of office of the Central Information Commission under the Right to Information Act, 2005.

(5 marks)

**Answer 4(a)**

Generally, opinion of third person is irrelevant. However, in some cases opinion of third person may be treated as relevant. According to Section 41 of Bharatiya Sakshya Adhiniyam, 2023 when the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact. A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Therefore, in the given situation, opinion of handwriting expert may be treated as relevant.

**Answer 4(b)**

The writ of Habeas corpus - an effective bulwark of personal liberty is a remedy available to a person who is confined without legal justification. The words 'Habeas Corpus' literally mean "to have the body". When a *prima facie* case for the issue of writ has been made then the Court issues a rule nisi upon the relevant authority to show-cause why the writ should not be issued. This is in national order to let the Court know on what grounds he has been confined and to set him free if there is no justification for his detention. This writ has to be obeyed by the detaining authority by producing the person before the Court. Under Articles 32 and 226 any person can move for this writ to the Supreme Court and High Court respectively. The applicant may be the prisoner or any person acting on his behalf to safeguard his liberty for the issuance of the writ of Habeas Corpus as no man can be punished or deprived of his personal liberty except for violation of law and in the ordinary legal manner. An appeal to the Supreme Court of India may lie against an order granting or rejecting the application (Articles 132, 134 or 136). The disobedience to this writ can be met with by punishment for contempt of Court under the Contempt of Courts Act.

In the above case, Raj has been detained wrongfully in custody by Yogesh, who is a police officer. As Raj was detained wrongfully by Yogesh, the writ of habeas corpus can be filed in court by Raj's family on his behalf since his whereabouts are not known to them.

**Answer 4(c)**

According to Right to Information Act, 2005 the term of office of Central Information Commission as follows-

- (1) The Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

- (2) Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

- (3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.
- (4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.
- (5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government: Provided that the salaries, allowances and other

conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment.

- (6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to, and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

In the given situation, Sohan Singh aged sixty-two who was working as Information Commissioner (IC) was appointed as the Chief Information Commissioner (CIC) in the midst of his tenure, after one year of his appointment as Information Commissioner. He is eligible for appointment as CIC under the second proviso to Section 13(2). However, since he has already served one year as Information Commissioner, and the aggregate tenure in both positions cannot exceed five years, his remaining tenure as CIC will be limited to four years. Moreover, as he is already sixty-two, he can serve only up to the age of sixty-five.

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

**Question 4A**

- (i) "The court have always insisted that the administrative agencies must follow minimum of fair procedure, i.e., Principle of Natural Justice". Under what circumstances can the right to a fair hearing and the rule against bias be lawfully excluded ?

(5 marks)

- (ii) What powers does the Collector have to stamp impounded instruments under the Indian Stamp Act, 1899 ? Discuss the procedure involved and legal implications of such stamping.

(5 marks)

- (iii) "A party may, before or during arbitral proceedings, or at any time after the making of the arbitral award but before its enforcement under Section 36, apply to the court for interim measures under Section 9(1) of the Arbitration and Conciliation Act, 1996." Discuss.

(5 marks)

**Answer 4A(i)**

**Exceptions to the principle of Natural Justice**

Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, that requirement may be excluded under certain exceptional circumstances. These circumstances inter alia include:

- 1. Statutory Exclusion:** The principle of natural justice may be excluded by the statutory provision. Where the statute expressly provides for the observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Where the statute is silent as to the observance of the principle of natural justice, such silence is taken to imply the observance thereto. However, the principles of natural justice are not incapable of exclusion. The statute may exclude them. When the statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate. But one thing may be noted that in India, Parliament is not supreme and therefore statutory exclusion is not final. The statute must stand the test of constitutional provision. Even if there is no provision under the statute for observance of the principle of natural justice, courts may read the requirement of natural justice for sustaining the law as constitutional.

2. **Emergency:** In exceptional cases of urgency or emergency where prompt and preventive action is required the principles of natural justice need not be observed. Thus, the pre-decisional hearing may be excluded where the prompt action is required to be taken in the interest of the public safety or public morality and any delay in administrative order because of pre-decisional hearing before the action may cause injury to the public interest and public safety. However, the determination of the situation requiring the exclusion of the rules of natural justice by the administrative authorities is not final and the court may review such determination.
3. **Interim disciplinary action:** The rules of natural justice are not attracted in the case of interim disciplinary action. For example, the order of suspension of an employee pending an inquiry against him is not final but interim order and the application of the rules of natural justice is not attracted in the case of such order.
4. **Academic evaluation:** Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded. The Supreme Court has made it clear that if the competent academic authority assesses the work of a student over the period of time and thereafter declare his work unsatisfactory the rule of natural justice may be excluded but this exclusion does not apply in the case of disciplinary matters.
5. **Impracticability:** Where the authority deals with a large number of persons it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice.

#### Answer 4A(ii)

Section 40 of the Indian Stamp Act, 1899 deals with Collector's powers to stamp an instrument which is impounded. Under Section 40(1), the Collector when impounding any instrument under Section 33, or receiving any instrument under Section 38(2) not being an instrument chargeable with duty not exceeding 10 naya paisa only or a bill of exchange or promissory note, shall adopt the following procedure:

- (i) if he is of the opinion that instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable as the case may be;
- (ii) if he is of the opinion that such instrument, is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of Rs. 5/-, if he thinks fit and amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of Rs. 5/-.

The Collector, however, has the discretion to remit the whole penalty leviable under this Section in a case where the instrument has been impounded only because it has been written in contravention of Section 13 or Section 14.

A certificate given in the situation (i) above, shall, for the purposes of the Act be conclusive evidence of the matters stated therein. Sub-section (3) of Section 40 provides that an instrument which has been sent to the Collector under Section 38(2) shall be returned to the impounding officer after the collector has dealt with the same in the manner provided above.

#### Answer 4A(iii)

Section 9(1) of the Arbitration and Conciliation Act, 1996 states that a party may, before, or during arbitral proceedings or at any time after making of the arbitral award but before it is enforced in accordance with section 36, apply to a court,

- (a) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (b) for an interim measure of protection in respect of any of the following matters, namely,
  - i. the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
  - ii. securing the amount in dispute in the arbitration;
  - iii. the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any part) or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
  - iv. interim injunction or the appointment of a receiver;
  - v. such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

Further, sub-section (2) states that where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

Under sub-section (3) once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

### Question 5

- (a) Discuss the effect of repeal under the General Clauses Act, 1897. The Bharatiya Nyaya Sanhita (BNS), 2023, which came into effect on July 1, 2024, repealed the Indian Penal Code (IPC), 1860, as the primary criminal law in India. What is the legal consequence of offences committed under the IPC, before July 1, 2024 ?

(5 marks)

- (b) What is meant by a summons under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 ? Discuss the provisions relating to the service of summons on corporate bodies, firms, and societies.

(5 marks)

- (c) A person was accused of theft involving stolen property valued at less than five thousand rupees. He was a first-time offender, and the property was recovered. Discuss the punishment prescribed for such an offence under the Bharatiya Nyaya Sanhita, 2023. What other offences are covered under this type of punishment ?

(5 marks)

### Answer 5(a)

According to section 6 of the General Clauses Act, 1897, where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

The Bharatiya Nyaya Sanhita (BNS) 2023, which came into effect on July 1, 2024, has repealed the Indian Penal Code (IPC), 1860 as the primary criminal law in India. For any offence committed before July 1, 2024, the provisions of the Indian Penal Code shall apply.

### Answer 5(b)

According to Section 63 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, every summons issued by a Court under BNSS shall be-

- i. in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court; or
- ii. in an encrypted or any other form of electronic communication and shall bear the image of the seal of the Court or digital signature.

Further as per section 64, every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant. However, by virtue of section 66, where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Section 65 of BNSS provides the provisions relating to Service of summons on corporate bodies, firms, and societies. Service of a summons on a company or corporation may be effected by serving it on the Director, Manager, Secretary or other officer of the company or corporation, or by letter sent by registered post addressed to the Director, Manager, Secretary or other officer of the company or corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

In this section, "company" means a body corporate and "corporation" means an incorporated company or other body corporate registered under the Companies Act, 2013 or a society registered under the Societies Registration Act, 1860.

Service of a summons on a firm or other association of individuals may be effected by serving it on any partner of such firm or association, or by letter sent by registered post addressed to such

partner, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.

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

The Bharatiya Nyaya Sanhita 2023(BNS) includes community service as a form of punishment for minor offences where the offenders perform unpaid work for the benefit of the community. The BNS aims to create a more balanced and rehabilitative criminal justice system by focusing on restorative justice. The goal is to promote rehabilitation and reduce the burden on the prison system.

Under the BNS, the following offences have been specifically mentioned as eligible for community service as a punishment:

- i. Section 202: Unlawful engagement of a public servant in trade
- ii. Section 209: Failure to appear in response to a proclamation under Section 84
- iii. Section 226: Attempt to commit suicide to influence authorities
- iv. Section 303(2) proviso: Petty theft (first-time offence, value under ₹5000, and property recovered)
- v. Section 355: Misconduct in public by a drunken person
- vi. Section 356(2): Defamation (in certain circumstances)

In all these cases, the court has the discretion to impose community service instead of imprisonment or fine, provided the statutory conditions are satisfied.

Further under Section 303(2), community service is the sole mandatory punishment for petty theft - where the value of stolen property is less than five thousand rupees, and a person is convicted for the first time and the stolen property/value has been returned or restored.

In the given situation, the person is a first-time offender, the stolen property is valued at less than ₹5,000, and it has been recovered. Therefore, in accordance with the proviso to Section 303(2) of the BNS, he shall be punished with community service.

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

#### **Question 6**

- (a) Anil inspects a hot water bottle at a chemist's shop and enquires whether it will stand boiling water. Anil was told that it will stand hot water but not boiling water and then he buys it. The moment Anil puts hot water into the bottle, it bursts causing him an injury. Discuss with the help of relevant provisions whether Anil has any remedy against the chemist ?

(5 marks)

- (b) Aamir the owner of a boat, contracts with Bhavesh to take a cargo of jute to Aligarh for sale at that place, starting on a specified day. The boat owing to some unfortunate reasons, could not start at the time appointed, and hence the arrival of the cargo at Aligarh is delayed beyond the specified contracted time. After that date and before the arrival of the cargo, the price of the jute falls. Discuss in detail the remedy available to Bhavesh.

(5 marks)

- (c) Ahmed, Raheem, and Sameer were joint-owners of a truck, and possession of the said truck was with Raheem. Sudhir purchased the truck from Raheem without knowing that Ahmed and Sameer were also co-owners of the truck. Will Sudhir get a good title ? Discuss in the light of the provisions of the Sale of Goods Act, 1930.

(5 marks)

- (d) The defendants were a partnership firm consisting of two partners, Ramesh and Mahesh. Ramesh was taking care of the functioning of the firm and Mahesh was a sleeping partner. Ramesh acting within the scope of his authority, bribed the clerk of the plaintiff's company and induced him to commit a breach of contract with the plaintiff and divulge some of the secret important information of the plaintiff's company. The plaintiff suffered losses. This act of Ramesh was done without Mahesh's knowledge. Plaintiff sued both the partners. Discuss whether the plaintiff would succeed.

(5 marks)

### Answer 6(a)

In a sale by description under the Sale of Goods Act, 1930(the Act), there are certain implied conditions.

- (a) Goods must correspond with description: It is provided under Section 15 of the Act that when there is a sale of goods by description, there is an implied condition that the goods shall correspond with description.

In a sale by description, the buyer relies for his information on the description of the goods given by the seller. Where 'A' buys goods which he has not seen, it must be sale by description, e.g., where he buys a 'new Fiat car' from 'B' and the car is not new, he can reject the car.

- (b) Goods must also be of merchantable quality: If they are bought by description from dealer of goods of that description. [Section 16(2)]

Merchantable quality means that the goods must be such as would be acceptable to a reasonable person, having regard to prevailing conditions. They are not merchantable if they have defects which make them unfit for ordinary use, or are such that a reasonable person knowing of their condition would not buy them. For example: 'P' bought black yarn from 'D' and, when delivered, found it damaged by the white ants. The condition of merchantability was broken.

But, if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. If, however, examination by the buyer does not reveal the defect and he approves and accepts the goods, but when put to work, the goods are found to be defective, there is a breach of condition of merchantable quality.

The buyer is given a right to examine the goods before accepting them. But a mere opportunity without an actual examination, however, cursory, would not suffice to deprive him of this right.

- (c) Condition as to wholesomeness: The provisions, (i.e., eatables) supplied must not only answer the description, but they must also be merchantable and wholesome or sound. For example: 'F' bought milk from 'A' and the milk contained typhoid germs. 'F's wife became infected and died. 'A' was liable for damages.
- (d) Condition as to quality or fitness for a particular purpose: Ordinarily, in a contract of sale, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied. But there is an implied condition that the goods are reasonably fit for the purpose for which they are required if:
- (i) the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill and judgement, and
  - (ii) the goods are of a description which it is in the course of the seller's business to supply

(whether he is the manufacturer or producer or not). There is no such condition if the goods are bought under a patent or trade.

Anil had inspected the hot water bottle at a chemist's shop. He made enquires too from the chemist whether it would stand boiling water. The chemist had affirmed that it would stand hot water but not boiling water and then Anil bought it. The moment Anil put hot water into the bottle, it burst causing him an injury.

In view of the provisions discussed above, it can be said that the goods were not of merchantable quality and even when the requirement was expressly made to the chemist it did not fit the purpose. The seller will be responsible for damages as the bottle was not fit for use as a hot water bottle. Anil may succeed in claiming damages from the chemist.

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

Section 55 of the Indian Contract Act, 1872 provides for the effect of failure to perform at the time fixed in a contract in which time is essential:

If time is of the essence, the party not at fault may void the contract. Even if the contract is not voided, the non-defaulting party is entitled to claim compensation for any loss caused by the delay.

Section 73 of the Indian Contract Act, 1872, deals with unliquidated damages. Where the amount of compensation claimed for a breach of contract is left to be assessed by the Court, damages claimed are called unliquidated damages. According to Section 73, when a contract has been broken, a party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage, caused to him thereby, which naturally arose in the usual course of things from such breach or which the parties knew, when they made the contract to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Unliquidated damages are of several kinds including ordinary damages.

### **Ordinary Damages:**

These are restricted to pecuniary compensation to put the injured party in the position he would have been had the contract been performed. It is the estimated amount of loss actually incurred. Thus, it applies only to the proximate consequences of the breach of the contract and the remote consequences are not generally regarded. For example, in a contract for the sale of goods, the damages payable would be the difference between the contract price and the price at which the goods are available on the date of the breach.

Thus, in this case ordinary damages may be given, that is, the measure of the compensation payable to Bhavesh by Aamir will be the difference between the price which Bhavesh could have obtained for the cargo at Aligarh at the time when it would have arrived if forwarded in due course and its market price at the time when it actually arrived.

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

The general rule is that only the owner of goods can sell the goods. Conversely, the sale of an article by a person who is not or who has not the authority of the owner, gives no title to the buyer. The rule is expressed by the maxim; "*Nemo Dat Quod Non Habet*" i.e., no one can pass a better title than he himself has. The Act while recognizing the general rule that no one can give a better title than he himself has laid down important exceptions to it. Under the exceptions, the buyer gets a better title to the goods than the seller himself.

As per Section 28 of Sale of Goods Act, 1930, if one of several joint owners of goods has the sole

possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

In the given situation, one of the joint owners Raheem had possession of the truck and Sudhir had purchased the truck without knowing that Ahmed and Sameer were also co-owners of the truck. Hence, applying the provisions of Section 28, property in truck passes to Sudhir and he gets a good title.

**Answer 6(d)**

For the tort committed by a partner in the ordinary course of the business of the firm, all the other partners are liable therefore to the same extent as the guilty partner. The liability of the partners is joint and several. This case involves vicarious liability arising out of the special relationship between partners. Partners are agent of a partnership firm. The principles of agency govern the relationship between partners as well as between partners and partnership firm. So far as the liability for the torts or negligence committed by the partners is concerned a firm is liable for the same, provided such negligence or tort is committed in the ordinary course of the business of the firm.

It is noteworthy that each partner is an agent at one hand and at the same time is a principal of all other partners. His deeds in the ordinary course of firm's business bind other partners and simultaneously make the firm liable for his deed.

In this case Ramesh was acting within the scope of his authority and in the ordinary course of firm's business, where he bribed the clerk of the plaintiff's company and induced him to commit a breach of contract with the plaintiff and divulge some of the secret important information of the plaintiff's company. Thus, both the partners may be held liable for the said wrongful act of Ramesh.

In view of the above, it can be said that plaintiff may succeed.

(5 marks)

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

- (i) "Law is a theory of social engineering, which means balance between the competing interests in society." Discuss Roscoe Pound's classification of interests.

(5 marks)

- (ii) Discuss the doctrine of sufficient cause under the Limitation Act, 1963.

(5 marks)

- (iii) "An information provider is a person, who provides information to a body corporate and, under these rules, has certain rights over sensitive personal information. Such information cannot be collected without the provider's consent." What restrictions do the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011—commonly known as the SPDI Rules—place on body corporates to protect individuals' privacy?

(5 marks)

- (iv) Discuss the grounds on which a party, against whom a foreign award is invoked, may oppose its enforcement under Section 48 of the Arbitration and Conciliation Act, 1996.

(5 marks)

**Answer 6A(i)**

Roscoe Pound drew a similarity between the task of a lawyer and an engineer and gave his theory of social engineering. The goal of this theory was to build such a structure of society where the satisfaction of wants of maximum was achieved with the minimum of friction and waste. Such a society according to Roscoe Pound would be an 'efficient' society. Realisation of such a social structure would require balancing of competing interests.

Roscoe Pound's classification of interests are as follows:

1. Individual interest: These are claims or demands determined from the standpoint of individual's life and concern. They are-
  - a. Interest of personality: This includes physical integrity, freedom of will, honour and reputation, privacy and freedom of conscience.
  - b. Interest in domestic relations: This includes relationships of parents, children, husbands and wives.
  - c. Interest of substance: This includes interests of property, freedom of association, freedom of industry and contract, continuity of employment, inheritance and testamentary succession.
2. Public interest: These interests are asserted by individuals from the standpoint of political life. They are:
  - a. Interests of the state as a juristic person: It includes integrity, freedom of action and honour of the state's personality, claims of the politically organized society as a corporation to property acquired and held for corporate purposes.
  - b. Interests of the state as guardian of social interest.
3. Social interests: These are claims or demands thought of in terms of social life and generalized as claims of the social group. It is from the point of view of protecting the general interest of all members of the society. Social interests include-
  - a. Social interest in the general security: This includes general safety, peace and order, general health, security of acquisition and transaction.
  - b. Social interest in the security of social institutions such as domestic, religious, political and economic institutions.
  - c. Social interest in general morals like laws dealing with prostitution, gambling, bigamy, drunkenness.
  - d. Social interest in the conservation of social resources like the natural and human resource. This social interest clashes to some extent with the individual interest in dealing with one's own property as on pleases.
  - e. Social interest in general progress. It has three aspects- economic, political and cultural.
  - f. Social interest in individual life. It involves self-assertion, opportunity and conditions of life. Society is interested in individual life because individuals are its building blocks.

Having given various interest recognized by law, Roscoe Pound applied himself to figure out to balance competing interests. He said that interests should be weighed on the same plane. According to him one cannot balance an individual interest against a social interest, since that very way of stating them may reflect a decision already made. Thus, all the interests should be transferred to the same place, most preferably to the social plane, which is the most general, for any meaningful comparison.

**Answer 6A(ii)**

Section 5 of the Limitation Act, 1963 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. This is known as doctrine of "sufficient cause" for condonation of delay which is embodied in Section 5 of the Limitation Act, 1963. Section 5 provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

It is clarified by the explanation appended to Section 5 that the fact that the appellant or applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the prescribed period may be a sufficient cause within the meaning of this section.

Thus, the Court may admit an application or appeal even after the expiry of the specified period of limitation if it is satisfied with the applicant or the appellant, as the case may be as to sufficient cause for not making it within time.

The Section is not applicable to applications made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 and also to suits. The Court has no power to admit a time barred suit even if there is a sufficient cause for the delay. It applies only to appeals or applications as specified therein. The reason for non- applicability of the Section to suits is that, the period of limitation allowed in most of the suits extends from 3 to 12 years whereas in appeals and application it does not exceed 6 months. For the applicability of Section 5, the "prescribed period" should be over. The prescribed period means any period prescribed by any law for the time being in force.

The party applying for condonation of delay should satisfy the Court for not making an appeal or application within the prescribed period for sufficient cause. The term sufficient cause has not been defined in the Limitation Act. It depends on the circumstances of each case.

However, it must be a cause which is beyond the control of the party.

**Answer 6A(iii)**

An information provider is a person who provides information to the body corporate and under these rules, he has certain rights over the sensitive personal information, this information cannot be collected without the providers' consent and he or she has the right to abstain from giving consent and can withdraw the consent by writing to the body corporate.

**i. Privacy Policy**

Rule 4 requires a body corporate to provide a privacy policy on their website, which is easily accessible, provides for the type and purpose of personal, sensitive personal information collected and used, and reasonable security practices and procedures.

**ii. Consent**

Rule 5 requires that prior to the collection of sensitive personal data, the body corporate must obtain consent, either in writing or through fax regarding the purpose of usage before collection of such information.

**iii. Collection Limitation**

Rule 5 (2) requires that a body corporate should only collect sensitive personal data if it is connected to a lawful purpose and is considered necessary for that purpose.

**iv. Notice**

Rule 5(3) requires that while collecting information directly from an individual, the body corporate must provide the following information:

- (a) The fact that information is being collected

- (b) The purpose for which the information is being collected
- (c) The intended recipients of the information.
- (d) The name and address of the agency that is collecting the information
- (e) The name and address of the agency that will retain the information

**v. Retention Limitation**

Rule 5(4) requires that body corporate must retain sensitive personal data only for as long as it takes to fulfil the stated purpose or otherwise required under law.

**vi. Purpose**

Limitation Rule 5(5) requires that information must be used for the purpose that it was collected for.

**vii. Right to Access and Correct**

Rule 5(6) requires a body corporate to provide individuals with the ability to review the information they have provided and access and correct their personal or sensitive personal information.

**viii. Right to 'Opt Out' and Withdraw Consent**

Rule 5(7) requires that the individual must be provided with the option of 'opting out' of providing data or information sought by the body corporate. Also, they must have the right to withdraw consent at any point of time.

**ix. Grievance Officer**

Rule 5(9) requires that body corporate must designate a grievance officer for redressal of grievances, details of which must be posted on the body corporate's website and grievances must be addressed within a month of receipt.

**x. Disclosure with Consent, Prohibition on Publishing and Further Disclosure**

Rule 6 requires that body corporate must have consent before disclosing sensitive personal data to any third person or party, except in the case with Government agencies for the purpose of verification of identity, prevention, detection, investigation, on receipt of a written request. Also, the body corporate or any person on its behalf shall not publish the sensitive personal information and the third party receiving the sensitive personal information from body corporate or any person on its behalf shall not disclose it further.

**xi. Requirements for Transfer of Sensitive Personal Data**

Rule 7 requires that body corporate may transfer sensitive personal data into another jurisdiction only if the country ensures the same level of protection and may be allowed only if it is necessary for the performance of the lawful contract between the body corporate or any person on its behalf and provider of information or where such person has consented to data transfer.

**xii. Security of Information**

Rule 8 requires that the body corporate must secure information in accordance with the ISO 27001 standard or any other best practices notified by Central Government, which must be audited annually or when the body corporate undertakes a significant up gradation of its process and computer resource.

**Answer 6A(iv)**

According to section 48(1) of the Arbitration and Conciliation Act, 1996, enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that –

- (a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

- (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Further according to section 48(2), Enforcement of an arbitral award may also be refused if the Court finds that –

- (a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or
- (b) the enforcement of the award would be contrary to the public policy of India.

*Explanation 1.* – For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, –

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

*Explanation 2.* – For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

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# COMPANY LAW & PRACTICE

## GROUP 1 PAPER 2

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### Part-I

#### Question 1

##### Case Study :

Sourav, Soumyadip, Sucharita and Sohini are four directors of Supershine Detergents Ltd. They decided to convene a meeting on 20th February, 2025 to discuss, consider and solve some issues the company is facing in the corporate secretarial compliances since few days. As there is no qualified Company Secretary at present in the company, they invited you, as a practising Company Secretary in the meeting, to take you valued views on the divergent issues and move forward accordingly.

Sohini started the discussion stating that five hundred equity shares of the company are presently held jointly by Dhiman, Bobby and Sam—their names appearing in the share certificates in this order. The joint shareholders want a transposition of the names in the order Sam, Dhiman and Bobby for in respect of three hundred shares. Sohini requested the members of the Board to analyse the if this is feasible.

Sourav updated the board members that the promoters of the company want to incorporate a company in the name and style of Rimjhim Tourism Corporation Ltd. in a scenic hilly town in the state of Uttar Pradesh. The proposed new company would deal with a different line of business. The new company after some years would become a subsidiary of Supershine Detergents Ltd. This strategic decision will increase the brand value of the Group. Sourav invited comments from his co-directors and asked you to examine the matter.

Sucharita mentioned that Vinod, an MBA (Finance) who is a member of the company for ten years wants to inspect the Register of deposits maintained by the company as required under the provisions of the Companies Act, 2013 and rules made thereunder. The secretarial officer of the company has refused to show the register for inspection, as Vinod did not divulge the reasons for inspection. She requested the other directors to look into the matter. Soumyadip brought to the notice of his board colleagues that Srishti, proprietor of S. Nagori and Associates, Chartered Accountants, is holding the office of statutory auditor of the company since 2019-20. The Audit committee is very happy with the performance of the auditor. The firm has also expressed its willingness to continue as statutory auditor for FY 2024-25. Soumyadip tabled the following figures from the audited financial statements of the company for year ended 31st March, 2024 :

| Items                                  | ₹ in crores |
|----------------------------------------|-------------|
| Paid-up share capital                  | 6           |
| Turnover                               | 35          |
| Borrowings from financial institutions | 60          |
| Net worth                              | 70          |

Soumyadip urged the other board members to examine the matter and take decision. Before conclusion of the meeting all the four directors jointly raised the topic of creation of charge on assets of the company for the loan taken from State Bank of India for ₹ 4 Crore for the purchase of raw materials keeping security of company immovable property.

They maintained their understanding that copy of every instrument evidencing any creation of charge is required to be filed with Registrar of Companies. However, the board members are confused over certain aspect of the matter and sought clarity on the matter.

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

- (a) Can the directors of the company allow transposition of names in the share certificate ? Advise the Board, whether form SH-4 is required to be executed.

(3 marks)

- (b) Can a company be incorporated in the name and style of Rimjhim Tourism Corporation Ltd under the Companies Act, 2013 ? You being a practicing Company Secretary, examine.

(3 marks)

- (c) Comment on the validity of action of the secretarial officer in refusal of inspection of register of deposits.

(3 marks)

- (d) In light of the provisions of Companies Act, 2013, examine whether S. Nagori and Associates can be reappointed as statutory auditor for year 2024-25.

(3 marks)

- (e) Advise the directors how the instruments evidencing creation of charge to be filed with Registrar is verified.

(3 marks)

### Answer 1(a)

In case of joint shareholders one or more of them may require the company to alter or re arrange the order of their names in the register of members of the company. If the company provides in its articles that the senior most amongst the joint shareholders will be recognised for all processes like service of notice, voting at the meeting etc. the request of transposition may be duly considered and approved by the Board or other authorised officer of the company. Since no transfer of any interest in the shares take place on such transposition it does not require payment of stamp duty. Section 56 of the Companies Act, 2013 read with Rule 11 of the Companies (Share Capital and Debentures) Rules, 2014, is primarily for the transfer of securities where there is a change in ownership from one person to another. Since transposition does not involve a change in ownership, it falls outside the purview of requiring a Form SH-4.

The stock exchange division of Department of Economic Affairs has clarified that there is no need of execution of transfer deed if requirement of change of order of name is made in writing by all joint holders. Hence a joint application by all the shareholders will be sufficient if it is for entire holding. Transposition of names of shareholders in the register of members do not require the execution through instrument of transfer in Form SH-4.

If transposition is needed in case of part of holding, execution of transfer deed with payment of stamp duty will be needed. The Board of directors are advised accordingly.

**Answer 1(b)**

According to section 4(2) of the Companies Act, 2013, the name stated in the memorandum shall not –

- a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
- b) be such that its use by the company –
  - (i) will constitute an offence under any law for the time being in force; or
  - (ii) is undesirable in the opinion of the Central Government.

In terms of section 4(3)(b) of the Companies Act, 2013 read with Rule 8B of the Companies (Incorporation) Rules, 2014, a company shall not be registered with a name which contains—

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

The word "Tourism Corporation" used in the proposed name may be considered undesirable as the words can be used only with the approval of the Central Government.

Hence, Rimjhim Tourism Corporation Ltd. cannot be formed without such previous approval of the Central Government for the use of any such word or expression. The promoters of the proposed company have to be guided accordingly by the Board of directors.

**Answer 1(c)**

According to rule 14 of the Companies (Acceptance of deposits) Rules, 2014, every company accepting deposits is required to maintain at its registered office one or more separate registers for deposits accepted or renewed in which prescribed particulars shall be entered separately in the case of each depositor.

The provisions of the Companies Act, 2013 do not contain any stipulation governing the inspection of the Register for deposits and therefore it can be said that in absence of any enabling provision, this register is not open for inspection by members and company may refuse to open it for inspection.

Accordingly, the secretarial officer of the company has not defaulted under any provision of the Companies Act, 2013 by refusing an inspection of Register of deposits to Vinod, member of the Company.

**Answer 1(d)**

The Companies Act, 2013 has introduced the system of rotation of auditors under section 139(2) of the Act and rule 5 of the Companies (Audit and Auditors) Rules, 2014, which is applicable to :

- all listed companies;
- all unlisted public companies having paid up share capital of rupees 10 crore or more;
- all private limited companies having paid up share capital of rupees 50 crore or more;
- all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crore or more;

The concept of rotation of auditors shall not apply to one-person companies and small companies.

All the companies mentioned above shall not appoint or re-appoint an individual as an auditor of the company for more than one term of 5 consecutive years. An individual auditor, who has completed his term of 5 consecutive years, shall not be eligible for re-appointment as auditor in the same company for 5 years from the date of completion.

In light of the above Supershine Detergents Private Ltd. is not a 'small company'. Being a private company, it has borrowings from financial institutions worth Rs. 60 crore which is higher than Rs. 50 crore and thus is hit by the mandatory rotation provisions of auditors. Accordingly, S. Nagori & Associates who has acted as auditor for five years from FY 2019-20 to end on FY 2023-24 cannot be reappointed as statutory auditor in the company for FY 2024- 25 though audit committee is happy with auditor's performance.

### Answer 1(e)

As per rule 3(4) of the Companies (Registration of Charges) Rules, 2014, a copy of every instrument evidencing any creation or modification of charge required to be filed with the Registrar in pursuance of section 77, 78 or 79 of the Companies Act, 2013 shall be verified as follows:

- (a) where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any Director or Company Secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;
- (b) where the instrument or deed relates, whether wholly or partly, to the property situated in India the copy shall be verified by a certificate issued under the hand of any Director or Company Secretary of the company or an authorised officer of the charge holder.

The Board members are advised on the above lines.

### Question 2

- (a) Can an Independent Director of a public listed company file a complaint with the NCLT against the management of the company for oppression and mismanagement ? Analyse as per the decided case laws meaning of oppression and mismanagement.

(3 marks)

- (b) Following is the financial information of Maximum Private Ltd. obtained from latest audited financial statement for the year ended 31st March, 2024 :

| Items           | Amount in ₹ |
|-----------------|-------------|
| Paid-up capital | 3 Crore     |
| Turnover        | 30 Crore    |
| Borrowings      | 50 Lakh     |

There is no Company Secretary in employment in the company and Joy, Officer (Accounts) prepared annual e-form AOC-4 and submitted to Satish, practicing Cost Accountant for certification in place of practicing Company Secretary. With the given information, examine with reference to the provisions of the Companies Act, 2013, if certification of AOC-4 is really necessary.

(3 marks)

- (c) What are the consequences when a public limited company is incorporated by furnishing false information/by fraud ? Discuss as per the provisions under Companies Act 2013, when any act to be considered as fraud ?

(3 marks)

- (d) (i) What is pre-certification of e-Forms ?

(ii) What is straight-through process ?

(iii) What are the consequences if a professional falsely certifies an e-Form ?

(3 marks)

- (e) The Board of Directors of Hub & Links Logistics Private Ltd. passed a resolution on 2nd January, 2025 to remove its statutory auditor Sundar & Co., Chartered Accountants from office before expiry of term as the quality of audit was found to be improper and inappropriate.

Thereafter the company passed an ordinary resolution on 3rd February, 2025 for removal of the auditor. The auditor objected to this mode of removal. You are informed that no audit fee was remaining payable to the auditor. Discuss with reference to the provisions of Companies Act, 2013.

(3 marks)

### Answer 2(a)

The words 'oppression and mismanagement' have not been defined under the Companies Act, 2013.

The meaning of the term "oppression" as explained by Lord Cooper in the Scottish case of *Elder v. Elder & Western Ltd.*, (1952) Scottish Cases 49, which has been cited with approval by Wanchoo, J (afterwards C.J.) of the Supreme Court in *Shanti Prasad v. Kalinga Tubes*, (1965) 1 Comp. L.J. 193 at 204 is as under : "The essence of the matter seems to be that the conduct complained of should at the lowest, involve a visible departure from the standards of fair dealing, on which every shareholder who entrusts his money to the company is entitled to rely."

As decided in [*Bellador Silk Limited* (1965) 1 All ER 667], a member can complain of oppression only as a member and not in his capacity as director or creditor.

According to Section 241 of Companies Act, 2013 allows the application to NCLT for relief in case of oppression by members only. As per Regulation 17(6)(d) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, an independent director shall not be offered any ESOP by the listed company.

According to Regulation 16(1)(b)(iv) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, an independent director, inter alia, shall not have any pecuniary relationship with the listed company.

Hence, an independent director who has no monetary stake in the company and who is prohibited from holding shares in a listed company cannot file a case of oppression and mismanagement with NCLT as he is not a member of the company in the first place. Therefore, the independent director of a public listed company cannot file a complaint with the NCLT against the management of the company for oppression and mismanagement.

### Answer 2(b)

A 'small company' has been defined under section 2(85) of the Companies Act, 2013 as a company, other than a public company whose-

- paid-up share capital does not exceed 4 crore rupees or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and
- turnover of which as per profit and loss account for the immediately preceding financial year does not exceed 40 crore rupees or such higher amount as may be prescribed which shall not be more than 100 crore rupees.

However, the definition excludes a holding company or a subsidiary company; a company registered under section 8; or a company or body corporate governed by any special Act.

In the instant case, Maximum Private Ltd. satisfies the turnover and paid-up share capital criteria to be a small company and is a 'small company'.

As per Rule 8(12)(a) and 8(12)(b) of the Companies (Registration Offices and Fees) Rules, 2014, there is no necessity of certification of e-forms by a 'small company' from a practicing professional, the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice.

### Answer 2(c)

- i) As per Section 7(5) of the Companies Act, 2013, if any person furnishes any false or incorrect information or suppresses any material information for registration of a company, he shall be liable for fraud under section 447 of the Act.
- ii) As per Section 7(6) of the Companies Act, 2013, it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, the promoters, the persons named as the first Directors of the company, and the professionals making declaration shall be liable for punitive action for fraud under section 447 of the Act.

In addition to the above, under section 7(7) of the Companies Act, 2013, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
  - (b) direct that liability of the members shall be unlimited; or
  - (c) direct removal of the name of the company from the register of companies; or
  - (d) pass an order for the winding up of the company; or
  - (e) pass such other orders as it may deem fit:
- iii) According to Section 447 of the Act, fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.

Section 447 states that without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

### Answer 2(d)

- I. Pre-certification of E-Forms are done by practicing professionals like Practising Chartered Accountant (PCA), Practising Cost Accountant (PCA (Cost)) and Practising Company Secretary (PCS).

Pre-certification by an independent professional in the form is aimed at reducing the workload of Registrar of Companies (ROC). Thus, pre-certification of e-forms aids in straight through processing of e-forms without manual intervention by the officials at ROC.

- II. Straight through process is an automated process in which a pre certified e-form is taken on record by the MCA-21 system without human intervention.
- III. If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under Section 447 and 448 of the Companies Act, 2013 besides disciplinary action by the Institute which issued the Certificate of Practice

### Answer 2(e)

As per section 140 of the Companies Act, 2013-The auditor appointed under section 139 of the Companies Act, 2013, may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the prior approval of Central Government in that behalf in the manner prescribed in rule 7 of the Companies (Audit & Auditors) Rules, 2014.

As per rule 7, the auditor appointed under section 139 of the Act, may be removed from his office before the expiry of the term only by -

- (i) Obtaining the prior approval of Central Government by filling an application in Form ADT-2 within 30 days of resolution passed by the Board.
- (ii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.
- (iii) The auditor concerned shall be given a reasonable opportunity of being heard.

As Central Government approval was not obtained in this case, ordinary resolution was passed instead of special resolution and auditor was not provided an opportunity of being heard, the objection of the auditor is valid.

### Question 3

- (a) The abstract of the balance sheet of Trucks and Pickups Limited, a listed company as on 31/03/2024 is given below :

| Item                               | Amount (₹ in crores) |
|------------------------------------|----------------------|
| Equity Shares Capital (FV 10 each) | 30                   |
| 10% Preference Share Capital       | 10                   |

|                                    |      |
|------------------------------------|------|
| Reserves and Surplus               | 85   |
| Capital Redemption Reserve Account | 15   |
| Long Term Borrowings               | 120  |
| Short Term Borrowings              | 240  |
| Short Term Provisions              | 20   |
| Profit for the year (LOSS)         | (-2) |

The company has declared and paid dividend for the last three years as given below :

| Year       | FY 2020-21 | FY 2021-22 | FY 2022-23 |
|------------|------------|------------|------------|
| Dividend % | 20%        | 10%        | 30%        |

The company has incurred a loss of ₹ 2 crores in the current FY 2023-24. However, the BOD decided to continue the tradition of continuous dividend payment history of the company by declaring the eligible dividend for the current FY.

Explain the provisions of Companies Act, 2013 on payment of dividend in case loss/ inadequate profit in the current year.

Decide on the amount of dividend payable to both equity and preference shareholders. (5 marks)

- (b) Vijay and Purnima, husband and wife, started an Organic fertilizer company called Vipur Organic Fertilizer Private Limited. The entire share capital of the company is held by Vijay and Purnima in equal proportions.

Vijay and Purnima are also the only directors of the company. The Board of Directors of the company has appointed you as the CFO and Company Secretary.

Now Vijay and Purnima want to go on a world tour holiday costing ₹ 5 lakhs each and want the company to pay for the travel agency.

As the CFO and Company Secretary of the company, decide as per provisions under

Companies Act, 2013 and decided cases, whether directors can use the company's money for the personal trips.

(5 marks)

- (c) The Board of Directors of Gallant Ltd. is contemplating to convert its status to a dormant company as it wants to start its business afresh after few years due to poor demand of its products in the market now. Sruti, an additional director has put before you, Manager (Secretarial), the following queries :

- How many board meetings are required to be held by a dormant company ?
- Can the Registrar of Companies grant status of a dormant company, if there is a dispute in the ownership of the company ?
- Can dormant status be granted by Registrar, if there are no outstanding statutory taxes payable to any government but duties payable to local authority ?
- Mention any two attachments, other than resolutions, to be filed with e-form MSC-1

with the ROC for applying for change of status of dormant company. Prepare a note to be sent to the director.

(5 marks)

### Answer 3(a)

i) According to Section 123(1) of Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, in case of inadequacy or absence of profits in any financial year, if a company proposes to declare dividend out of accumulated profits earned by the company in previous years and transferred by it to free reserves, such declaration shall be made subject to the following conditions:

- a) The rate of dividend shall not exceed the average of the rates at which dividend was declared by it in the immediately preceding three years
- b) The total amount to be withdrawn from such accumulated profits shall not exceed one tenth of its paid-up capital and free reserves as appearing in the latest audited financial statement.
- c) The amount so withdrawn shall first be utilized to set off the losses and provide for the depreciation incurred in the financial year in which the dividend is proposed to be declared.
- d) The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

ii) Thus, the maximum dividend that can be declared by the company in FY 23-24 is

- Average of previous three years' dividend rates =  $(20\% + 10\% + 30\%) / 3$
- Average Rate =  $60\% / 3 = 20\%$

The maximum dividend rate that can be declared is 20%.

The maximum amount that can be withdrawn from free reserves is

- Maximum amount to be withdrawn = 10% of (Paid-up Capital + Free Reserves)
- Maximum amount to be withdrawn = 10% of ₹125(30+10+85) Crores = ₹12.5 Crores

(iii) The current FY losses need to be first set-off. Hence, the balance available after setting off the current year losses and also preference dividend @ 10 % on Rs. 10 crore of preference shares is  $(12.5 - 2 - 1) =$  Rupees 9.5 crore.

The balance left in free reserve after such withdrawal  $(85 - 12.5 = 72.5)$  is more than the required (15% of  $(30 + 10)$  (equity share capital + preference share capital) = Rupees 6 crore)

Hence, the company can proceed with declaring 20 % dividend on equity shares amounting to Rs. 6 Crore in spite of current year losses amounting to Rupees 6 crores only after payment of contracted preference dividend @ 10 % amounting to Rupees. 1 crore and also after setting-off current year losses of Rupees 2 crore.

### Answer 3(b)

i) In a celebrated case law *Solomon v Salomon & Co Ltd (1897) A.C.22*, it was established that once a company has been validly constituted under the Companies Act, it becomes a legal person distinct from its members.

The House of Lords have observed that, *inter alia*, the company is a different person altogether different from the subscribers to the memorandum. The same principle has been upheld in a number of cases including an earlier case *Kondoli Tea Co. Ltd., (1886) ILR 13 Cal.43 et al.*,

ii) The company being a separate legal person distinct from its members is capable of owning, enjoying and disposing of properties in its own name. In other words, no members can claim ownership of any of the assets of the company.

iii) In a noted case *H.C.Sastri v Dolphin Canpack Pvt Ltd (1998)*, the Delhi High Court held that neither the shareholder nor a Director has any right in the property and assets of a company which is a separate juristic person distinct from its shareholders

The Court held that the shareholder who buys shares in a company does not buy an interest in the property of the company. In other words, the shareholder as an investor becomes entitled to participate in the profits of the company only as and when the company declares any dividend.

iv) In the present case, the shareholders of the company Vijay and Purnima have tried to use the cash balance of the company for paying for their personal expenses to be incurred for an international holiday.

v) Hence, as the CFO and Company Secretary of the company, you can decline to pay for the personal expenses of the directors from the coffers of the company.

### Answer 3(c)

(i) According to Section 173(5) of the Companies Act, 2013, the dormant company is required to conduct at least one meeting of the Board of directors in every half year. The gap between two meetings shall not be less than 90 days.

(ii) As per rule 3 of the Companies (Miscellaneous) Rules, 2014, the Registrar shall not grant the status of a dormant company if there is dispute in the management or ownership of the company.

(iii) As per rule 3 of the Companies (Miscellaneous) Rules, 2014, the Registrar shall not grant the status of a dormant company if there are outstanding statutory taxes, dues, duties, etc., payable to the Central Government or any State Government or local authorities etc.

(iv) Following attachments needs to be filed along with e-form MSC-1 other than resolutions:

- Statement of affairs duly certified by the Chartered Accountant or auditor of company.
- Concurrence of lender if the company is having any outstanding loans, whether secured or unsecured.
- Latest financial statement and annual return of the company.
- Copy of approval or no objection certificate from the regulatory authority in case company is regulated by such authority.

Form MSC-1 is filed for obtaining the status of a Dormant Company and Form MSC-4 is filed for seeking change of status of dormant company.

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

#### **Question 4**

(a) Referring to the provisions of Companies Act, 2013 and the Rules made thereunder, explain, with reasons, whether the following persons are members of a company :

(i) Ananya subscribed to the Articles of Association of a public company and agreed to take up 1000 shares of Face Value ₹ 10 each. Due to technical problems, the Registrar of Companies refused to issue Certificate of Registration to the proposed company.

- (ii) The name of Anand, aged 12, was entered in the register of members of a public company. However, Anand never applied for the shares of the company.
- (iii) Amal purchased 1000 shares Face Value ₹ 10 from Vimal and sent the share certificates along with the share transfer form to the company. The documents were lost in postal transit and never reached the company.
- (iv) Ashok holds 1000 shares of Face Value ₹ 10 in a public company. Subsequently Ashok was declared bankrupt by the competent Court.
- (v) Arpita holds 1000 debentures of Face Value ₹ 10 of a public company. The company defaulted payment of interest on the debentures for the last three years.

(5 marks)

- (b) Vishal, Chief Executive Officer (CEO) of Sigma Ltd., an unlisted company, has decided to place before the Board a proposal for rights issue of equity shares. In this connection Vishal wants to know from you, corporate secretarial advisor of the company, as follows :

- (i) The period of notice for offer;
- (ii) Does the offer deemed to include right of renunciation. Advise the CEO referring to provisions of Companies Act, 2013.

(5 marks)

- (c) An investigation was ordered by Central Government under section 216 of the Companies Act, 2013 against Diya Steels and Aluminium Ltd. for determining true membership of the company. In connection with this investigation, it appeared to the Tribunal that there is sufficient reason to find out the facts about 8% optionally convertible redeemable cumulative preference shares issued by the company on 15.10.2023 and the Tribunal is of the opinion that unless restriction is imposed on further issue of such shares the purpose cannot be solved. Accordingly, the Tribunal by an order dated 15.08.2024 directed the company that further issue of such shares shall be subject to restrictions for a period of four years. Despite the order of Tribunal, the company proceeded with further issue of shares on 20.08.2024 in order to fund the working capital requirements for its expansion project.

Referring to the provisions of Companies Act, 2013 examine :

- (i) Can the Tribunal restrict further issue of shares ? If yes, then to what period ?
- (ii) What are the penal provisions in case of contravention of the above Order ?

(5 marks)

#### Answer 4(a)

- i) According to Section 2(55) of Companies Act, a person can acquire the membership of a company, *inter alia*, by subscribing to the Memorandum of Association of a company and shall be deemed to have agreed to become a member of the company on its registration.

In this case Ananya is not a member of the company because the company never came into existence as the certificate of registration was denied by the Registrar of Companies. It is also strange that Articles of a proposed company contain the subscription clause. It is generally the practice to include the subscription clause in the Memorandum of Association of the Company.

- ii) According to Section 11 of Indian Contracts Act, 1872, only a person who is competent to contract can become a member of a company, As Anand, aged 12 is obviously a minor,

he is incompetent to enter into a contract and hence cannot become a member of the company. In this case, the Register of Members of the company maintained u/s 88 of the Act in Form MGT-1 needs to be rectified.

- iii) The provision to section 56(1) of the Companies Act, 2013, provides that where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period (within 60 days from the date of execution of the instrument of transfer), the company may register the transfer on such terms as to indemnity as the Board may think fit. The Board of the company should be satisfied that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee has been lost. The proof may be in the form of an affidavit from the transferor or the transferee and supported by the purchase or sale note of the broker and the registration receipt issued by the postal authorities. In addition, the Board can take an indemnity on such terms as it may think fit to safeguard its position and after that company may register the transfer.

Since the share certificates and the share transfer form sent by Amal never reached the company due to loss in postal transit, Vimal continues to be member of the company. Amal has to prove to the company that he is the genuine purchaser of the shares from Vimal and also give satisfactory evidence of loss of documents in postal transit before the shares can be transferred to him.

- iv) According to Section 2(55) of the Companies Act, 2013, every person who agrees to become a member of a company and whose name is entered in its Register of Members shall be a member of the company.

However, according to Section 11 of Indian Contracts Act, 1872, only a person who is competent to contract can become a member of a company, As Ashok has been declared as a bankrupt by the competent Court, he is no more *sui juris*.

Hence, the shares held by Ashok will be transferred to the Bankruptcy Trustee appointed u/s 125 of Insolvency and Bankruptcy Code, 2016 on the order of NCLT u/s 126 as part of the Bankruptcy Estate u/s 155 of the Code. An insolvent may be a member of a company as long as he is on the register of members. He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee.

- v) A debenture holder is a creditor to the company. A debenture holder is not a member of the company. Even when the company defaults on the payment of interest or the repayment of the debenture principal amount, the relationship between the debenture holder and the company is one of creditor-debtor only. Hence, Arpita is not a member of the company.

#### Answer 4(b)

As per section 62(l)(a) of the Companies Act, 2013 and rule 12A of the Companies (Share Capital and Debentures) Rules, 2014.

The offer for rights issue shall be made by notice, specifying the number of shares offered:

- (i) Limiting a time not being less than fifteen days or such lesser number of days as may be prescribed and not more than 30 days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;
- (ii) The offer shall be deemed to include right of renunciation, unless the articles of the company otherwise provide; and the notice referred above shall contain a statement of this right;

The CEO of Sigma Ltd. is to be guided accordingly.

**Answer 4(c)**

- (i) Under section 222(1) of the Companies Act, 2013 the Tribunal may pass such order where it appears to the Tribunal, in connection with any investigation or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed.

The Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period not exceeding three years as may be specified in the order.

In line with the above provision Tribunal can put restrictions on further issue of redeemable cumulative preference shares of the company in question. But the restriction cannot be for more than three years. Hence, restriction imposed by Tribunal for four years is not valid.

- (ii) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

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

- (i) ABC Cargo Private Ltd. was incorporated on 28.03.2024. As per requirement of Companies Act, 2013, the company is to issue the share certificates to the subscriber of Memorandum of Association (MOA) within two months. The share certificates, to initial subscriber of MOA Rohan and Ram, were issued on 09.08.2024, as there was delay in receipt of share application money from initial subscribers. On a scrutiny, the Registrar of Companies imposed penalty on the company and its officers of ₹ 50,000 each. Discuss if the action of the Registrar is valid under Companies Act, 2013.

(5 marks)

- (ii) A segment of depositors of Roshni Ltd. having net worth of ₹ 200 crore were concerned about the company's performance suspecting obvious negligence and mismanagement of the affairs of the company that may be detrimental to the interests of the company. Therefore, they wish to apply before the Tribunal seeking an appropriate order to restrain the company from committing an act which is ultra vires the articles or memorandum of the company. In this scenario the aggrieved depositors have approached you, company secretary in practice and proficient in handling Tribunal cases the following queries :

- (a) What is the requisite number of depositors needed for making an application to Tribunal?
- (b) What will be the consequence, apart from rejecting the application, if the Tribunal finds the application to be vexatious ? Advise in terms of provisions of Companies Act, 2013.

(5 marks)

- (iii) Bakul has recently joined the board of Lalan Lubricants Ltd. The company is in manufacturing sector and Bakul is of the opinion that based on the turnover of the company, cost audit might be applicable for financial year 2025-26. He wants to know the following from you, Chief Manager (Secretarial) of the company :

- (i) the authority who appoints the cost auditor and when;
- (ii) the prescribed format of cost audit report, if any;
- (iii) the form in which the company is to report to the Registrar of companies for the replies to the qualifications made by the cost auditor and when.

Write a brief note to nominee director Bakul in terms of provisions of Companies Act, 2013.

(5 marks)

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

In case of a newly incorporated company the subscribers to Memorandum automatically become members of the company on the date of incorporation u/s 2(55)(i) read with Section 9 of Companies Act, 2013 and their names have to be entered in the register of members. Share certificates have to be issued to the subscribers within 2 months as provided in Section 56(4)(a) failing which penalty provision as per sub-section (6) gets attracted. A question that arises here is whether share certificate is required to be issued even if subscription money has not been received from the subscribers. Interestingly, the answer is yes. Subscription money payable is a debt under Section 10(2) of the Act and company can file suit for recovery of the same. As per ICAI guidance note on Schedule III to the Act:

"However, the unpaid amount towards shares subscribed by the subscribers of the Memorandum of Association should be considered as 'subscribed and paid-up capital' in the Balance Sheet and the debts due from the subscriber should be appropriately disclosed as an asset in the balance sheet."

In this case there was delay of 74 days in issue of share certificates to subscribers due to delay in receipt of subscription money and hence ROC levied penalty of Rs. 50,000 each on the company and its officers which is justified.

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

(a) Under Section 245(3)(b)(ii) of the Companies Act, 2013: In case of application by depositors:

- Not less than one hundred depositors of the company, or
- Not less than such percentage of the total number of depositors as may be prescribed, whichever is less shall have right to apply.
- Any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed shall also have right to apply.

As per sub-rule (4) of rule 84 of the National Company Law Tribunal Rules, 2016, the requisite prescribed number of depositor or depositors to file an application under subsection (1) of section 245 shall be -

- (i) (a) at least five per cent. of the total number of depositors of the company; or  
(b) one hundred depositors of the company, whichever is less; or
- (ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.

(b) As per section 245(8) of the Companies Act, 2013, where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

**Answer 4A(iii)**

- i) Section 148(3) of the Companies Act, 2013 read with Rule 14 of the Companies (Audit & Auditors) Rules, 2014 prescribes that the Board of directors shall appoint, an individual, who is a cost accountant, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee (if the Company has such a Committee, as the case may be) which shall also recommend remuneration for such cost auditor.
- ii) Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in Form CRA-3 [Rule 6(4) of the Companies (Cost Records & Audit) Rules, 2014].
- iii) As per rule 6(6) of the Companies (Cost Records & Audit) Rules, 2014, every eligible company covered under these rules shall, within a period of 30 days from the date of receipt of a copy of the cost audit report, furnish the Central Government with such report along with full information and explanation on every reservation or qualification contained therein, in Form CRA-4 in Extensible Business Reporting Language format along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014.

**PART-II****Question 5****Case Study :**

Edge Ltd. was incorporated in November, 2021 in Odisha with the objective of manufacturing water purifier. The plant was commissioned in May, 2022 at a cost of ₹ 400 crore. It was financed partly by the promoters (80%) and balance from bank loan. Currently, Edge Ltd. is not a listed company but plans to get listed in next year.

Over a period of time, Edge Ltd. has evolved to become one of India's top ten manufacturer of water purifier and is also eyeing to have a share in the export market. It won an award in an all India based trade fair organised by a Chamber of Commerce.

The company has now 300 members. The Board consists of ten directors.

**Case I :**

Two out of ten directors of the company have retired by rotation at the last annual general meeting. These two vacancies or place of retiring directors is not filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date. Neither place of retiring directors could be filled up at the adjourned meeting nor did the meeting expressly resolve 'not to fill the vacancy'.

**Case II :**

Due to diversification and expansion of activities, the board desires to increase the number of directors. In their last meeting, it appointed following two persons as directors :

- (a) Amit—He holds directorship in eleven companies including ten public companies. He is a whole-time Chartered Accountant in practice.
- (b) Romit—He holds directorship in eight public companies including managing directorship in one and other directorship in seven companies. In addition, he also holds alternate directorship in three private companies.

**Case III :**

The company has an authorised capital of ₹ 200 lakh and paid-up capital of ₹ 160 lakh. Free reserves are available to the extent of ₹ 120 lakh. Edge Ltd. has advanced a loan of ₹ 128 lakhs to other companies till date. Now the company proposes to advance an interest free loan of ₹ 48 lakh to its wholly owned subsidiary.

**Case IV :**

29% of equity in the company is held by the Government of Odisha in the name of the Governor of the State. When the company proposed to hold its annual general meeting (AGM) for the last year, the Collector of the district of Ganjam where the company is situated insisted on receiving the notice of the AGM and wanted to attend the meeting.

**Case V :**

Atanu joined the Board of Edge Ltd. as additional director on 1st January, 2025. On 2nd January, 2025 he sent an email to you, Company Secretary of the company, that he wanted to inspect the minutes of board meeting held on 7th June, 2024 in which the directors's report for the year 2023-24 was approved.

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

- (a) Whether in such a situation the retiring directors shall be deemed to be re-appointed at the adjourned meeting ? What is your answer in case at the adjourned meeting resolutions for re-appointment of these directors were lost ?

(5 marks)

- (b) Analyse the validity of the appointment of Amit and Romit as directors in Edge Ltd.

(5 marks)

- (c) Discuss the validity of proposed transaction of advancing interest free loan to wholly owned subsidiary with reference to provisions of Companies Act, 2013.

(5 marks)

- (d) In respect of notice of AGM comment on the legality of claim of Collector to receive meeting notice.

(3 marks)

- (e) Examine if claim of Atanu for inspection of board minutes given in the case is tenable under Companies Act/Secretarial Standards.

(2 marks)

**Answer 5(a)**

Pursuant to section 152(7)(a) of the Companies Act, 2013 which provides that if at the annual general meeting at which a director retires and the vacancy is not so filled up and the meeting has not expressly resolved not to fill the vacancy the meeting shall stand adjourned to next day same day next week at the same time and place or if that day is national holiday till next succeeding day which is not a national holiday at the same time and place.

Section 152(7)(b) further provides that if at the adjourned meeting also the place of retiring directors is not filled up and the meeting also not expressly resolved not to fill the vacancy the retiring director shall be deemed to have been reappointed at the adjourned meeting unless at the adjourned meeting or previous meeting a resolution of reappointment of such directors was put and lost or

he has given a notice in writing addressed to the company and board of directors expressing his desire not to be re-elected or disqualified.

Therefore, in the given case, applying the above provisions, the answer is as follows-

The retiring directors shall be deemed to have been reappointed in the first case. In second case, where resolution for reappointment of retiring directors were lost they shall not be deemed to have been reappointed.

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

As per section 165(1) of the Companies Act, 2013, no person shall hold office as director including any alternate directorship, in more than 20 companies at the same time. Out of limit of 20, the maximum number of public companies in which a person can be appointed as director shall not exceed 10. Private companies that are either holding or subsidiary of a public company shall be included in reckoning the limit of public companies in which a person can be appointed as director.

In the instant case Amit was appointed as director in Edge Ltd. He was already holding directorship in eleven companies including ten public companies. He is a whole-time Chartered Accountant in practice. As he is already a director in ten public companies, his appointment in Edge Ltd. is not valid as it will lead to his directorship in eleven public companies.

In this case Romit holds directorship in eight public companies including managing directorship in one company and other directorship in seven companies. In addition, he also holds alternate directorship in three private companies. Hence, total holding of directorship in companies is 11 (8 public +3 Private) which is valid.

Hence, Romit can be appointed as director in Edge Ltd.

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

Section 186(2) of the Companies Act, 2013 stipulates that, no company shall directly or indirectly -

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

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

Section 186(3) states where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2) of Section 186 of the Act i.e. 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account whichever is more, investment or loan can be made or guarantee can be given or security can be provided only with the previous authorisation by a special resolution passed in a general meeting.

Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of section 186(3) of the Act shall not apply i.e. prior special resolution is not required.

Sub-section 7 provides that no loan shall be given under section 186 at a rate of interest lower than the prevailing yield of one year, three-year, five year or ten-year government security closest to the tenure of loan.

In the given problem, Edge Ltd. has to provide interest free loan to its wholly owned subsidiary. The maximum amount of loan Edge Ltd. can provide to other body corporate is Rs. 168 lakh [higher of {60% of (160+120)} or {100% of 120}]. Edge Ltd. has already provided loan of Rs.128 lakh to other companies. Thus, if Edge Ltd. proposes to provide loan beyond Rs. 40 lakh (Rs. 168 lakhs – Rs. 128 lakhs = Rs. 40 lakhs), it requires shareholders' approval.

However, Edge Ltd. can give loan to its wholly owned subsidiary without passing of special resolution. Again, the Section 186(7) of the Act prohibits giving interest free loan. So, Edge Ltd. cannot provide interest free loan even to its wholly owned subsidiary.

#### Answer 5(d)

As per section 112 of the Companies Act, 2013 read with Para 3.2 of SS-2, when the President of India or the Governor of a State is a member of a company, he may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company. A person so nominated shall be deemed to be a member of the company and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or Governor as the case may be, could exercise as a member of the company.

In view of the above, unless the Collector of the District of Ganjam is nominated by the Governor of Odisha, he is not entitled to receive the notice of the AGM and he cannot be ) permitted to attend the meeting.

#### Answer 5(e)

7.7.2 of SS-1: A Director is entitled to receive, a copy of the Minutes of a Meeting held before the period of his Directorship. A Director is entitled to inspect and receive a copy of the signed minutes of a meeting held during the period of his directorship, even if he ceases to be a director. Thus, claim of Atanu is correct under law.

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

#### Question 6

- (a) Delta Flight Simulators Limited, a listed company, incorporated on 1st April 2020, has given the following information :

**Rupees in Crores**

| Item                       | FY 2020-21 | FY 2021-22 | FY 2022-23 |
|----------------------------|------------|------------|------------|
| Equity Share Capital       | 100        | 100        | 100        |
| Preference Share Capital   | 50         | 50         | 50         |
| General Reserve            | 350        | 400        | 475        |
| Revaluation Reserve        | 100        | 100        | 100        |
| Revenue from Operations    | 750        | 850        | 1000       |
| Profit After Tax           | 70         | 140        | 210        |
| Tax Rate (on Gross Profit) | 30%        | 30%        | 30%        |

Due to oversight, the company has neither constituted Corporate Social Responsibility (CSR) Committee nor spent any amount on CSR activities for the last three years. You are required to compute the following :

- (a) Ascertain the eligibility to constitute CSR Committee.
- (b) Minimum CSR expenditure to be incurred for the years FY 2021-2022 and FY 2022-2023.
- (c) Penalty amount for the years FY 2021-2022 and FY 2022-2023.

(5 marks)

- (b) Prabal, Executive Director of your company having paid up share capital ₹ 300 lakh fears that in the upcoming extraordinary general meeting on resolution for capital reduction, there will be lots of disturbances and unruly behaviour in the meeting from shareholders. Being the Compliance Officer of the company, you are approached by Prabal to send him a note on:

- (i) Who can demand for a poll ?
- (ii) When is the scrutinizer required to submit his report ? (iii) What is the rule for preservation of postal ballots ?

Advise your Executive Director in light of the provisions of Companies Act, 2013.

(5 marks)

- (c) Draft a resolution for creation of security on the properties of the company in favour of the lenders, stating the authority, type of resolution and relevant provisions of the Companies Act, 2013.

(5 marks)

- (d) You are the Assistant Company Secretary of GH Ltd. Anirban, Chief Manager (Secretarial & Legal) has advised you to prepare a model board resolution for preparation of annual report in abridged form for mailing to the members of the company. Draft the resolution. Assume facts and figures.

Rajen is a Company Secretary in employment in a reputed company for last twenty years. Few non-working directors in the Board are not satisfied about the way he recently handled a show cause notice under FEMA thereby causing harassment to the Board. Rajen believes that he will be removed from his position. Examine if Rajen can be removed from his position by passing an ordinary resolution in a general meeting of members.

(5 marks)

### Answer 6(a)

- (a) According to Section 135(1) of the Companies Act, 2013 read with Companies (CSR Rules), 2014, every company with a turnover of Rs. 1000 crore or more or net worth of Rs. 500 crore or more or a net profit of Rs. 5 crore or more during the immediately previous financial year is required to constitute CSR Committee of the Board to formulate and monitor the CSR policy of the company. Here net profits of the company in all three years is above 5 crores, hence the company is required to constitute CSR Committee. For computing net worth of a company u/s 2(57) of the Act, revaluation reserve is ignored.
- (b) The company was incorporated on 01st April 2020 and it satisfies at least one criterion which triggers the condition for CSR contribution for spending on CSR initiatives. For this, the company is required to constitute CSR committee for the FY 2021-22 itself and spend at least 2% of the adjusted average net profit for the past three years from the FY 2020-2021 onwards.

- (c) With effect from 22nd January 2021, as per the amended Section 135(7) of the Act, in case of default in complying with the provisions of the Act, the company will be liable to a penalty of twice the amount that needs to be transferred to the Fund as per Schedule VII of the Act or Rs. 1 crore whichever is less.

With effect from 22nd January 2021, as per the amended Sec 135(7) of the Act, in case of default in complying with the provisions of the Act, each Officer-in Default of the company will be liable to a penalty of one tenth the amount that needs to be transferred to the Fund as per Schedule VII of the Act or Rs. 2 lakhs whichever is less.

**Rupees in Crores**

| Item                                                                         | FY 2020-2021 | FY 2021-2022                                | FY 2022-2023                                      |
|------------------------------------------------------------------------------|--------------|---------------------------------------------|---------------------------------------------------|
| Equity Share Capital                                                         | 100          | 100                                         | 100                                               |
| Preference Share Capital                                                     | 50           | 50                                          | 50                                                |
| General Reserve                                                              | 350          | 400                                         | 475                                               |
| Revaluation Reserve                                                          | 100          | 100                                         | 100                                               |
| Net worth                                                                    | 500          | 550                                         | 625                                               |
| Revenue from Operations (Turnover)                                           | 750          | 850                                         | 1000                                              |
| Profit After Tax                                                             | 70           | 140                                         | 210                                               |
| Tax Rate(on Gross Profit)                                                    | 30%          | 30%                                         | 30%                                               |
| Profit Before Tax                                                            | 100          | 200                                         | 300                                               |
| CSR Expenditure 2%                                                           |              | $(100 \times 0.02) = \text{Rs. 2.00 crore}$ | $(100+200)/2 \times 0.02 = \text{Rs. 3.00 crore}$ |
| Penalty- company -@2x or Rs.1 crore (which ever lower)                       |              | 1 crore                                     | 1 crore                                           |
| Penalty - each Officer in Default (1/10x) or Rs.2 lakhs (whichever is lower) |              | 2 lakhs                                     | 2 lakhs                                           |

**Answer 6(b)**

- i) Under Section 109(1) of the Companies Act, 2013: Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the following person(s):
- (a) in the case a company having a share capital: by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000/- or such higher amount as may be prescribed, has been paid-up; and

- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.
- ii) As per sub-rule (2) of Rule 21 of the Companies (Management and Administration) Rules, 2014, the scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots to the Chairman within seven days from the date the poll is taken.
- iii) Rule 22(11) of the Companies (Management and Administration) Rules, 2014, The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

**Answer 6(c)**

**Authority:** Members of the company

**Type of resolution:** Special Resolution

**“RESOLVED THAT** pursuant to the provisions of section 180(1)(a) and other applicable provisions, if any, of the Companies Act, 2013, as amended from time to time and the Articles of Association of the company, consent of the shareholders be and is hereby accorded to the Board of directors for creation of security in any form or manner on the movable or immovable properties of the company whether tangible, intangible or otherwise both present and future of the whole or substantially the whole of the undertaking(s) of the company in such form and manner as the Board of directors may deem fit, in favour of such lenders from time to time, together with interest at the agreed rate(s), in the event of default, accumulated interest, liquidated damages, all other charges, expenses and costs payable by the company in respect of such borrowings, made by the Board in accordance with the authorizations given to it by the company, from time to time.

**RESOLVED FURTHER THAT** the Board of directors be and are hereby authorised to negotiate and settle the terms and conditions of the securities, finalize and execute all agreements, deeds and documents as may be necessary, desirable or expedient, settle any question, doubt or difficulties that may arise in this regard, do all such acts, deeds, things or matters, as they may in their absolute discretion deem proper, necessary or desirable and to delegate all or any of these powers to any Committee of directors or to the Managing Director or Whole-time Director or any officer of the company. “

**Answer 6(d)**

Specimen Board Resolution for preparation of annual report in abridged form for mailing to the members-

**“RESOLVED THAT** pursuant to the provisions of Section 136 of the Companies Act, 2013, and Rule 11 of the Companies (Accounts) Rules, 2014, and any other applicable provisions, the consent of the Board be and is hereby accorded to prepare and circulate an abridged form of the Annual Report for the financial year ended March 31, 2025, to all the members of the Company, debenture holders, and all other persons entitled to receive the same.

**RESOLVED FURTHER THAT** the full Annual Report, including the audited financial statements, Board's Report, Auditor's Report, and all other annexures as required under the Companies Act, 2013, shall be made available for inspection at the Registered Office of the Company during business hours, and shall also be placed on the Company's website at [Company Website URL].

**RESOLVED FURTHER THAT** Mr. .... Chief Manager (Secretarial & Legal), and the Assistant Company Secretary be and are hereby jointly and severally authorized to:

- a. Finalize the contents, design, and layout of the abridged form of the Annual Report.
- b. Ensure that the abridged Annual Report includes all information as required by the applicable provisions of the Companies Act, 2013, and rules made thereunder.
- c. Take all necessary steps to print and dispatch the abridged Annual Report to the members and others entitled to receive it, within the statutory timelines.
- d. Ensure that the full Annual Report is made available for inspection and placed on the Company's website as stipulated by law.
- e. Do all such other acts, deeds, and things as may be necessary, proper, or expedient to give effect to this resolution."

A company secretary can be removed or dismissed like any other employees of the organization. Since, Rajen is appointed by Board, the Board of directors of a company have absolute discretion to remove a company secretary or to terminate his services at any time for any reason or without any reason. However, principles of natural justice like show cause notice, hearing, reasoned order, compliance with his terms of appointment, etc. must be followed. Hence, a resolution in general meeting - ordinary or special is not required for removal of a company secretary in employment.

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

**Question 6A**

(i) Comment on the following :

- (a) All Key Managerial Personnel (KMP) are appointed by the members at the Annual General Meeting.
- (b) Every company with a paid-up capital of ₹ 50 crore or turnover of ₹ 250 crore or borrowings of ₹ 100 crore should appoint KMPs.
- (c) Any vacancy of KMPs can be filled-up by the appointing authority viz., the members at AGM within three months.
- (d) Provisions of the Act on appointment of KMPs are not applicable to Government Companies.
- (e) Every company should intimate the stock exchange on the appointment of KMPs.

(5 marks)

(ii) (a) You being the Deputy Company Secretary of a company have been asked by one of the directors, who will be signing the Board Report, what is meant by the Directors' Responsibility Statement. Answer in pursuance of provisions of Companies Act, 2013.

(b) Annual return of unlisted company Faithful Ltd. having a turnover of ₹ 75 crore and net profit of ₹ 5 crore, is signed by the Managing Director and a Whole Time Director, whether this annual return is to be certified by a Practicing Company Secretary, if so suggest the board under which form it has to be certified by the Practicing Company Secretary.

(5 marks)

(iii) Draft a sample proxy form with notes for members of PQR Promex Ltd. in relation to a general meeting in terms of provisions of Companies Act, 2013.

(5 marks)

- (iv) (a) The Board of Directors of Creative Pest Control Ltd. resolved to pay sitting fees per meeting, as follows to its members :

| Director | Position                      | Amount in ₹ |
|----------|-------------------------------|-------------|
| Avik     | Executive                     | 70,000      |
| Bulbul   | Non-executive non-independent | 50,000      |
| Chirag   | Independent                   | 60,000      |
| Dipika   | Woman                         | 1,20,000    |

The statutory auditor performing audit has remarked that this resolution is not valid. Comment on the remark of the auditor referring to provisions of the Companies Act, 2013.

(b) During an internal audit of Silent Housing Finance Ltd., it was ascertained that director Goutam has received remuneration in excess of the limits indirectly. The company advised him to refund the amount within five months. Goutam protested for allowing such a less time. Is the objection of Goutam tenable under Companies Act, 2013 ? Discuss.

(5 marks)

#### Answer 6A(i)

- (a) Under section 203(2) of the Companies Act, 2013, every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration. The statement is incorrect.

As per Section 196(4), Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions Specified in Part I of that Schedule. However, as per notification of 05.06.2015 this provision is not applicable to private companies.

- (b) The statement is incorrect. According to Section 203 of the Companies Act, 2013 read with Rule 8 of The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.

Further as per rule 8A of The Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Every private company which has a paid up share capital of ten crore rupees or more shall have a whole -time company secretary. The turnover or borrowings of the company are not relevant for appointment of KMPs.

- (c) The statement is partially correct. Section 203 (4) of Companies Act 2013 states that if the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of 6 months from the date of such vacancy. In the case of MD/WTD, the appointing authority viz., the members in the AGM appoint a director in place of the vacancy of MD/WTD. However, any casual vacancy in the post of MD/WTD can also be filled up by the BOD by appointing the person as an additional director on the Board u/s 161(1) of the Act.
- (d) The statement is partially correct. According to Section 203(4A) of the Companies Act, 2013, the provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole-

time director of the Government Company. However, the said provisions of Section 203 are equally applicable to appointment of KMPs like CFO and CS in case of Government companies also.

- (e) The statement is incorrect. Only listed companies are required to report any appointment/change in KMPs under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 within 24 hrs of the appointment/resignation. Other public unlisted and Private limited companies are not required to intimate to stock exchanges.

### Answer 6A(ii)

- (a) Section 134(5) of the Companies Act, 2013, specifically provides that the Directors' Responsibility Statement shall set out the following affirmations:

- (i) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (ii) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (iii) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (iv) the directors had prepared the annual accounts on a going concern basis; and
- (v) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively; and
- (vi) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

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

- (b) Under section 92(2) of the Companies Act, 2013 read with rule 11(2) of the Companies (Management and Administration) Rules, 2014 the annual return of a listed company or of a company having a paid-up share capital of Rs.10 crore or more or turnover of Rs. 50 crore or more shall be certified by a Company Secretary in practice in Form MGT-8. Accordingly, annual return of Faithful Ltd., an unlisted company having a turnover of Rs.75 crore shall be certified by a Practising Company Secretary under Form MGT- 8.

### Answer 6A(iii)

#### Form No. MGT-11

#### (Proxy Form)

*[Pursuant to section 105(6) of the Companies Act, 2013 and rule 19(3) of the Companies (Management and Administration) Rules, 2014]*

CIN:

Name of the company:

Registered office:

Name of the member (s):

Registered address:

E-mail Id:

Folio No/ Client Id:

DP ID:

I/We, being the member (s) of ..... shares of the above named company, hereby appoint

1. Name: .....

Address:

E-mail Id:

Signature:....., or failing him

2. Name: .....

Address:

E-mail Id:

Signature:....., or failing him

3. Name: .....

Address:

E-mail Id:

Signature:....., or failing him

as my/our proxy to attend and vote (on a poll) for me/us and on my/our behalf at the ..... Annual general meeting/ Extraordinary general meeting of the company, to be held on the ..... day of..... At..... a.m. /p.m. at.....(place) and at any adjournment thereof in respect of such resolutions as are indicated below:

Resolution No.

1. ....

2. ....

3. ....

Affix  
Revenue  
Stamp

Signed this..... day of..... 20....

Signature of shareholder

Signature of Proxy holder(s)

Notes:

This form of proxy in order to be effective should be duly completed and deposited at the Registered Office of the Company, not less than 48 hours before the commencement of the Meeting.

### Answer 6A(iv)

- (a) Rule 4 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 read with section 197(5) of the Companies Act, 2013 provides that a company may pay a sitting fee to a director for attending meetings of the board or committees thereof such

sum as may be decided by the board of directors thereof which shall not exceed one lakh rupees per meeting. For independent directors and women directors, the sitting fee shall not be less than the sitting fee payable to other directors.

Applying the above provision in the case given, payment of Rs. 110,000 to woman director Dipika is not in order. The maximum permissible sitting fee per meeting, as per the rules, is INR 100,000. Therefore, this payment exceeds the statutory limit. Also sitting fees to independent director Chirag Rs.60,000 is less than that of Executive director Avik Rs. 70,000 This is in direct contravention of the legal provision that mandates the sitting fee for independent directors (and women directors) to be no less than that payable to other directors. Hence, the resolution is invalid.

- (b) As per section 197(9) of the Companies Act, 2013, if any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company. Therefore, advice of the company to the director to refund in five months is permissible. The objection by director is invalid.

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# SETTING UP OF BUSINESS, INDUSTRIAL AND LABOUR LAWS

## GROUP 1 PAPER 3

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

Amit, originally from India, relocated to Germany in search of better career opportunities after completing his education. Over the next three decades, he worked diligently, building a successful career, and eventually acquired German citizenship. Despite his professional success abroad, Amit always felt a strong emotional connection to India and frequently thought about ways to contribute to his homeland in a meaningful way. His sense of social responsibility grew over time, and he envisioned using his wealth and experience to improve the lives of underprivileged people in India.

Amit's desire to make a difference was driven by a genuine desire to give back to society. After carefully researching various organizations and initiatives, he decided to visit India for two years on a business visa. During his stay, Amit sought to explore different avenues for contributing to social causes, particularly those focused on underprivileged communities in India. He also hoped to connect with individuals or organizations already making a positive impact.

It was during his visit that Amit reconnected with his childhood friend, Raghav. Unlike Amit, Raghav had stayed in India and dedicated his life to social work. Raghav was the founder of Noble Work Foundation, a non-profit organization established in 2014 and registered as a Section 8 company under the Companies Act, 2013. The foundation's mission was to address key social issues such as education for underprivileged children, healthcare support, and empowerment programs for marginalized communities.

As Amit learned more about the foundation's initiatives, he was deeply impressed by its impact on society. Noble Work Foundation had helped thousands of individuals through its various social welfare programs, and its mission resonated deeply with Amit's vision of contributing to India's development. Amit admired Raghav's commitment to social causes and the foundation's success in reaching out to those in need. This inspired Amit to become involved with the organization.

Amit's desire to contribute went beyond a financial donation. He recognized the value of using his international experience, strategic planning skills, and innovative ideas to help expand the foundation's work. Amit envisioned playing an active role in the organization by not only donating funds to support social projects but also becoming one of the directors of Noble Work Foundation. Additionally, Amit wanted to establish a branch office of Noble Work Foundation in Germany to expand the organization's reach and create greater international awareness for its cause.

However, before moving forward with his plans, Amit realized that he would need to navigate various legal and regulatory requirements, especially given his current status as a German citizen. Noble Work Foundation, being a non-profit organization under the Indian Companies Act, was subject to specific regulations related to foreign funding and foreign directorship. Amit also wanted to explore the possibility of converting Noble Work Foundation into a private limited company to broaden its scope for raising funds and expanding its operations.

To ensure that all transactions and legal formalities were handled appropriately, Amit sought the assistance of Vijay, a practicing Company Secretary, who could provide the necessary guidance on compliance with Indian laws regarding non-profit organizations, foreign funding, and directorship.

In view of the above, answer the following :

- (a) What exemptions are granted to Noble Work Foundation under the Companies Act, 2013 ?
- (b) What are the permissible sources through which Noble Work Foundation can raise funds to sustain and grow its operations ?
- (c) What is the procedure for Amit to become a Director of Noble Work Foundation ?
- (d) What approvals and compliance are required by Noble Work Foundation to establish a branch office in Germany ?
- (e) What is the procedure for the conversion of Noble Work Foundation into a private limited company ?

(3 marks each)

### Answer 1(a)

#### Exemptions Granted to section 8 companies

- No Minimum Paid-Up Capital requirement
- General Meetings: The Annual General Meetings (AGM) for the Companies can be convened after giving notice of 14 clear days under section 101 of the Companies Act, 2013.
- Minutes of the Meeting: Recording of minutes of General Meetings, Board Meeting and other resolutions is not applicable. However, the minutes of meetings may be recorded within 30 days of conclusion of the meeting in cases where the company's articles provide for confirmation by way of circulation of minutes.
- Audited Financial Statements: Copies of the audited financial statements and documents can be sent 14 days to the members instead of 21 days (SS-1). Furthermore, there is no requirement of Cash Flow Statement in financial statements if it's a private company (Section 2(40))
- Directorship: The maximum limit of 15 directors and appointment of more than 15 directors by passing special resolution are not applicable to Section 8 Company. (Sec 149)
- Appointment of Independent Director: There is no requirement to appoint an independent director for Section 8 Company. (Sec 149)
- Holding of Board Meetings: The companies are required to hold one Board Meeting within six months and the requirement of as the companies to hold four board meetings annually shall not apply.
- Constitution of nomination and remuneration committee and related compliances: Section 178 of the Act is not applicable to Section 8 Company. Accordingly, Section 8 Companies are not required to have a Nomination and Remuneration Committee and a Stakeholders Relationship Committee.
- No appointment of Company Secretary: They do not have to appoint a company secretary.
- Power of Board to borrow, invest and grant loans: Matters referred to in clause (d), (e) and (f) of section 179(3) may be decided by the Board by circulation instead of at a meeting i.e. instead of requirement of resolution passed at meeting of Board of Directors, it can be decided by Board by a resolution by circulation in case of exercising power d) to borrow

monies; (e) to invest the funds of the company; (f) to grant loans or give guarantee or provide security in respect of loans;

Accordingly, being a Section 8 company, the above exemptions are granted to Noble Work Foundation under the Companies Act, 2013.

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

As per Section 8 of the Companies Act, 2013, a non-profit organization can raise funds through the following sources:

1. Donations and Grants – From individuals, corporate CSR contributions (Section 135 of the Companies Act, 2013), and foreign contributions (FCRA, 2010).
2. Government Funding–Grants from state/central governments, international agencies, or NGOs.
3. Membership Fees – Contributions from members or affiliated partners.
4. Sponsorships and Fundraising Events – Organizing social programs, workshops, or awareness campaigns.
5. Interest/Income from Investments – Earnings from legally permitted investments in fixed deposits or mutual funds (subject to Income Tax Act, 1961 regulations and the Rules thereunder).
6. Revenue from Social Enterprises – Running permitted commercial activities that support charitable objectives (profits must be reinvested in non-profit activities).

Thus, Noble Work Foundation can sustain and grow its operations through a combination of grants, CSR funds, donations, membership fees, and investment income.

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

A person can become a director in a Section 8 company as per Sections 152 and 160 of the Companies Act, 2013, along with Rule 19 of the Companies (Incorporation) Rules, 2014.

Procedure to Appoint Amit as a Director:

1. Obtain Director Identification Number (DIN) – As per Section 153, Amit must apply for a DIN using Form DIR-3.
2. Digital Signature Certificate (DSC) – Required for e-filing with the Ministry of Corporate Affairs (MCA).
3. Consent and Declaration – Amit must submit Form DIR-2 (Consent to Act as Director) and Form DIR-8 (Declaration of Non-Disqualification) under Section 164.
4. Board Resolution – The Board of Directors must pass a resolution approving his appointment.
5. Filing with ROC – The company must file Form DIR-12 with the Registrar of Companies (ROC) within 30 days of appointment.
6. Disclosure of Interest – As per Section 184, he must disclose his interest in Form MBP-1 in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding.
7. Check for FCRA Compliance- Amit, being a foreign national, may be treated as a “foreign source” under FCRA. If he donates or participates in management, FCRA registration or prior approval is essential

Thus, Amit should follow the aforesaid procedure to become a Director of Noble Work Foundation.

### Answer 1(d)

The following approvals and compliance are required by Noble Work Foundation to establish a branch office in Germany:

- Establishing a branch office in Germany involves compliance with Foreign Exchange Management Act (FEMA) regulations. Prior approval from RBI is needed under FEMA regulations if funds are being remitted abroad.
- Noble Work Foundation must ensure that MOA permits foreign expansion for the establishment of overseas offices, if not then approval from the Central Government will be required for any alteration in the Memorandum of Association (MoA) or Articles of Association (AoA).
- Board Approval by passing a board resolution. And take Approval of Members in General Meeting by passing a special resolution (u/s 179 & 186).
- The foundation must also comply with local German laws regarding non-profit entities and branch registration.

### Answer 1(e)

Procedure for Conversion of a Section 8 Company into any other Company:

- 1. Holding a Board Meeting:** Issue a notice (not less than 7 days) and agenda of the Board Meeting as per the provisions of section 173 of the Companies Act and Secretarial Standards-I for convening a Board Meeting to consider the proposal for converting Section 8 Company into any other Company. The main agenda for this board meeting would be:
  - a. To pass a board resolution to get in-principal approval of the Directors for conversion of section 8 company into any other company.
  - b. To fix the date, time and place for holding general meeting to get approval of shareholders, by way of Special Resolution, for conversion of a section 8 company into any other company.
  - c. To approve notice of general meeting along with agenda and explanatory statement to be annexed to the notice of general meeting as per section 102(1) of the Companies Act, 2013. The notice of the general meeting must contain the special resolution for effecting the conversion of the section 8 Company into any other company and the required alteration in the Memorandum of Association and Articles of Association of the Company.
  - d. To authorize the Director or Company Secretary to issue notice of the general meeting as approved by the board.
  - e. To authorize the Company Secretary and if there is no Company Secretary, any one director of the company to sign, certify and file the required forms with the Registrar of Companies and to do all such acts and deeds necessary to give effect to the proposed conversion
  - f. To approve the draft new set of Memorandum of Association and the Articles of Association.
- 2. Issue of Notice of General Meeting:** Issue Notice of the General meeting to all Members, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013 and Secretarial Standards -2. Notice shall be given at least 14 clear days before the actual date of the General Meeting. Notice shall specify the day, date,

time and full address of the venue of the General Meeting and must contain a statement on the business to be transacted at such Meeting.

3. **Holding of General Meeting:** Hold the General meeting as scheduled and pass the necessary Special Resolution, to get shareholders' approval for Conversion of Section 8 Company into any other Company along with alteration in Memorandum of Association and Articles of Association under section 14.
4. **Filing of e-form MGT-14:** In case of conversion of Section 8 Company into any other company special resolution is required to be passed under section 14 of the Companies Act, 2013. Accordingly, as per section 117(3)(a), a copy of special resolution is required to be filed with the concerned ROC through filing of E-form MGT-14 within 30 days of passing the special resolution in the general meeting. The following documents are required to be attached with the e-form MGT-14:
  - A certified true copy of the Altered MoA.
  - A certified true copy of the Altered AoA.
  - Notice of General Meeting along with an explanatory statement.
  - Certified true copy of Special Resolutions passed in the General Meeting along with explanatory statement.
5. **Filing of e-form INC-18 with the Regional Director and Registrar:** An intimation along with copy of the application with annexures as filed in Form no. INC.18 with the Regional Director shall also go to the Registrar through MCA system.
6. **Publication of an Advertisement:** After submitting an application to the Regional Director, the Company should publish a notice in FORM INC-19 in the newspaper at least one in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, for the Conversion of Section 8 Company into any other Company and on the website of the company, if any. The publication in the newspaper should be done within a week from the date of submitting an application to the Regional Director.
7. **Obtain No Objection Certificates (NOC):** From concerned authorities (e.g., Income Tax, Charity Commissioner, etc.) If registered under FCRA, notify Ministry of Home Affairs
8. **Order of Conversion by Regional Director:** On receipt of the application and on being satisfied, the Regional Director shall pass the order of conversion with certain conditions, as may be required depending upon the facts and circumstances of each case. However, before imposing any conditions or rejecting the application, the Regional Director shall give a reasonable opportunity of being heard to the Company.
9. **Issuance of fresh Certificate of Incorporation:** On receipt of all the required documents, the Registrar of Companies will issue Fresh Certificate of Incorporation to the applicant. When the license of the Company as Section 8 Company is revoked, the Company can apply for the Conversion of its status and name with the Registrar of Companies in Form INC-20.

Accordingly, Noble Work Foundation should follow the aforesaid procedure for conversion into a private limited company.

## Question 2

- (a) A and B are partners in a partnership firm registered under the provisions of the Partnership Act, 1932. Due to B's declining health, he intends to introduce his elder son, who is a minor, into

the partnership to receive the benefits of the firm. Is B allowed to do so under the Partnership Act, 1932 ? Additionally, upon reaching the age of majority, within what time frame must B's elder son decide whether to become a full partner in the firm ?

(3 marks)

- (b) Ava runs a home-based business making cakes and pastries and plans to open a shop with an expected annual turnover of ₹ 20 lakh. Does she need to get a registration or license from the Food Safety and Standards Authority of India (FSSAI) for her business ? If yes, which type of FSSAI approval does she need ?

(3 marks)

- (c) TelecomGlobal Ltd., a UK-based company, intends to set up a Project Office in the Andaman and Nicobar Islands, India, as part of its expansion into the telecommunications sector. The CEO of TelecomGlobal Ltd., James Anderson, seeks your advice on whether this establishment requires prior approval from the Reserve Bank of India (RBI), considering both the sector-specific regulations governing foreign direct investment in telecommunications and the geographical location of the Andaman and Nicobar Islands.

Does this establishment require prior approval from the RBI ?

(3 marks)

- (d) ABC Housing Finance Ltd., a newly established company, intends to register as a Housing Finance Company (HFC) under the National Housing Bank Act, 1987. The company meets all the eligibility criteria for registration, except for the Net Owned Fund (NOF) requirement, as its current NOF is ₹ 18 crore, which is below the required threshold.

Advise the company on the minimum NOF required for HFC registration and whether the company can seek an exemption from the National Housing Bank (NHB) regarding this requirement.

(3 marks)

- (e) A group of employees from a large company has pooled funds to establish a housing society in Delhi. While some members suggest registering the society under the Societies Registration Act, 1860, others oppose it due to concerns about ongoing compliance requirements and legal/financial costs.

What would be the consequences if the society is not registered under the Societies Registration Act, 1860 ?

(3 marks)

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

As per Section 30 of the Partnership Act, 1932, a minor cannot become a full-fledged partner in a partnership firm. However, a minor can be admitted only for the benefits of the partnership, with the consent of all existing partners.

In this case, B can introduce his minor son into the partnership for benefits, but only with A's consent. The minor will be entitled to a share in the firm's profits but will not be personally liable for any losses incurred by the firm.

Thus, B can introduce his minor son into the partnership for the benefits, but only if A agrees, and subject to the conditions outlined in the Partnership Act, 1932.

**After attaining majority: [Section 30(5)]**

Once the minor attains majority:

At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm: Provided that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

**Answer 2(b)**

Yes, obtaining Food Safety and Standards Authority of India (FSSAI) License is mandatory for Ava under the Food Safety and Standards Act, 2006 since she is engaged in food business operations.

FSSAI Registration and Licence requirements are as follows:

- **FSSAI Registration:** It is required for all petty food business operators. A petty food business operator is any person or entity who manufactures, sells, trades, restaurant who are involved in food business with turnover up to ₹12 lakh and whose:
- **State FSSAI License:** FSSAI State License is needed for small to medium-sized Food Companies which has an annual turnover of ₹ 12 Lakhs - ₹ 20 crores. State FSSAI license is required for medium sized food manufacturers, processors and transporters.
- **Central FSSAI License:** For businesses with turnover above ₹20 crore or those operating in multiple states.

In view of the above, it is concluded that obtaining an FSSAI approval is mandatory for her cake and pastry business. As per the Food Safety and Standards Act, 2006, all food business operators, including cake and pastry shops, must obtain either FSSAI registration or a license, depending on their scale of operations. Since she expects an annual turnover of around ₹20 lakh, she is required to obtain a State FSSAI License as per the applicable regulations.

**Answer 2(c)**

As per the provisions of the Reserve Bank of India (RBI), RBI approval is required for setting up a Branch Office, Project Office or Liaison Office in India in the following cases:

- (a) The applicant is a citizen of or is registered/incorporated in Pakistan;
- (b) The applicant is a citizen of or is registered/incorporated in Bangladesh, Sri Lanka, Afghanistan, Iran, China, Hong Kong or Macau and the application is for opening a BO/LO/PO in Jammu and Kashmir, North East region and Andaman and Nicobar Islands;
- (c) The principal business of the applicant falls in the four sectors namely Defense, Telecom, Private Security and Information and Broadcasting;
- (d) The applicant is a Non-Government Organization (NGO), Non-Profit Organization, Body/ Agency/Department of a foreign government.

Based on the above, TelecomGlobal Ltd., a UK-based company planning to establish a Project Office (PO) in the Andaman and Nicobar Islands for its telecom business, falls under the category where RBI approval is mandatory.

**Answer 2(d)**

Minimum NOF Requirement for HFC Registration:

As per the National Housing Bank (NHB) regulations, an entity seeking registration as an HFC must

comply with the minimum Net Owned Fund (NOF) requirement. A Housing Finance Company (HFC) is required to maintain a minimum Net Owned Fund (NOF) of ₹20 crore (after RBI's Notification dated October 2021) to be eligible for registration. Since ABC Housing Finance Ltd. currently has an NOF of ₹18 crore, it does not fulfill the regulatory threshold of ₹20 crore and must infuse additional capital before applying for registration.

**Seeking Exemption from NHB:**

Under the existing regulatory framework, the National Housing Bank (NHB) does not grant any exemption or relaxation regarding the minimum NOF requirement.

**Answer 2(e)**

If the society is not registered under the Societies Registration Act, 1860, the following major implications arise:

1. No Separate Legal Identity – The society cannot own property, enter contracts, or sue/be sued in its own name.
2. Inability to Open a Bank Account – The society cannot open a bank account in its name, leading to financial transparency issues.
3. Challenges in Property Ownership – Property must be held in individual names, increasing the risk of disputes.
4. No Perpetual Succession – The society lacks statutory recognition, making governance unstable when members change.
5. Ineligibility for Government Grants & Benefits – The society cannot receive government aid, tax exemptions, or financial support.
6. Personal Liability for Members – Members may be personally liable for any legal or financial obligations of the society.

While registration involves recurring compliance and expenses, it provides legal protection, operational clarity, and collective rights. If the society remains unregistered, members may face significant legal and operational challenges in managing the property and resolving disputes. Therefore, registration is generally advisable for long-term stability and legal protection.

**Question 3**

- (a) Divakar and Raina, two individuals, have established a Limited Liability Partnership (LLP) to conduct business in computer hardware and peripherals at Nehru Place, New Delhi. They are now seeking guidance on drafting the LLP agreement. Advise them on the contents that should be included in the LLP agreement.
- (b) SPM Ltd. and BRB Ltd. wish to form a new company in the name of BNPM Ltd. for the purpose of manufacturing different types of inks in India. Both companies seek your advice on the key issues which must be kept in mind while drafting the Shareholder's Agreement (SHA). Advise them.
- (c) Ramanlal, the promoter and director of a One Person Company (OPC) engaged in manufacturing and selling electronic gadgets, wishes to participate in a government tender related to his business. However, the tender eligibility criteria only allow registered private limited and public limited companies to participate.

Can Ramanlal convert his OPC into a private limited company in order to meet these eligibility requirements? What steps should he follow to make the conversion?

- (d) Moonlight Inc., a USA-incorporated company, has a branch office in Surat, India, and the company intends to close it. Advise on the procedure for closing the branch office in India, including necessary legal and regulatory steps.
- (e) VRS Finance Ltd., a non-banking financial company, has ceased to operate as a non-banking financial institution in India. The Reserve Bank of India (RBI) has subsequently revoked the certificate of registration issued to VRS Finance Ltd. Referring to the applicable statutory provisions, assess the legality and justification of the RBI's decision to cancel the certificate of registration granted to VRS Finance Ltd.

(3 marks each)

### Answer 3(a)

After the incorporation, the designated partners must enter into an LLP agreement in the prescribed format. It is not necessary to have the LLP Agreement signed at the time of incorporation, as the details of the same need to be filed in e-form 3 within 30 days of incorporation along with the Certificate of incorporation as LLP form ROC but in order to avoid any dispute between the partners as to the terms & conditions of the agreement the same can be filed afterwards. The contents of the limited liability partnership agreement are as follows:

1. Name and Registered Office of LLP
2. Business Objectives and Scope of Operations (e.g., computer hardware and peripherals)
3. Details of Partners
  - Contribution (monetary or otherwise)
  - Profit-sharing ratios
  - Designated vs. ordinary partners
4. Capital Contribution
  - Initial contributions
  - Manner of additional contributions
5. Duties and Rights of Partners
  - Roles, powers, and restrictions
6. Decision-making & Meetings
  - Voting rights
  - Quorum and resolution mechanisms
7. Banking and Accounting
  - Maintenance of accounts and audit provisions (if required)
8. Remuneration/Compensation
  - For services rendered by partners
9. Admission, Retirement & Expulsion of Partners
10. Dispute Resolution
  - Arbitration clause or other modes
11. Winding Up and Dissolution

12. Indemnity and Liability Clauses

13. Miscellaneous

Accordingly, Divakar and Raina are advised on the aforesaid contents that should be included in the LLP agreement.

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

#### **Essential Features of a Shareholders' Agreement (SHA)**

Some of the key issues that must be kept in mind while drafting the SHA are summarised below:

- (i) The business of the new company/LLP;
- (ii) Manner and extent to which resources (financial, manpower, technology, etc) will be brought in;
- (iii) Provisions relating to allotment and transfer of shares;
- (iv) Constitution of the Board of Directors/Designated Partners;
- (v) Manner in which decision making will take place (majority vote or consensus);
- (vi) Decision regarding the Chairman and Managing Director of the entity; their rights, duties and responsibilities;
- (vii) Persons responsible for managing finances, marketing, production, etc.;
- (viii) Dividend distribution policy;
- (ix) Term of office of the nominated directors, the manner of their appointment and changes among them;
- (x) Valuation of the company at the time of separation;
- (xi) Dispute resolution mechanism.

The above examples are indicative and are not exhaustive.

Accordingly, SPM Ltd. and BRB Ltd. are advised on the key issues that must be kept in mind while drafting the Shareholder's Shareholders' Agreement (SHA) and ensure that the SHA aligns with the Articles of Association (AoA) of BNPM Ltd

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

Yes, Ramanlal can convert his One Person Company (OPC) into a private limited company, subject to the provisions of the Companies Act, 2013. The conversion can be either voluntary or mandatory (if the OPC meets prescribed thresholds).

Procedure for Conversion of OPC to Private Limited Company:

1. Holding a Board Meeting and passing a Board Resolution: Pass a resolution approving the conversion of OPC into a private limited company and authorizing the necessary actions.
2. Increase the Number of Directors and Members: Since a private limited company requires a minimum of two members and two directors, Ramanlal must appoint an additional director and induct at least one more shareholder.
3. Alteration of Memorandum and Articles of Association (MOA & AOA):
  - i. Modify the MOA & AOA to reflect the change in company structure.
  - ii. Remove OPC-related clauses and comply with private company regulations.

4. Obtain No Objection Certificate (NOC): If the company has any creditors or other stakeholders, an NOC may be required for conversion.
5. Holding of General Meeting: Hold the General Meeting and pass the necessary Special resolution.
6. File Necessary Forms with the Registrar of Companies (ROC):
  - i. Form MGT-14: After the General Meeting and passing the special resolution.
  - ii. Form INC-6 (Application for conversion of OPC to Private Limited Company).
  - iii. Attach required documents such as the altered MOA & AOA, list of proposed directors and shareholders, board resolution, and NOC (if applicable).
7. Approval from ROC: Upon verification of documents, the ROC will approve the conversion and issue a fresh Certificate of Incorporation.
8. Update Business Registrations and Licenses: Inform relevant authorities and update registrations, such as GST, PAN, and bank accounts, to reflect the new company status.
9. After conversion, comply with the applicable requirements of a private company under the Act.

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

#### **Closure of BO/PO/LO**

Requests for closure of the BO / LO/ PO and allowing the remittance of winding up proceeds of BO / LO/ PO may be submitted to the designated AD Category - I bank by the BO/ LO/ PO or their nodal office, as the case may be. The application for winding up may be submitted along with the following documents:

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

**Remittance of winding up proceeds:**

A designated AD Category-I bank may allow remittance of winding-up proceeds in respect of offices of banks and insurance companies, after obtaining copies of permission of closure from the sectoral regulators along with the documents mentioned above.

Accordingly, Moonlight Inc., a USA-incorporated company, is advised.

**Answer 3(e)**

In terms of Section 45-IA (6) of the RBI Act, 1934, RBI may cancel a certificate of registration granted to a non-banking financial company under this section if such company

- (i) ceases to carry on the business of a non-banking financial institution in India; or
- (ii) has failed to comply with any condition subject to which the certificate of registration had been issued to it; or
- (iii) at any time fails to fulfil any of the conditions referred to in clauses (d) to (g) of sub-section (4); or
- (iv) fails:-
  - (a) to comply with any direction issued by the Bank under the provisions of this Chapter; or
  - (b) to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank under the provisions of this Chapter; or
  - (c) to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or
- (v) has been prohibited from accepting deposit by an order made by the Bank under the provisions of this Chapter and such order has been in force for a period of not less than three months.

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

- (a) What are the eligibility criteria for a start-up to apply for Angel Tax exemption after obtaining recognition ?
- (b) What restrictions have been introduced concerning the use of the term “Nidhi Limited” in a company’s name under the Nidhi (Amendment) Rules, 2024 ?
- (c) What are the main advantages of using a Special Purpose Vehicle (SPV)?
- (d) Explain the objectives of the National SC-ST Hub Scheme.
- (e) What is the importance of linking the Permanent Account Number (PAN) with Aadhaar ?

(3 marks each)

**Answer 4(a)**

Once a startup is recognized by the Department for Promotion of Industry and Internal Trade (DPIIT), it may apply for tax exemption under Section 56(2)(viib) of the Income Tax Act, commonly known as the Angel Tax exemption. The eligibility criteria are as follows:

Eligibility Criteria for Angel Tax Exemption:

- i. The startup must be recognized by DPIIT as a Startup under the Startup India initiative.

- ii. The startup should be registered as a Private Limited Company or a Limited Liability Partnership (LLP) under the Companies Act, 2013 or LLP Act, 2008.
- iii. *Paid-up share capital*: aggregate amount of paid-up share capital and share premium of the startup after issue or proposed issue of shares, if any, does not exceed, twenty-five crore rupees:
- iv. *Age of the Startup*: The entity should not be older than 10 years from the date of incorporation.
- v. *Turnover Limit*: The startup's annual turnover should not exceed ₹100 crore in any financial year since its incorporation.
- vi. *Nature of Investment*: The exemption applies only to investments made by resident investors, including angel investors, HNIs, and venture capital funds.
- vii. *Utilization of Funds*: The funds received must be used for genuine business purposes and not for speculative or investment activities like purchasing shares, real estate, or lending, jewellery other than that held by the Startup as stock-in-trade in the ordinary course of business.

#### Answer 4(b)

The Nidhi (Amendment) Rules, 2024\* (MCA Notification No. G.S.R. 413(E) Notified on July 16, 2024)

In exercise of the powers conferred by sub-section (1) of section 406 read with subsections (1) and (2) of section 469 of the Companies Act, 2013 the Central Government notified the Nidhi (Amendment) Rules, 2024

According to the Amended Rules in the Nidhi Rules, 2014, in rule 4, in sub-rule (5,) the following proviso shall be inserted, namely:

“Provided that a company shall not use the words “Nidhi Limited” in its name unless it is declared as such under sub-section (1) of section 406 of the Act.”

Thus, A Company shall not use the words “Nidhi Limited unless it is declared by the Central Government by notification in the Official Gazette as declared to be a Nidhi or Mutual Benefit Society, as the case may be.

#### Answer 4(c)

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

The biggest advantage of SPV is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation. The SPV also allows securitisation of assets without disturbing the managerial relationship.

Under the arrangement, any predictable income stream generated by secure assets can be securitised.

- (a) Ownership of Assets – An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.
- (b) Minimum Statutory Requirement – Depending on the choice of jurisdiction, it is relatively cheap and easy to set up an SPV.
- (c) Clarity of documentation – It is easy to limit certain activities or to prohibit unauthorised transactions within the SPV documentation.
- (d) Tax benefits – SPVs are often used to make a transaction tax efficient by choosing the most favourable tax residence for the vehicle. SPVs are method of financial engineering schemes

which have as their main goal, the avoidance of tax. Some countries have different tax rates for capital gains and gains from property sales.

- (e) Legal protection – By structuring the SPV appropriately, the sponsor may limit legal liability in the event that the underlying project fails.
- (f) Accounting Reasons – Debts raised through SPV are not reflected in the balance sheet of the sponsor. It reflects a pleasant picture and enhances the debt raising ability of the sponsor. Losses incurred by SPV are not shown in the balance sheet of the sponsor, so it helps to maintain a healthy picture of the sponsor in the eyes of its stakeholders.
- (g) The key advantage is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation.
- (h) The SPV also allows securitization of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secured assets can be securitized.

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

The main objective of National SC-ST Hub Scheme is to provide professional support to Scheduled Caste and Scheduled Tribe Entrepreneurs to fulfil the obligations under the Central Government Public Procurement Policy for Micro and Small Enterprises Order 2012, adopt applicable business practices and leverage the Stand-Up India initiatives.

The scheme is applicable to aspiring and existing SC/ST Entrepreneurs.

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

Linking the Permanent Account Number (PAN) with Aadhaar is crucial for:

1. Tax Compliance: Ensures accurate identification of taxpayers and reduces tax evasion by preventing the issuance of multiple PANs.
2. Fraud Prevention: Minimises the risk of identity fraud by linking a unique identity (Aadhaar) to a financial identifier (PAN).
3. Regulatory Requirement: Compliance with government regulations, as linking is mandatory for filing income tax returns and conducting certain financial transactions.
4. Efficiency: Streamlines financial processes, such as applying for loans, accessing government services, and claiming tax benefits.

Overall, the linkage enhances transparency, ensures regulatory compliance, and promotes financial integrity

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

#### **Question 4A**

- (i) Differentiate between the Start-up India Seed Fund Scheme (SISFS) and the Credit Guarantee Scheme for Start-ups (CGSS).
- (ii) Is the concept of Significant Beneficial Owner (SBO) applicable to Limited Liability Partnerships (LLPs) ? What are the criteria for identifying an SBO in the context of an LLP ?
- (iii) How the recent regulatory changes impacted the registration process for foreign companies establishing a business in India ?

- (iv) What are the advantages of a Multi-State Co-Operative Society ?
- (v) State the procedure for obtaining NOC from Pollution Control Board.

(3 marks each)

#### Answer 4A(i)

Realising the action items of the Startup India Action Plan, the Government is implementing flagship Schemes under Startup India initiative namely, Fund of Funds for Startups (FFS), Startup India Seed Fund Scheme (SISFS) and Credit Guarantee Scheme for Startups (CGSS) to support startups at various stages of their business cycle to enable startups to graduate to a level where they are able to raise investments or seek loans.

**Startup India Seed Fund Scheme (SISFS):** The Startup India Seed Fund Scheme has been approved for the period of 4 years starting from 2021-22 with a corpus of Rs. 945 crore. The Scheme aims to provide financial assistance to startups for proof of concept, prototype development, product trials, market entry and commercialization. The Scheme is implemented from 1st April 2021. The Experts Advisory Committee (EAC), under SISFS, is responsible for the overall execution and monitoring of SISFS. The EAC evaluates and selects incubators for allocation of funds under the Scheme. As per provisions of the Scheme, the selected incubators shortlist startups based on parameters outlined in Scheme guidelines.

**Credit Guarantee Scheme for Startups (CGSS):** The Government has established the Credit Guarantee Scheme for Startups for providing credit guarantees to loans extended to DPIIT recognized startups by Scheduled Commercial Banks, Non-Banking Financial Companies (NBFCs) and Venture Debt Funds (VDFs) under SEBI registered Alternative Investment Funds. CGSS is aimed at providing credit guarantee up to a specified limit against loans extended by Member Institutions (MIs) to finance eligible borrowers viz. DPIIT recognised startups. CGSS is operationalized by the National Credit Guarantee Trustee Company Limited (NCGTC).

#### Answer 4A(ii)

Yes, the concept of Significant Beneficial Owner (SBO) is applicable to Limited Liability Partnerships (LLPs). The Ministry of Corporate Affairs (MCA) notified the Limited Liability Partnership (Significant Beneficial Owner) Rules, 2023 (SBO Rules) on November 9, 2023. These rules, conferred under section 79 of the Limited Liability Partnership Act, 2008, aim to regulate and identify significant beneficial owners in Limited Liability Partnerships (LLPs) similar to companies under the Companies Act, 2013.

In relation to a reporting LLP means an individual who acting alone or together or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting LLP, namely –

- (i) **Contribution Criterion:** holds indirectly or together with any direct holdings not less than 10% of the contribution;
- (ii) **Voting right criterion:** holds indirectly or together with any direct holdings, not less than 10% of the voting rights in respect of the management or policy decisions in such LLP;
- (iii) **Profit sharing criterion:** has right to receive or participate in not less than 10% of the total distributable profits or any other distribution, in a financial year through indirect holdings alone or together with any direct holdings;
- (iv) **Significant Influence or Control:** has right to exercise or actually exercises significant influence or control, in any manner other than through direct-holdings alone.

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

The process for foreign companies to register their place of business in India has been updated under the Companies (Registration of Foreign Companies) Amendment Rules, 2024 (MCA Notification No. GSR 491 (E) Dated August 12 2024).

Key modifications include:

1. Centralized Filing: The term "registrar" has been replaced with "Registrar, Central Registration Centre," indicating a shift toward centralized handling of registration documents.
2. Form FC-1 Submission: Foreign companies are now required to submit registration documents in Form FC-1 directly to the Registrar, Central Registration Centre.
3. Timeline: The 30-day deadline for filing Form FC-1 after establishing a place of business in India remains the same.
4. Supporting Documents: The requirement for an attested copy of RBI approval under FEMA (if applicable) or a declaration stating no approval is needed continues to apply.

The Companies (Registration of foreign Companies) Amendment rules 2024 Amendment Rules, 2024, initiate a qualitative shift in India's involvement in cross-border mergers, potentially enriching the framework and benefiting companies, particularly those with subsidiaries in foreign territories.

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

Advantages of Multi-State Cooperative Society (MSCS):

1. MSCS provides loans at reasonable rates of interest to the poor. This benefits them, as they do not have to go to financiers who lend at high interest rates.
2. MSCS can function pan India as they can start branches in different districts and states.
3. As regulatory requirements of filing, etc. is minimal, MSCS have low compliance costs.
4. A Multi State Co-operative Credit Society belongs to its members, who are at the same time the owners and the customers of their Society. This creates a sense of belonging and ownership among the members.

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

Procedure for obtaining NOC from Pollution Control Board:

1. The application for consent to establish (CTE) and consent to operate (CTO) can now be made online by logging onto the concerned State's pollution control board's website.
2. The State Pollution Control Board need to reply within 4 months. Due diligence is carried out by the pollution authority of the business premises and pollution.
3. The NOC application is either accepted or rejected. If the application is accepted for NOC, then a certificate is issued to the business. However, if application is rejected by pollution control board, then the applicant needs to be intimate of the reason for the same.

If an individual fails to obtain a CTE/CTO or Pollution license, they will be subject to 6 months to 1 year of imprisonment, with chances of a 6-year extension and fine.

## PART – II

### Question 5

Odisha Coal Mining Ltd. (OCML) contracted external parties for the transportation of crushed coal between 1984 and 1994. To carry out various essential tasks such as coal spill removal, equipment operation, and railway siding maintenance, the contractors employed 32 workers. These tasks were integral to OCML's operations and needed to be performed consistently as part of the company's daily functioning.

The workers, represented by the OCML Coal Mines Workers' Union, sought regularization of their employment. The union argued that the nature of the work being done was not temporary but rather permanent and ongoing, which should have entitled these workers to regular employment rather than being outsourced to contractors. They also invoked the National Coal Wage Agreement-IV (NCWA-IV), which, in its terms, prohibited the outsourcing of work that was permanent and essential to the company's operations.

Specifically, the NCWA-IV, dated July 27, 1989, aimed to protect workers in permanent roles from being replaced with casual or contract workers.

In response to the union's demands, the Assistant Labour Commissioner initiated a conciliation process, which led to a settlement on April 5, 1997, under Rule 58 of the Industrial Disputes (Central) Rules, 1957. According to this settlement, 19 out of the 32 workers were regularized as General Mazdoors. However, 13 workers were excluded from this regularization and were classified by OCML as 'casual workers,' rather than as permanent workers.

The exclusion of the 13 workers led to disputes between the union and OCML, which were referred to the Industrial Tribunal. The core issue before the Tribunal was whether the 13 excluded workers were engaged in work of a perennial nature, similar to the tasks carried out by the 19 workers who were regularized. The Tribunal examined testimonies from various sources, including OCML's personnel manager, who acknowledged that all 32 workers performed identical tasks, which were vital to the daily operations of OCML.

After reviewing the evidence, the Tribunal ruled on May 23, 2002, that the exclusion of the 13 workers was unjustified. It directed OCML to regularize their employment and pay them back wages for the period of their wrongful exclusion. OCML, dissatisfied with the Tribunal's decision, challenged it in the Orissa High Court. The company argued that the

1997 settlement was binding and that the Tribunal lacked jurisdiction to alter its terms. However, the High Court dismissed OCML's petition, affirming the Tribunal's decision. The court noted that all 32 workers had been engaged in the same essential and perennial tasks, and therefore, the settlement could not be used as a basis to deny regularization to the excluded workers. The High Court also dismissed a subsequent review petition filed by OCML on November 11, 2021.

Following this, OCML appealed to the Supreme Court, raising the following key points :

- That the 1997 settlement was binding on all parties under Section 19(2) of the Industrial Disputes Act, 1947, as it had not been terminated or modified.
- That the 13 excluded workers were engaged in 'casual' work, which was different from the 'perennial' tasks performed by the 19 regularized workers.
- That the Tribunal had erred in awarding back wages, as there was no evidence of the workers being unemployed during the period in question. OCML cited the case of J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433] in support of their argument.

The Union countered these arguments by emphasizing that :

- All 32 workers had performed the same essential tasks for OCML, making their work undeniably permanent in nature.
- Their duties were continuous and integral to the company's coal transportation process, and as such, should be treated as part of the company's regular operations.
- The exclusion of the 13 workers from regularization was arbitrary, unjust, and violated principles of fairness and equity.
- The workers were entitled to back wages because they had been wrongfully denied regular employment, which had caused them financial harm.

In view of the above, answer the following :

- (a) What principles govern the regularization of contract labour, and under what conditions can contract workers seek regular employment under the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 ?
- (b) X, a worker, served as a contract worker in the company for 26 years. If he retires, how would his gratuity be calculated under the Payment of Gratuity Act, 1972 ? Assume X's last drawn salary (Basic + DA) is ₹ 40,000.
- (c) What are the fundamental rights of employees and the responsibilities of an employer to ensure compliance with labour laws ?
- (d) State the conditions stipulated for award of back wages under the Payment of Wages Act, 1936.

*(5 marks each)*

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

The Contract Labour (Regulation & Abolition) Act, 1970 does not have specific provisions for regularization of contract labour. However, as per the decision of apex Court, when contract labour is prohibited and the contracts are sham, ruse or camouflage, the contract labourer are entitled to regularization. The regularization of contract labor is governed by the following principles:

1. Nature of Work: Contract workers who perform tasks that are ongoing and permanent in nature may qualify for regularization. In this scenario, all 32 workers were involved in essential and continuous duties.
2. Abolition of Contract Labor: According to the Contract Labour (Regulation and Abolition) Act, 1970, contract labour should not be employed for work that is crucial to the establishment.
3. Judicial Precedents: Courts have consistently held that contract labour engaged in continuous work should be recognized as regular employees.
4. Equity and Fairness: Employers must not arbitrarily deny regularization to workers who perform the same tasks as regular employees.
5. Legal Framework: The principles and guidelines set forth by labor laws and judicial decisions provide a framework for the regularization of contract labor.

In this case, the Tribunal and the High Court determined that the 13 excluded workers performed the same perennial duties as the 19 regularized workers, making their exclusion unjustified.

The above matter is similar to the decided case by the Hon'ble Supreme Court of India in the matter of Mahanadi Coalfields Ltd. Vs OCML Coal Mines Workers Union [SC] – Civil Appeal No(s).

4092-4093 of 2024 [ @ SLP(C) No(s) 6370-6371 of 2024 decided on 12<sup>th</sup> March 2024. Wherein, it was stated that:

“In view of the concurrent findings of fact on the issue of nature of work, the continuing nature of work, continuous working of the workmen, we are of the opinion that there is no merit in the appeals filed by the appellant. This is a case of wrongful denial of employment and regularization, for no fault of the workmen and therefore, there will be no order restricting their wages. With respect to payment of back wages, we are of the opinion that the workmen will be entitled to back wages as observed by the Industrial Tribunal. However, taking into account, the long drawn litigation affecting the workmen as well as the appellant in equal measure and taking into account the public interest, we confine the back wages to be calculated from the decision of the Tribunal dated 23.05.2002. This is the only modification in the order of the Tribunal, and as was affirmed by the judgment of the High Court. For the reasons stated above, the appeals arising out of the final judgment and order of the High Court in W.P.(C) No. VERDICTUM.IN 16 2002/2002 and order in Review Petition No. 77/2017 are dismissed with the direction that the concerned workmen shall be entitled to back wages with effect from 23.05.2002.

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

#### **Calculation of Gratuity**

Under the Payment of Gratuity Act, 1972, gratuity is calculated using the formula:

$$\text{Gratuity} = (\text{Last drawn salary}) \times (15/26) \times (\text{Years of Service})$$

If Mr. X's last drawn salary (Basic + DA) is ₹40,000, and his total service period (including contract work) is 26 years, then:

$$\text{Gratuity} = 40,000 \times (15/26) \times 26$$

$$= \text{Rs. } 40,000 \times 15$$

$$= \text{Rs. } 6,00,000$$

As per the amendment, the maximum gratuity payable under the Act is ₹20/₹25 lakhs.

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

Fundamental Rights of Employees:

- 1) Equality before Law
- 2) Equal Opportunity in Public Employment
- 3) Right to form associations or Union
- 4) Right to life
- 5) Prohibition of trafficking and forced into labour
- 6) Prohibition of child labour under the age of 14 years
- 7) Equal Pay for Equal Work
- 8) Right to fair wages and equal pay for equal work
- 9) Right to job security and protection against arbitrary termination.
- 10) Right to health and safety at the workplace.
- 11) Right to form and join trade unions.
- 12) Right to social security benefits like PF, gratuity, and ESI.

**Employer's Responsibilities:**

- 1) Compliance with labor laws such as the Industrial Disputes Act, Payment of Wages Act, and Factories Act.
- 2) Ensuring regularization of workers engaged in perennial tasks.
- 3) Providing safe working conditions and timely wage payments.
- 4) Avoiding unfair labor practices and discrimination.
- 5) Maintain Statutory Records
- 6) Issue Appointment Letters and Maintain Contracts

**Answer 5(d)**

Back wages refer to compensation awarded to employees for the period they were wrongfully denied employment. Under the Payment of Wages Act, 1936, back wages may be awarded if:

- The termination or non-regularization was deemed illegal or unfair by a tribunal or court.
- The employer failed to pay wages on time or made unauthorized deductions.
- The employee was deprived of employment benefits due to employer misconduct.

However, as held in *J.K. Synthetics Ltd. v. K.P. Agrawal*, back wages are not automatic. The court must consider whether the employee was employed elsewhere during the period of wrongful denial of employment.

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

**Question 6**

- (a) Ramesh Kumar Gupta, a Director of 'Flavors of Delhi Private Ltd.,' a prominent restaurant business located in Connaught Place, Delhi, employs 20 male staff members. He has approached you, a practicing Company Secretary, for your opinion on the following :

- (i) Whether Flavors of Delhi Private Ltd. is required to establish an Internal Complaints Committee (ICC) under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013. (2 marks)
- (ii) What should be the composition of the ICC, given that there are no female employees in the organization ?

(3 marks)

- (b) SKY Enterprises, a newly registered firm, intends to start a small manufacturing unit and will operate with only 25 workers. The management of SKY Enterprises is concerned about the compliance burden related to maintaining various registers and submitting multiple returns under different labour laws. The newly appointed HR head has come across the Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments Act, 1988, and believes the firm may be eligible for an exemption as a small establishment.

Based on the provisions of this Act, answer the following questions :

- (i) What are the eligibility criteria for SKY Enterprises to avail the exemption under this Act ?

(2 marks)

- (ii) Which specific labour laws are covered under the First Schedule for this exemption ?

(3 marks)

- (c) Ravi Kumar has been employed at XYZ Private Ltd. for the past 12 years and is a member of the Employees' Provident Fund (EPF). Due to financial difficulties, he has taken a personal loan of ₹ 5,00,000 from a bank. To repay this loan, he wishes to withdraw a portion of his EPF balance and has submitted an application to the Employees' Provident Fund Organization (EPFO).

Based on the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, answer the following questions :

- (i) Is Ravi Kumar allowed to withdraw his EPF balance to repay a personal loan ?

(2 marks)

- (ii) Under what circumstances can an employee withdraw EPF funds before retirement ?

(3 marks)

- (d) A newly incorporated company obtained ESI registration through a single-window licensing system and initially employed 25 workers. However, after two years, the workforce decreased to 20 employees. The company received a notice from the Employees' State Insurance (ESI) department for failing to file ESI returns. The company argues that ESI no longer applies due to the reduced number of employees. Is this argument valid under the Employees' State Insurance Act, 1948 ?

(5 marks)

### Answer 6(a)

#### (i) Requirement to constitute an Internal Complaints Committee (ICC):

According to Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013, requires an employer to setup an Internal Complaints Committee ('ICC') at each office or branch, of an organization employing 10 or more employees, to hear and relates redress grievances pertaining to sexual harassment. It is irrespective of whether there are currently any female employees. The Act is designed to create a safe and secure working environment for women, and it applies to all workplaces, including restaurants, offices, and other establishments.

Since "Flavors of Delhi Private Ltd." employs 20 employees, it falls under the purview of the Act, even though there are no female employees at present. The absence of female staff does not exempt the company from the requirement of forming an ICC. The committee must be constituted to address any future complaints of sexual harassment, should the company hire female employees or engage with women in any capacity (e.g., customers, vendors, or contractors).

#### (ii) Composition of the ICC:

The Internal Committee shall consist of the following members to be nominated by the employer, namely:

- a. **Presiding Officer:** a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees. However, in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section.

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;

- b. Members:** not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
- c. External member:** one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

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

#### **(i) Eligibility Criteria:**

As per Section 2(e) of the Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments Act, 1988 (the Act), small establishment means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months.

Since SKY Enterprises has 25 workers, it qualifies as a 'small establishment' and can avail of the benefits and exemption under this Act.

#### **(ii) Following are the sixteen Acts specified in the first schedule. They are as under:**

1. The Payment of Wages Act, 1936
2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961
8. The Payment of Bonus Act, 1965
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

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

- (i) No, the EPF Scheme, 1952 does not allow employees to withdraw funds for repaying personal loans. Withdrawals are permitted only under specific grounds such as medical emergencies, home loan repayment, marriage, higher education, or unemployment.

## (ii) Circumstances for withdrawing EPF funds before retirement:

An employee can withdraw from their EPF account before retirement under specific conditions, including:

- a. Medical treatment for self or family members
- b. Marriage or higher education of self, children, or sister/brother or the post matriculations education of son or daughter
- c. Purchase or construction of a house
- d. Home loan repayment
- e. Unemployment for more than 2 months
- f. Retirement after attaining 58 years of age
- g. Temporary closure of any factory or establishment for more than 15 days, for reasons other than strike or due to non-receipt of wages for 2 months
- h. In case property is damaged by a calamity of exceptional natures such as floods, earthquake or riots

**Answer 6(d)**

*Applicability of the Employees' State Insurance (ESI) Act, 1948:*

The ESI Act, 1948 applies to:

1. The ESI Act is applicable to all non-seasonal factories employing 10 or more persons [Section -1(2) read with Section 2(12) and Section 2(19A)]. The State Governments have extended the coverage under Section 1(5) of the Act to Shops, Hotel, Restaurants, Cinema including preview theatres, Road-motor transport undertakings, Newspaper establishments, Private Medical Institutions, Educational Institutions and to contract and casual employees of Municipal Corporation/Municipal Bodies employing 10 or more persons in the certain States/UTs, where State Govt. is the appropriate Government.

The Central Govt. has extended the coverage under Section 1(5) to Shops, Hotels, Restaurants, Road Motor Transport establishments, Cinema including preview theatres, Newspaper establishments, establishment engaged in Insurance Business, Non-Banking Financial Companies, Port Trust, Airport Authorities, Warehousing establishments employing 20 or more Persons, where Central Government is the appropriate Government.

2. Under the Employees' State Insurance (ESI) Act, 1948, an establishment that initially falls within the ambit of the Act continues to be governed by its provisions even if the number of employees subsequently falls below the prescribed threshold (generally 10 or 20 employees, depending on the applicability rules of the state). This principle, known as the 'once covered, always covered' rule, ensures that establishments that have once qualified under the Act continue to comply with its provisions, including contribution payments and return filings, unless formally deregistered.
3. In this case, since the company initially had 25 employees and obtained ESI registration, it remains liable to comply with the ESI Act, including filing returns and making contributions, even after the number of employees dropped to 20.

The company's contention that ESI is no longer applicable due to a reduced workforce is not valid under the ESI Act, 1948. It remains obligated to fulfil all compliance requirements unless it has obtained formal deregistration from the ESI authorities.

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

**Question 6A**

- (i) What is meant by 'set on and set off' of allocable surplus under the Payment of Bonus Act, 1965 ?
- (ii) What is the significance of contract of apprenticeship under the Apprentices Act, 1961 ?
- (iii) Analyze the provisions related to nursing breaks and creche facilities under the Maternity Benefit Act, 1961.
- (iv) Examine the constitutional meaning, scope and legal implications of the term 'begar' as prohibited under Article 23 of the Constitution of India.

*(5 marks each)*

**Answer 6A(i)**

Section 15 of the Payment of Bonus Act, 1965 deals with Set on and set off of allocable surplus. It provides that:

- (1) Where for any accounting year, the allocable surplus exceeds the amount of maximum bonus payable to the employees in the establishment under Section 11, then, the excess shall, subject to a limit of twenty per cent of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the fourth accounting year to be utilized for the purpose of payment of bonus in the manner illustrated in the Fourth Schedule.
- (2) Where for any accounting year, there is no available surplus or the allocable surplus in respect of that year falls short of the amount of minimum bonus payable to the employees in the establishment under Section 10, and there is no amount or sufficient amount carried forward and set on under sub-section (1) which could be utilized for the purpose of payment of the minimum bonus, then, such minimum amount or the deficiency, as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the fourth accounting year in the manner illustrated in the Fourth Schedule.
- (3) The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by sub-section (1) or sub-section (2) for the purpose of payment of bonus under this Act.
- (4) Where in any accounting year any amount has been carried forward and set on or set off under this Section, then, in calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Apart from the provisions contained in Section 15(1), there is no statutory obligation on an employer to set apart any part of the profits of the previous year for payment of bonus for subsequent years.

**Answer 6A(ii)**

Section 4 of the Apprentices Act, 1961 deals with Contract of apprenticeship. Section 4 states that :

- (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.
- (2) The apprenticeship training shall be deemed to have commenced on the date on which

the contract of apprenticeship has been entered into under sub-section (1).

- (3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract: Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.
- (4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration.
- (4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.
- (4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

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

#### **Section 11 of Maternity Benefit Act, 1961 deals with Nursing breaks**

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.

Section 11A of Maternity Benefit Act, 1961 deals Creche Facility

- (1) Every establishment having fifty or more employees shall have the facility of creche within such distance as may be prescribed, either separately or along with common facilities. The employer shall allow four visits a day to the creche by the woman, which shall also include the interval for rest allowed to her.
- (2) Every establishment shall intimate in writing and electronically to every woman at the time of her initial appointment regarding every benefit available under the Act.

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

According to Article 23(1), traffic in human beings, begar, and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 23(1) proscribes three unsocial practices, viz., (1) begar; (2) traffic in human beings; and (3) forced labour.

The term 'begar' means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration for it.

Withholding of pay of a government employee as a punishment has been held to be invalid in view of Article 23 which prohibits begar. 'To ask a man to work and then not to pay him any salary or wages savours of begar. It is a Fundamental Right of a citizen of India not to be compelled to work without wages.' (Suraj v. State of Madhya Pradesh, AIR 1960 MP 303).

The expression 'traffic in human beings,' commonly known as slavery, implies the buying and selling of human beings as if they are chattels, and such a practice is constitutionally abolished.

The words 'other similar forms of forced labour' in Article 23(1) are to be interpreted ejusdem generis. The kind of 'forced labour' contemplated by the Article has to be something in the nature of either traffic in human beings or begar. The prohibition against forced labour is made subject to one exception. Under Article 23(2), the State can impose compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. The State may thus exempt women from compulsory service for that will be discrimination on the ground of sex and this has not been forbidden by Article 23(2).

The Supreme Court has given an expansive significance to the term "forced labour" used in Art. 23(1) in a series of cases beginning with the *Asiad* case in 1982. (*People's Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473). The Court has insisted that Article 23 is intended to abolish every form of forced labour even if it has origin in a contract. Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to the basic human values.

In *Sanjit Roy v. State of Rajasthan*, 1983, SCR (2) 271 case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words 'forced labour' under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.

# CORPORATE ACCOUNTING & FINANCIAL MANAGEMENT

## GROUP 1 PAPER 4

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

Aashna is a Mechanical Engineer from a premier institute based in Kolkata. After working for a decade in the engineering industry, Aashna completes a management development programme from a top-grade Business School. Subsequently, Aashna along with her three colleagues sets up a venture capital fund - GKJ & Co. The aim is to invest in companies that manufacture import substitutes. There is an impetus from the Government to manufacture in India to meet domestic demand and for the world and hence it is felt that any investment made in the manufacturing industry is likely to grow at an above average rate.

GKJ & Co. has raised an initial amount of ₹ 80 crore from investors and is scouting for initial deployment opportunities. One such opportunity is investments in Royden & Co. Royden & Co. is a manufacturer of equipment and tools which are used in dental clinics. This equipment is essentially an import substitute and has potential to be exported as well.

The Balance Sheet of Royden & Co. as on the recent financial year end is given below :

| I. Equity and Liabilities                          | Beginning of financial year<br>(₹ Lakhs) | Ending of financial year<br>(₹ Lakhs) |
|----------------------------------------------------|------------------------------------------|---------------------------------------|
| Share Capital                                      | 1,400                                    | 1,600                                 |
| Share Premium                                      | 180                                      | 220                                   |
| Retained Earnings                                  | 476                                      | 616                                   |
| 7% Mortgage Loans                                  | -                                        | 400                                   |
| Creditors                                          | 138                                      | 120                                   |
| Outstanding Salaries                               | 40                                       | 28                                    |
| Provision for taxation                             | 20                                       | 28                                    |
| <b>Total</b>                                       | <b>2,254</b>                             | <b>3,012</b>                          |
| II. Assets                                         |                                          |                                       |
| Plant & Machinery                                  | 1,240                                    | 1,320                                 |
| Accumulated depreciation<br>on plant and machinery | (740)                                    | (524)                                 |
| Building                                           | 1,900                                    | 2,320                                 |

| I. Equity and Liabilities            | Beginning of financial year<br>(₹ Lakhs) | Ending of financial year<br>(₹ Lakhs) |
|--------------------------------------|------------------------------------------|---------------------------------------|
| Accumulated depreciation on building | (860)                                    | (900)                                 |
| Land                                 | 200                                      | 240                                   |
| Stock                                | 204                                      | 192                                   |
| Debtors                              | 172                                      | 152                                   |
| Prepaid Expenses                     | 14                                       | 16                                    |
| Cash & Bank                          | 124                                      | 196                                   |
| Total                                | <b>2,254</b>                             | <b>3,012</b>                          |

The following additional details are hereunder :

- (i) Plant costing ₹ 320 lakhs (accumulated depreciation ₹ 296 lakhs) was sold during the year for ₹ 24 lakhs
- (ii) Building was acquired during the year at cost of ₹ 420 lakhs. In addition to cash payment of ₹ 20 lakhs mortgage of ₹ 400 lakhs was raised for balance.
- (iii) Dividend of ₹ 160 lakhs was paid during the year.
- (iv) A sum of ₹ 278 lakhs was transferred to Provision for tax account.

Royden & Co. wants to setup a plant to manufacture advanced dentistry equipment. The said equipment is imported from USA. The Indian Government is giving benefits in terms of tax holidays for such types of business. It is estimated that turnover of ₹ 800 lakhs could be generated at a profit in the first year of operations. The new business setup requires a significant investment. Royden & Co. have reached out to GKJ & Co. for the first round of funding. GKJ & Co. has requested Royden & Co. for some further information before investing. Royden & Co. is requested to prepare profitability projections under different scenarios. The scenarios are given below :

|                            | Base Case (Rs. Lakhs) | Best Case                         | Worst Case                        |
|----------------------------|-----------------------|-----------------------------------|-----------------------------------|
| Revenues                   | 800                   | Sales higher by 37.5%             | Sales decline by 25%              |
| Variable Cost 60% of sales | 480                   | 56% of sales                      | 65% of sales                      |
| Fixed Cost                 | 80                    | 60                                | 100                               |
| Depreciation               | 100                   | 100                               | 100                               |
| Income Tax                 | Rs.40 lakhs           | Same income tax rate as base case | Same income tax rate as base case |

- (a) Prepare cash flow statement (indirect method) of Royden & Co. for the current financial year with the available details.

(b) Calculate Return on Equity and Return on Assets of Royden & Co.

(c) Calculate profit under different scenarios.

(7+3+5=15 marks)

### Answer 1(a)

#### Cash Flow Statement (indirect method) of Royden & Co.

|                                                                       |       | Amount (₹ lakh) |
|-----------------------------------------------------------------------|-------|-----------------|
| <b>A. Cash Flow from Operations</b>                                   |       |                 |
| Net Profit for the year before dividend and provision for tax (W.N:1) |       | 578             |
| Depreciation on Plant (W.N:2)                                         | 80    |                 |
| Depreciation on Building (W.N:2)                                      | 40    | 120             |
|                                                                       |       | 698             |
| <i>Changes in working capital</i>                                     |       |                 |
| Decrease in stock                                                     | 12    |                 |
| Decrease in Debtors                                                   | 20    |                 |
| Increase in prepaid expenses                                          | (2)   | 30              |
|                                                                       |       |                 |
| Decrease in creditors                                                 | (18)  |                 |
| Decrease in outstanding salaries                                      | (12)  | (30)            |
| Cash flow from operations before tax payment                          |       | 698             |
| Less: Income Tax paid (W.N:1)                                         |       | (270)           |
| <b>Cash flow from operations after income tax paid - I</b>            |       | <b>428</b>      |
|                                                                       |       |                 |
| <b>B. Cash Flow from Investing</b>                                    |       |                 |
| Purchase of Building (W.N:2)                                          | (420) |                 |
| Purchase of Plant & Machinery (W.N:2)                                 | (400) |                 |
| Purchase of Land                                                      | (40)  |                 |
| Sale of Plant                                                         | 24    |                 |
| <b>Net Cash Flow from Investing - II</b>                              |       | <b>(836)</b>    |
|                                                                       |       |                 |

|                                                         |       |            |
|---------------------------------------------------------|-------|------------|
| <b>C. Cash Flow from Financing</b>                      |       |            |
| Mortgage Loan                                           | 400   |            |
| Issue of Shares                                         | 200   |            |
| Share premium                                           | 40    |            |
| Dividend paid                                           | (160) |            |
| <b>Cash Flow from Financing - III</b>                   |       | <b>480</b> |
| <b>Change in Cash &amp; cash equivalents (I+III-II)</b> |       | <b>72</b>  |
| <b>Opening Balance of cash &amp; cash equivalents</b>   |       | <b>124</b> |
| <b>Closing Balance of cash &amp; cash equivalents</b>   |       | <b>196</b> |

**Working Note- 1: Calculation of Net Profit after tax but before dividend and provision for tax.**

**Provision for Taxation A/c**

| Particulars                                     | Amount (₹ lakh) | Particulars    | Amount (₹ lakh) |
|-------------------------------------------------|-----------------|----------------|-----------------|
| To Bank (income tax paid)<br>(Balancing figure) | 270             | By balance b/d | 20              |
| To balance c/d                                  | 28              | By P&L A/c     | 278             |
|                                                 | 298             |                | 298             |

**Retained Earnings A/c**

| Particulars      | Amount (₹ lakh) | Particulars                     | Amount (₹ lakh) |
|------------------|-----------------|---------------------------------|-----------------|
| To Dividend paid | 160             | By balance b/d                  | 476             |
| To balance c/f   | 616             | By Profit<br>(Balancing figure) | 300             |
|                  | 776             |                                 | 776             |

**Net profit for the year = Provision for Tax Account (P&L account balance) + Profit for the year as per retained earnings**

$$= ₹ 278 \text{ lakh} + ₹ 300 \text{ lakh} = ₹ 578 \text{ Lakh}$$

**Working Note- 2: Depreciation**

**Plant and Machinery A/c**

| Particulars    | Amount (₹ lakh) | Particulars                 | Amount (₹ lakh) |
|----------------|-----------------|-----------------------------|-----------------|
| To balance b/f | 1,240           | By Bank A/c (sale of plant) | 24              |

|                                          |       |                               |       |
|------------------------------------------|-------|-------------------------------|-------|
| To Bank – purchase<br>(Balancing figure) | 400   | By depreciation on plant sold | 296   |
|                                          |       | By balance c/d                | 1,320 |
|                                          | 1,640 |                               | 1,640 |

**Accumulated Depreciation on Plant and Machinery A/c**

| Particulars                      | Amount (₹ lakh) | Particulars                                   | Amount (₹ lakh) |
|----------------------------------|-----------------|-----------------------------------------------|-----------------|
| To depreciation on<br>plant sold | 296             | By balance b/d                                | 740             |
| To balance c/d                   | 524             | By P&L A/c (depreciation for<br>current year) | 80              |
|                                  | 820             |                                               | 820             |

**Building A/c**

| Particulars    | Amount (₹ lakh) | Particulars    | Amount (₹ lakh) |
|----------------|-----------------|----------------|-----------------|
| To balance b/d | 1,900           |                |                 |
| To Bank        | 420             |                |                 |
|                |                 | By balance c/d | 2,320           |
|                | 2,320           |                | 2,320           |

**Accumulated Depreciation on Building A/c**

| Particulars    | Amount (₹ lakh) | Particulars               | Amount (₹ lakh) |
|----------------|-----------------|---------------------------|-----------------|
|                |                 | By balance c/d            | 860             |
| To balance c/f | 900             | By P&L A/c (depreciation) | 40              |
|                | 900             |                           | 900             |

**Answer 1(b)****(Amount in ₹ lakh)**

|                                                       |              |              |
|-------------------------------------------------------|--------------|--------------|
| <b>Net Profit After Tax [NPAT] (W.N-1)</b>            | <b>300</b>   |              |
|                                                       |              |              |
| <b>Total Assets (A)</b>                               | <b>2,254</b> | <b>3,012</b> |
|                                                       |              |              |
| <b>Average Total Assets [(Beginning + Closing)/2]</b> | <b>2,633</b> |              |

|                                                            |        |       |
|------------------------------------------------------------|--------|-------|
| Return on total assets (NPAT/Average total assets)         | 11.39% |       |
|                                                            |        |       |
| Equity (Share Capital + Share Premium + Retained Earnings) | 2,056  | 2,436 |
|                                                            |        |       |
| Average Total Equity [(Opening + Closing)/2]               | 2,246  |       |
| Return on equity<br>(NPAT/Average total equity)            | 13.36% |       |

**Answer 1(c)***Amount in ₹ lakh***Calculation of Profit under different scenarios**

|                                                                                             | Base case  | Best Case              | Best Case  | Worst Case              | Worst Case |                |
|---------------------------------------------------------------------------------------------|------------|------------------------|------------|-------------------------|------------|----------------|
| Revenues (A)                                                                                | 800        | 37.50%<br>Higher sales | 1,100      | -25%<br>(Decline sales) | 600        |                |
| Variable Cost 60% (B)                                                                       | 480        | 56% of Sales           | 616        | 65% of Sales            | 390        |                |
| Contribution (C= A-B)                                                                       | <b>320</b> |                        | <b>484</b> |                         | <b>210</b> | <b>2 marks</b> |
| Fixed Cost (Given) (D)                                                                      | 80         |                        | 60         |                         | 100        |                |
| Depreciation (Given) (E)                                                                    | 100        |                        | 100        |                         | 100        |                |
| Profit Before Tax (C-D-E)*                                                                  | <b>140</b> |                        | <b>324</b> |                         | <b>10</b>  | <b>1 mark</b>  |
| Less: Income Tax                                                                            | 40         | 28.57% of 324          | 93         | 28.57% of 10            | 3          |                |
| Profit After Tax                                                                            | 100        |                        | <b>231</b> |                         | <b>7</b>   | <b>2 marks</b> |
| *Income tax rate (Income Tax/ PBT) (40/140) = 28.57%<br>Rounded off to nearest whole number |            |                        |            |                         |            |                |

**Question 2**

(a) Oreon Ltd. grants 10,000 employee stock options on 1.4.2021 at ₹ 400. The market price of the share is ₹ 1,600. The vesting period is 2.5 years and the maximum exercise period is one year.

- 3,000 unvested options lapses on 1.5.2023.
- 6,000 options are exercised on 30.6.2024.
- 1,000 vested options lapses at end of exercise period.

Pass journal entries and show necessary working notes.

- (b) Divya Ltd. purchased machinery worth ₹ 1,20,000 and building worth ₹ 2,00,000 from Tara Ltd. for consideration other than cash at an agreed purchase consideration of ₹ 3,00,000 to be satisfied by the issue of 3,000, 12% debentures of ₹ 100 each.

Show the necessary journal entries in the books of Divya Ltd.

(3 marks)

- (c) Shiv Shakti Ltd. issued 20,000, 13%, Convertible Debentures of ₹ 100 each on 1st April, 2024. The debentures are due for redemption on 1st July, 2024. The terms of issue of debentures provided that they were redeemable at a premium of 5% and also conferred an option to the debentureholders to convert 20% of their holding into equity shares having a nominal value of ₹ 10 per share at a price of ₹ 15 per share. Debentureholders holding 2,500 debentures did not exercise the option.

Calculate the number of equity shares to be allotted to the Debentureholders exercising the option to the maximum.

(5 marks)

### Answer 2(a)

#### In books of Oreon Ltd.

#### Journal Entries

| Entry number | Date      | Particulars                                                                                                                                                                                                                                               |     | Dr. (₹)   | Cr. (₹)   |
|--------------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----------|-----------|
| 1            | 31.3.2022 | Employee Compensation Expense A/c<br>To Employee stock option outstanding A/c<br>(Being compensation expense in relation to ESOP i.e. 10,000 options granted to employees at a discount of 1,200/- each, amortized on straight line basis over 2.5 years) | Dr. | 48,00,000 | 48,00,000 |
| 2            |           | P&L A/c<br>To Employee Compensation Expense A/c<br>(Being expenses transferred to Profit & Loss A/c at year end)                                                                                                                                          | Dr. | 48,00,000 | 48,00,000 |
| 3            | 31.3.2023 | Employee Compensation Expense A/c<br>To Employee stock option outstanding A/c<br>(Being compensation expense in relation to ESOP i.e. 10,000 options granted to employees at a discount of 1,200/- each, amortized on straight line basis over 2.5 years) | Dr. | 48,00,000 | 48,00,000 |
| 4            |           | P & L A/c<br>To Employee Compensation Expense A/c<br>(Being expenses transferred to Profit & Loss A/c at year end)                                                                                                                                        | Dr. | 48,00,000 | 48,00,000 |

|   |            |                                                                                                                                                                                                                                        |            |                        |                     |
|---|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|------------------------|---------------------|
| 5 | 31.3.2024  | Employee Stock Option Outstanding A/c<br>(W.N.)<br>To General Reserve A/c<br>(Being excess of employee compensation expenses transferred to general reserve account)                                                                   | Dr.        | 12,00,000              | 12,00,000           |
| 6 | 30.6.2024  | Bank A/c<br>Employee Stock Option Outstanding A/c<br>To Equity Share Capital A/c<br>To Share premium A/c<br>(Being 6,000 employee stock options exercised at an exercise price of ₹ 400/- each, assumed share face value of ₹ 10 each) | Dr.<br>Dr. | 24,00,000<br>72,00,000 | 60,000<br>95,40,000 |
| 7 | 01.10.2024 | Employee Stock option outstanding A/c<br>To General Reserve A/c<br>(Being Employee stock option outstanding account transferred to General Reserve Account in the lapse of 1,000 options at the end of exercise of option period)      | Dr.        | 12,00,000              | 12,00,000           |

**Working Notes:**

(₹)

|                                                         |                  |
|---------------------------------------------------------|------------------|
| ESOP price                                              | 400              |
| Share price                                             | (1,600)          |
| Difference                                              | 1,200            |
| Granting of ESOP                                        | 10,000           |
| Amount to be amortized (1,200 * 10,000)                 | 1,20,00,000      |
| Amount to be amortized over 2.5 years (1,20,00,000/2.5) | <b>48,00,000</b> |

|                                               |           |
|-----------------------------------------------|-----------|
| Unvested Options                              | (₹)       |
| Options vested                                | 7,000     |
| Discount                                      | 1,200     |
|                                               | 84,00,000 |
| Expenses recognized                           | 96,00,000 |
| Excess expense transferred to general reserve | 12,00,000 |

(₹)

|                           |           |
|---------------------------|-----------|
| Number of options vested  | 6,000     |
| Discount                  | 1,200     |
| Options Vested * Discount | 72,00,000 |
| Expenses recognized       | 84,00,000 |
| Excess                    | 12,00,000 |

**Answer 2 (b)****In the Books of Divya Limited****Journal Entries**

|    | Particulars                                                                                                                                                                                              |            | (Amount in ₹)        | (Amount in ₹)      |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|----------------------|--------------------|
| 1. | Building A/c<br>Plant and Machinery A/c<br>To Tara Ltd<br><b>To Capital Reserve A/c</b><br>(Being Purchase of Sundry Assets and transfer of Capital Profits as per agreement with the vendor dated.....) | Dr.<br>Dr. | 2,00,000<br>1,20,000 | 3,00,000<br>20,000 |
| 2. | Tara Ltd<br>To 12% Debentures A/c.<br>(Being 3,000, 12% Debentures of Rs.100 each allotted to vendors for consideration other than cash as per Board resolution dated....)                               | Dr.        | 3,00,000             | 3,00,000           |

**Note:** If the value of debentures allotted is less than the agreed purchase price, the difference is to be credited to Capital Reserve Account.

**Answer 2(c)****Calculation of number of Equity Shares to be allotted**

| Particulars                                             | Number of Debentures |
|---------------------------------------------------------|----------------------|
| Total number of debentures                              | 20,000               |
| Less: Debenture holders not opted for conversion        | (2,500)              |
| Debenture holders opted for conversion                  | <b>17,500</b>        |
| Option for conversion                                   | 20%                  |
| Number of debentures to be converted<br>(20% of 17,500) | <b>3,500</b>         |

Redemption value of 3,500 debentures at a premium of 5% [ $3,500 \times (\text{₹}100 + \text{₹}5)$ ]

**= ₹ 3,67,500**

Equity Shares of ₹10 each issued on conversion at a price of ₹ 15 [ $\text{₹}3,67,500 / \text{₹}15$ ]

**= 24,500 Shares.**

### Question 3

(a) The summarised Balance Sheets of H Ltd. and S Ltd. as on 31st March, 2025 is given below :

| <b>Equities and Liabilities</b>              | <b>H Ltd.</b>    | <b>S Ltd.</b>    |
|----------------------------------------------|------------------|------------------|
| Share capital (Face value of ₹ 10 per share) | 30,00,000        | 6,00,000         |
| Reserves                                     | 4,80,000         | 1,80,000         |
| Profit and Loss Account                      | 3,60,000         | 2,40,000         |
|                                              | <b>38,40,000</b> | <b>10,20,000</b> |
| <b>Assets</b>                                |                  |                  |
| Sundry Assets                                | 30,00,000        | 10,20,000        |
| 48,000 shares in S Ltd.                      | 8,40,000         |                  |
|                                              | <b>38,40,000</b> | <b>10,20,000</b> |

S Ltd. had reserves of ₹ 1,80,000 when H Ltd. acquired shares in S Ltd. The P & L balance of S Ltd. was fully earned after the acquisition of shares by H Ltd. S Ltd. decided to issue bonus shares out of post-acquisition profit in the ratio of 1 share for every 10 shares held.

Calculate the cost of control before and after issue of bonus shares.

(5 marks)

(b) Sangam Ltd. came up with public issue of 3,00,000 Equity Shares of ₹ 10 each at ₹ 15 per share. P, Q and R took underwriting of the issue in the ratio of 3 : 2 : 1 with the provisions of firm underwriting of 20,000, 14,000 and 10,000 shares respectively.

Applications were received for 2,40,000 shares excluding firm underwriting.

The number of applications from public were received as under :

P – 60,000

Q – 50,000

R – 60,000

Compute the liability of each underwriter as regards the number of shares to be taken up assuming that the benefit of firm underwriting is not given to individual underwriters.

(c) Calculate Trade Receivables turnover ratio and average collection period from the following information :

|                                                  |             |
|--------------------------------------------------|-------------|
| Total Revenue from operations                    | ₹ 78,00,000 |
| Revenue from sales on credit                     | 65%         |
| Trade receivables at beginning of financial year | ₹ 5,00,000  |
| Trade receivables at end of financial year       | ₹ 7,00,000  |

Assume 365 days in the year for calculation of average collection period.

(5 marks)

**Answer 3(a)**

**Cost of control before and after issue of bonus shares of S Ltd.**

| Calculation of cost of control before issue of bonus shares |                   |
|-------------------------------------------------------------|-------------------|
|                                                             |                   |
| Amount of consideration                                     | ₹ 8,40,000        |
| Less: Face Value of Shares acquired                         | ₹ 4,80,000        |
|                                                             | ₹ 3,60,000        |
| Less: Shares amount in reserves (180,000 * 80%)             | ₹ 1,44,000        |
| Cost of control/Goodwill before issue of bonus shares       | <b>₹ 2,16,000</b> |

| Calculation of cost of control after issue of bonus shares |                   |
|------------------------------------------------------------|-------------------|
|                                                            |                   |
| Amount of consideration                                    | ₹ 8,40,000        |
| Less: Face Value of Shares acquired                        | ₹ 4,80,000        |
|                                                            | ₹ 3,60,000        |
| Less: Shares amount in reserves (180,000 * 80%)            | ₹ 1,44,000        |
|                                                            | ₹ 2,16,000        |
| Less: H Ltd's share in bonus [600000*80%*1/10]             | <b>₹ 48,000</b>   |
| Cost of Control/Goodwill                                   | <b>₹ 1,68,000</b> |

**Answer 3(b)**

**Calculation of Liability of each Underwriter (in shares)**

(Assuming the benefit of firm underwriting is not given to individual underwriters)

| Particulars                                                 | P             | Q             | R               | Total      |
|-------------------------------------------------------------|---------------|---------------|-----------------|------------|
| Gross Liability                                             | 1,50,000      | 1,00,000      | 50,000          | 3,00,000   |
| Less: Marked Applications excluding firm underwriting       | (60,000)      | (50,000)      | (60,000)        | (1,70,000) |
| Balance                                                     | <b>90,000</b> | <b>50,000</b> | <b>(10,000)</b> | 1,30,000   |
| Less: Surplus of R allocated to P and Q in the ratio of 3:2 | (6,000)       | 4,000         | 10,000          |            |

|                                                                                 |               |               |                 |               |
|---------------------------------------------------------------------------------|---------------|---------------|-----------------|---------------|
| Balance                                                                         | 84,000        | 46,000        | -               | 1,30,000      |
| Less: Unmarked applications including firm underwriting <b>[Working Note]</b> . | (57,000)      | (38,000)      | (19,000)        | (1,14,000)    |
| Net Liability                                                                   | <b>27,000</b> | <b>8,000</b>  | <b>(19,000)</b> | 16,000        |
| Less: Surplus of R allocated to P and Q in the ratio of 3:2                     | (11,400)      | (7,600)       | 19,000          | -             |
| Balance                                                                         | <b>15,600</b> | <b>400</b>    | -               | 16,000        |
| Add: Firm Undertaking                                                           | 20,000        | 14,000        | 10,000          | 44,000        |
| <b>Total Liability</b>                                                          | <b>35,600</b> | <b>14,400</b> | <b>10,000</b>   | <b>60,000</b> |

**Working Note:**

|                                                              |                        |
|--------------------------------------------------------------|------------------------|
| Applications received from the Public                        | 2,40,000 shares        |
| Add: Shares for firm Underwriting (20,000 + 14,000 + 10,000) | 44,000 shares          |
| Total Application                                            | 2,84,000 shares        |
| Less: Marked applications (60,000 + 50,000 + 60,000)         | 1,70,000 shares        |
| Unmarked application including firm undertaking              | <b>1,14,000 shares</b> |

**Answer 3(c)**

|                               |                    |
|-------------------------------|--------------------|
| Total Revenue from operations | ₹ 78,00,000        |
| Credit Revenue                | 65%                |
| Credit Revenue                | <b>₹ 50,70,000</b> |

|                                                  |                   |
|--------------------------------------------------|-------------------|
| Trade Receivables at beginning of financial year | ₹ 5,00,000        |
| Trade Receivables at end of financial year       | ₹ 7,00,000        |
| Average receivables (5,00,000 + 7,00,000 / 2)    | <b>₹ 6,00,000</b> |

$$\text{Trade Receivables Turnover Ratio} = \frac{\text{Credit Revenue}}{\text{Average Receivables}} = \frac{\text{₹ 50,70,000}}{\text{₹ 6,00,000}} = 8.45$$

$$\text{Average collection period} = \frac{365}{\text{Trade Receivables turnover ratio}} = \frac{365}{8.45} = 43 \text{ days (Approx.)}$$

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

**Question 4**

- (a) A new process for development of Active Pharmaceutical ingredients (APIs) is developed by Prof. Shastri. The process is subsequently patented. The APIs are used to manufacture

medicines for cure of cardiac diseases. The patent is bought by a pharmaceutical company Ratna & Co. The patent was bought for a consideration of ₹ 45,00,00,000. The deal involves payment of ₹ 15,00,00,000 to Prof. Shastri and allotment of shares of ₹ 10 each at a discount of ₹ 2 per share for balance consideration of ₹ 30,00,00,000.

Prepare necessary journal entries in the books of Ratna & Co.

(5 marks)

(b) The following data is given for two similar companies :

|                      | A Ltd. | B Ltd. |
|----------------------|--------|--------|
| Net profit margin    | 23%    | 20%    |
| Asset turnover ratio | 1.25   | 1.50   |
| Financial Leverage   | 1.50   | 1.40   |

- Calculate Return on Equity for A Ltd. and B Ltd.
- Which company has higher Return on Equity ?
- What is the reason for higher return on equity ?

(3+1+1=5 marks)

(c) Calculate material consumed in production and payment for the inventory from the given figures. Assume entire purchase is on credit basis :

| Particulars                     | ₹        |
|---------------------------------|----------|
| Inventory in the beginning      | 80,000   |
| Credit Purchases                | 3,20,000 |
| Inventory in the end            | 76,000   |
| Trade payables in the beginning | 28,000   |
| Trade payables at the end       | 29,000   |

(5 marks)

#### Answer 4(a)

#### In the books of Ratna & Company

#### Journal Entry

| Entry No. | Particulars                                                                      |     | Dr. (₹)      | Cr. (₹)      |
|-----------|----------------------------------------------------------------------------------|-----|--------------|--------------|
| 1.        | Patent A/c<br>To Prof. Shastri A/c<br>(Being patent acquired from Prof. Shastri) | Dr. | 45,00,00,000 | 45,00,00,000 |

|    |                                           |     |              |              |
|----|-------------------------------------------|-----|--------------|--------------|
| 2. | Prof. Shastri A/c                         | Dr. | 45,00,00,000 |              |
|    | Discount on issue of shares <b>(W.N.)</b> | Dr. | 7,50,00,000  |              |
|    | To Bank A/c                               |     |              | 15,00,00,000 |
|    | To Share Capital A/c                      |     |              | 37,50,00,000 |
|    | (Being consideration for patent)          |     |              |              |

**Working Note:****Calculation of discount on issue of shares**

|                                    |                  |
|------------------------------------|------------------|
| Total consideration                | ₹ 45,00,00,000/- |
| Direct payment                     | ₹ 15,00,00,000/- |
| Shares issued                      | ₹ 30,00,00,000/- |
| Face value of shares issued        | ₹ 37,50,00,000/- |
| $\frac{30,00,00,000 \times 10}{8}$ |                  |
| Discount on issue of shares        | ₹ 7,50,00,000/-  |

**Answer 4(b)(i)**

| Return on equity = | Net Profit Margin x Asset turnover ratio x Financial Leverage |   |        |
|--------------------|---------------------------------------------------------------|---|--------|
| A Ltd. =           | 23% x 1.25 x 1.50                                             | = | 43.13% |
| B Ltd. =           | 20% x 1.50 x 1.40                                             | = | 42.00% |

**Answer 4(b)(ii)**

A Ltd. has higher Return on equity.

**Answer 4(b)(iii)**

A Ltd. has higher net profit margin (Net Profit/Sales) and slightly better financial leverage (Total Assets/Total Equity) as compared to B Ltd.

**Answer 4(c)****Inventory A/c****(Amount in ₹)**

|                   |          |                                            |          |
|-------------------|----------|--------------------------------------------|----------|
| To balance b/d    | 80,000   | By Material consumed<br>(Balancing figure) | 3,24,000 |
| To Trade Payables | 3,20,000 | By balance c/d                             | 76,000   |
|                   | 4,00,000 |                                            | 4,00,000 |

**Trade Payable A/c****(Amount in ₹)**

|                      |                 |                |                 |
|----------------------|-----------------|----------------|-----------------|
| To bank (Bal.figure) | <b>3,19,000</b> | By balance b/d | 28,000          |
| To balance c/d       | 29,000          | By Inventory   | 3,20,000        |
|                      | <b>3,48,000</b> |                | <b>3,48,000</b> |

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

- (i) Financial Forecasting is the start of budgeting process. Elucidate.
- (ii) Write a short note on "Role of Escrow Account in buyback of shares".
- (iii) What is the significance of debt service coverage ratio ?

*(5 marks each)***Answer 4(i)**

A concrete financial plan is built on both forecasting and sound spending guidance.

Financial forecasting and budgeting are two separate terms and cannot be used interchangeably. Financial forecasting is a critical first step in the budgeting process. Organizations work hard to create reliable financial forecasts which results in building realistic budgets. Financial forecasts should always precede the budgeting process to ensure spending is in line with factors that can impact overall financial performance.

Budgets created without financial forecasts are at risk of:

- Overspending
- Lack of cash for unexpected costs
- Shortfalls in revenue

Lacking a financial forecast may also keep the business from green lighting a new capital investment or launching a product that may have ended up being a growth driver.

**Answer 4A(ii)**

As per SEBI (Buy back of Securities) Regulations, 2018, a company intending to buy back shares shall within two working days of the public announcement, as and by way of security for performance of its obligations, deposit a specified sum in an escrow account. The escrow account shall be payable as follows:

| <b>Consideration for buyback</b> | <b>Escrow Account</b>                                                                                                  |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Does not exceed ₹ 100/- crore.   | 25% of the consideration payable                                                                                       |
| Exceeds ₹ 100/- crore            | (i) 25% for consideration amount of upto ₹ 100/- crore and<br>(ii) 10% for consideration of amount above ₹ 100/- crore |

Escrow account shall, subject to appropriate margin as specified by the Board, consist of:

- i. Cash including bank deposits deposited with any scheduled commercial bank, or
- ii. Bank guarantee issued in favour of the merchant banker by any scheduled commercial bank, or

- iii. Deposit of frequently traded and freely transferable equity shares or other freely transferable securities, or
- iv. Government Securities, or
- v. units of mutual funds invested in gilt funds and overnight schemes, or
- vi. a combination of above

**Answer 4(iii)**

Financial institutions provide term loans to organizations. The debt service coverage ratio ("DSCR") is an important tool for assessing the financial health of an organization. It also helps in estimating capability to repay existing debt. DSCR assists lenders and investors in determining whether it is safe for the organization to take on additional debt financing.

The DSCR is calculated for financial institutions for the period during which term loan of the project is repayable. Normally financial institutions regard a DSCR of 1.5 to 2.0 as satisfactory.

$$\text{DSCR} = \frac{\text{Profit After Tax} + \text{Depreciation} + \text{Other Non- Cash Charges} + \text{Interest on term loan} + \text{Lease Rentals}}{\text{Interest on term loans} + \text{Lease rentals} + \text{Repayment of term loans}}$$

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

Vishal is a Mechanical Engineer with over three decades of experience. After completion of his graduation, he has worked in the global oil and gas industry for various companies as an employee. Given his vast experience in the energy sector; Vishal is often invited to various conferences on the oil and gas industry. One such conference was on "Areas of opportunities common to all include the India growth story" given the demographic dividend and energy independence.

Vishal recognizes the huge potential of the oil and gas sector in India and sets up an engineering and construction company M/s. Mid-Stream & Co., based in Kolkata.

The first bid for the project is a gas pipeline for a Government Company. The initial outlay for the project is ₹ 5,75,00,000.

The duration of the project is five years. The expected cash inflows from the project are given below :

| Year | ₹           |
|------|-------------|
| 1    | 1,75,00,000 |
| 2    | 1,95,00,000 |
| 3    | 1,90,00,000 |
| 4    | 2,85,00,000 |
| 5    | 2,40,00,000 |

The acceptable rate of return for M/s. Mid-Stream & Co. is 15%.

Anuja, CFO of M/s. Mid-Stream & Co. recommends a risk premium of 3% over and above the acceptable rate of 15% given the risky nature of the project.

Vishal estimates duration to recover the initial cost of the project. Anuja mentions that it would be prudent to use discounted cash flows for such calculations. A risk management perspective also would involve a more conservative approach in terms of Cash Flow estimation. Anuja mentions that

the firm needs to make more conservative estimates of cash flow using the Certainty Equivalent technique with a discount rate of 15% to be used.

Cash Flows from Government project with Certainty Coefficients :

| Year | ₹           | Certainty Coefficients |
|------|-------------|------------------------|
| 1    | 1,75,00,000 | 0.90                   |
| 2    | 1,95,00,000 | 0.88                   |
| 3    | 1,90,00,000 | 0.85                   |
| 4    | 2,85,00,000 | 0.81                   |
| 5    | 2,40,00,000 | 0.65                   |

Calculate :

- (i) NPV of gas pipeline bid for the Government Company. Give your recommendation regarding acceptability of the project.

(7 marks)

- (ii) Payback period, post payback profitability index and discounted payback period.

(7 marks)

- (iii) NPV of the Government project, after application of Certainty Coefficients.

(6 marks)

Present Value Factors are given below :

| Years         | 0 | 1    | 2    | 3    | 4    | 5    |
|---------------|---|------|------|------|------|------|
| Discount rate |   |      |      |      |      |      |
| 15%           | 1 | 0.87 | 0.76 | 0.66 | 0.57 | 0.50 |
| 18%           | 1 | 0.85 | 0.72 | 0.61 | 0.52 | 0.44 |

### Answer 5(i)

**Step 1: Zero year cash outflow:**

|                |               |
|----------------|---------------|
|                | (₹)           |
| Initial outlay | 5,75,00,000/- |
|                | 5,75,00,000/- |

**Step 2: Appropriate Discount rate:**

|                   |     |
|-------------------|-----|
| Acceptable return | 15% |
| Risk Premium      | 3%  |
| Discount rate     | 18% |

**Step 3: Calculation of NPV:**

| Years                                 | 0                                                                             | 1                  | 2                  | 3                  | 4                  | 5                  |
|---------------------------------------|-------------------------------------------------------------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| Discount rate                         |                                                                               |                    |                    |                    |                    |                    |
| 18%                                   | 1                                                                             | 0.85               | 0.72               | 0.61               | 0.52               | 0.44               |
| Cash flows<br>(In ₹)                  | -                                                                             | 1,75,00,000        | 1,95,00,000        | 1,90,00,000        | 2,85,00,000        | 2,40,00,000        |
| NPV @ 18% (In ₹)                      | <b>-5,75,00,000</b>                                                           | <b>1,48,75,000</b> | <b>1,40,40,000</b> | <b>1,15,90,000</b> | <b>1,48,20,000</b> | <b>1,05,60,000</b> |
| Total Present value of inflows (In ₹) | Cash Outflow- Cash Inflow<br>(1+2+3+4+5) – 0<br>₹ 6,58,85,000 - ₹ 5,75,00,000 |                    |                    |                    |                    | <b>83,85,000</b>   |

*(Discounted rate rounded off to nearest two decimal)*

Since project has generated positive NPV of ₹ 83,85,000/- , project can be accepted.

**Answer 5(ii)****Step 1: Payback Period**

| Year | Cash Inflows (In ₹) | Cumulative Cash Inflows (In ₹) |
|------|---------------------|--------------------------------|
| 1    | 1,75,00,000         | 1,75,00,000                    |
| 2    | 1,95,00,000         | 3,70,00,000                    |
| 3    | 1,90,00,000         | 5,60,00,000                    |
| 4    | 2,85,00,000         | 8,45,00,000                    |
| 5    | 2,40,00,000         | 10,85,00,000                   |

|                |   |                                      |   |                                                                       |
|----------------|---|--------------------------------------|---|-----------------------------------------------------------------------|
| Payback Period | = | (Year preceding final recovery year) | + | (Balance to be recovered) / (Cash Flow during final year of recovery) |
| Payback Period | = | 3                                    | + | (₹ 5,75,00,000 – ₹ 5,60,00,000) / ₹ 2,85,00,000                       |
| Payback Period | = |                                      |   | 3.05 years                                                            |

**Step 2: Post Payback Profitability**

|                            |   |                    |   |                    |
|----------------------------|---|--------------------|---|--------------------|
| Post Payback Profitability | = | Total Cash Inflows | - | Investment Outlays |
| Post Payback Profitability | = | ₹ 10,85,00,000     | - | ₹ 5,75,00,000      |
| Post Payback Profitability | = | ₹ 5,10,00,000      |   |                    |

**Step 3: Post Payback Profitability Index**

$$\text{Post Payback Profitability Index} = \frac{\text{Post Payback Profitability}}{\text{Investment Outlay}} = \frac{\text{₹ } 5,10,00,000}{\text{₹ } 5,75,00,000} = 88.70\%$$

**Step 4: Discounted Payback Period**

| Discounted Cash Inflows (in ₹) |                       |
|--------------------------------|-----------------------|
|                                | Cumulative cash flows |
| 1,48,75,000                    | 1,48,75,000           |
| 1,40,40,000                    | 2,89,15,000           |
| 1,15,90,000                    | 4,05,05,000           |
| 1,48,20,000                    | 5,53,25,000           |
| 1,05,60,000                    | 6,58,85,000           |
| Cash outflows                  | 5,75,00,000           |

|                           |   |                                      |   |                                                                       |              |
|---------------------------|---|--------------------------------------|---|-----------------------------------------------------------------------|--------------|
| Discounted Payback Period | = | (Year preceding final recovery year) | + | (Balance to be recovered) / (Cash Flow during final year of recovery) |              |
| Discounted Payback Period | = | 4                                    | + | (₹ 5,75,00,000 – ₹ 5,53,25,000) / ₹ 1,05,60,000                       | = 4.21 years |

**Answer 5(iii)**

| Year | Cash inflows (₹) | Certainty Coefficients | Certain Cash Flows (₹) | PVF @ 15% | NPV (₹)      |
|------|------------------|------------------------|------------------------|-----------|--------------|
| 0    | -5,75,00,000     | 1                      | -5,75,00,000           | 1         | -5,75,00,000 |
| 1    | 1,75,00,000      | 0.9                    | 1,57,50,000            | 0.87      | 1,37,02,500  |
| 2    | 1,95,00,000      | 0.88                   | 1,71,60,000            | 0.76      | 1,30,41,600  |
| 3    | 1,90,00,000      | 0.85                   | 1,61,50,000            | 0.66      | 1,06,59,000  |
| 4    | 2,85,00,000      | 0.81                   | 2,30,85,000            | 0.57      | 1,31,58,450  |
| 5    | 2,40,00,000      | 0.65                   | 1,56,00,000            | 0.50      | 78,00,000    |
|      |                  |                        |                        |           | 8,61,550     |

As the project NPV is yet positive, project can be accepted.

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

- (a) Win Some Ltd. is contemplating issue of shares for an expansion project :

|                                                     |               |
|-----------------------------------------------------|---------------|
| Market Capitalization Rate                          | 15%           |
| Number of shares outstanding at the beginning of FY | 1,00,000      |
| Share price at the beginning of FY                  | ₹ 120         |
| Dividend expected to be declared                    | ₹ 2 per share |
| Expected net income                                 | ₹ 50,00,000   |
| New investment                                      | ₹ 1,00,00,000 |

Assuming that Modigliani Miller's approach (theory of irrelevance of dividend to market value) is followed, you are required to calculate :

- Total number of shares at the end of FY.
- The market value of the shares at the end of FY.

(3+2=5 marks)

- (b) A new project requires outlay of ₹ 800 lakhs. The amount may be raised through issue of equity shares of ₹ 400 each or by issuing equity shares of value ₹ 600 lakhs and loan of ₹ 200 lakhs at 14% interest.

Assuming income tax rate at 25%, calculate EBIT levels that would keep equity investors indifferent to the two options.

(5 marks)

- (c) Rita wants to invest her savings in certain annuity plans. Amount to be invested is ₹ 2,00,000 per annum for next five years. The investment is expected to compound at 10% p.a. Calculate future value :

- Assuming investments are made at the end of year.
- Assuming investments are made at the beginning of year.

(2+3=5 marks)

- (d) Sun Star Ltd. is a listed company whose share prices for last 14 trading session are given below. Calculate Relative Strength Index :

| Trading session number | Share price (₹) |
|------------------------|-----------------|
| 1                      | 334             |
| 2                      | 344             |
| 3                      | 335             |
| 4                      | 312             |
| 5                      | 334             |
| 6                      | 348             |

| Trading session number | Share price (₹) |
|------------------------|-----------------|
| 7                      | 314             |
| 8                      | 309             |
| 9                      | 316             |
| 10                     | 339             |
| 11                     | 347             |
| 12                     | 317             |
| 13                     | 333             |
| 14                     | 340             |

(5 marks)

**Answer 6(a)**

Calculation of share price at end of the FY:

$$P_0 = \frac{(D_1 + P_1)}{(1 + K_e)}$$

$$120 = \frac{(2 + P_1)}{(1 + .15)}$$

$$P_1 = ₹ 136/-$$

**Amount to be raised from new shares**

|   |                                           | (₹)         |
|---|-------------------------------------------|-------------|
| A | Expected Net Income                       | 50,00,000   |
| B | Total Dividend (₹ 1,00,000 x 2)           | (2,00,000)  |
| C | Retained earnings (A- B)                  | 48,00,000   |
| D | Investment required                       | 1,00,00,000 |
| E | Amount to be raised from new shares (D-C) | 52,00,000   |

**(i) Total number of shares at the end of year**

|   |                                                        |             |
|---|--------------------------------------------------------|-------------|
| A | Amount to be raised from new shares                    | ₹ 52,00,000 |
| B | Market price                                           | ₹ 136/-     |
| C | New shares (A/B) [Rounded off to nearest whole number] | 38,235      |
| D | Number of shares at beginning of the year              | 1,00,000    |
| E | Total shares at end of the FY (C+D)                    | 1,38,235    |

**(ii) Total market value at the end of the year:**

|                                   |                 |
|-----------------------------------|-----------------|
| Total shares                      | 1,38,235        |
| Market price at end of year       | ₹ 136/-         |
| Market value at the end of the FY | ₹ 1,87,99,960/- |

**Answer 6(b)****Step 1: Formula for calculation of indifference point**

$$\frac{(\text{EBIT} - \text{Interest}) * (1 - \text{tax rate})}{(\text{Number of equity shares in Plan 1})} = \frac{(\text{EBIT} - \text{Interest}) * (1 - \text{tax rate})}{(\text{Number of equity shares in Plan 2})}$$

**Step 2: Calculation of interest and number of equity shares in each plan**

|                                     | Plan 1 (Equity) | Plan 2 (Equity + Loan) |
|-------------------------------------|-----------------|------------------------|
| Value of equity shares (in ₹ Lakhs) | 800             | 600 + 200              |
| Share price (₹)                     | 400             | 400                    |
| Number of shares (in lakhs)         | 2               | 1.5                    |
| Loan amount (₹ Lakhs)               |                 | 200                    |
| Interest %                          |                 | 14%                    |
| Interest amount (₹ Lakhs)           |                 | 28                     |

**Step 3: Calculation of indifference point**

| Plan 1                                     |   | Plan 2                                        |
|--------------------------------------------|---|-----------------------------------------------|
| $\frac{(\text{EBIT} - 0) * (1 - 25\%)}{2}$ | = | $\frac{(\text{EBIT} - 28) * (1 - 25\%)}{1.5}$ |
| $\frac{.75 \text{ EBIT}}{2}$               | = | $\frac{.75 \text{ EBIT} - 21}{1.5}$           |
| .5625 EBIT                                 | = | .75 EBIT - 21                                 |
| EBIT (₹ Lakhs)                             | = | <b>112/-</b>                                  |

**Answer 6(c)****(i) Assuming investment made at end of year**

$$\text{Future Value} = \text{Investment} \times \frac{[(1 + \text{return}\%)^N - 1]}{\text{Return \%}}$$

$$\text{Future Value} = ₹ 2,00,000 \times \frac{[(1 + 10\%)^5 - 1]}{10\%} = ₹ 12,21,020/-$$

**(ii) Assuming investment made at beginning of year**

$$\text{Future Value} = \text{Investment} \times \frac{((1 + \text{return}\%)^N - 1)}{\text{Return \%}} \times (1+r)$$

$$\text{Future Value} = ₹ 2,00,000 \times \frac{[(1 + 10\%)^5 - 1] \times (1+10\%)}{10\%} = ₹ 13,43,122/-$$

**Answer 6(d)****Step 1: Calculation of Average Gain and Average Loss**

| Trading session number | Share price (₹) | Gain in ₹ | Loss in ₹ |
|------------------------|-----------------|-----------|-----------|
| 1                      | 334             | -         | -         |
| 2                      | 344             | 10        |           |
| 3                      | 335             |           | 9         |
| 4                      | 312             |           | 23        |
| 5                      | 334             | 22        |           |
| 6                      | 348             | 14        |           |
| 7                      | 314             |           | 34        |
| 8                      | 309             |           | 5         |
| 9                      | 316             | 7         |           |
| 10                     | 339             | 23        |           |
| 11                     | 347             | 8         |           |
| 12                     | 317             |           | 30        |
| 13                     | 333             | 16        |           |
| 14                     | 340             | 7         |           |
| Total                  |                 | 107       | 101       |
| Number of sessions     |                 | 8         | 5         |
| Average Gain/Loss      |                 | 13.375    | 20.2      |

**Step 2: Calculation of Relative Strength**

$$RS = \frac{\text{Average Gain Per Day}}{\text{Average Loss Per Day}} = \frac{13.375}{20.2} = 0.66$$

**Step 3: Calculation of Relative Strength Index**

$$RSI = 100 - \frac{100}{(1+RS)} = 39.76 \text{ or } 40 \text{ Approx.}$$

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

**Question 6**

- (i) Write a short note on common size financial statements.
- (ii) What is the rationale of stable dividend policy ?
- (iii) How can financial leverage lead to an improvement in EPS ?
- (iv) What are the safety stocks in terms of working capital management ?

(5 marks each)

**Answer 6A(i)**

A common size financial statement displays line items as a percentage of one selected or common figure. Creating common size financial statements makes it easier to analyze a company over time and conduct a peer comparison. Using common size financial statements are helpful in spotting trends that a raw financial statement may not uncover.

Financial statements in currency amounts can easily be converted to common size statements using a spreadsheet.

Common Size Balance Sheet Analysis: The common figure for a common size balance sheet analysis is total assets. It is also possible to use total liabilities to indicate where a Company's obligations lie and whether it is being conservative or risky in managing its debts. One can conclude if debt level is too high, excess cash is being retained on the balance sheet or inventories are blocking working capital funds.

The Goodwill level on a balance sheet also helps indicate the extent to which a company has relied on acquisitions for growth.

Common Size Income Statement analysis: The common figure for an income statement is total sales. This is like calculating profit margins. For instance - net profit margin is net income divided by sales - which also happens to be a common size analysis.

**Answer 6A(ii)**

Most firms adopt a stable dividend policy. The rationale for a stable dividend policy is as follows:

- i. Stock holders like stable dividends – Many of them depend on dividend income. A dividend reduction may cause serious hardship to the stockholders. A stable dividend policy is desirable for many investors such as retired persons who take dividends as a source to meet current living expenses.
- ii. A stable dividend policy would reduce investor uncertainty and reductions in uncertainty are generally associated with lower capital costs and higher stock prices, other things being equal.
- iii. Institutional investors prefer to invest in companies having stable dividend records.
- iv. Adoption of stable dividends is advantageous for a company interested in raising funds from

external sources. Shareholders willingly invest in companies having stable dividends as they have more confidence in such companies.

### Answer 6A(iii)

Financial leverage is defined as “the ability of the firm to use fixed financial charges to magnify effects of changes in EBIT on the earnings per share”. It involves the use of funds obtained at a fixed cost in the hope of increasing the return to the shareholders. “The use of long-term fixed interest-bearing debt and preference share capital along with share capital is called financial or trading on equity”.

Financial leverage maybe favourable or unfavourable depending upon the use of fixed cost funds.

Favourable financial leverage: Favourable financial leverage occurs when the company earns more on the assets purchased with the funds compared to the fixed cost of their use. Hence, it is also called as positive /favourable financial leverage.

Unfavourable financial leverage: Unfavourable financial leverage occurs when the company does not earn as much as the funds cost. Hence it is also called as negative /unfavourable financial leverage.

$$\text{Financial Leverage} = \frac{\text{Operating Profit (EBIT)}}{\text{Profit before tax}}$$

Financial leverage may also be defined as the ability of a firm to use fixed financial changes to magnify the effects of change in EBIT on EPS.

$$\text{Degree of Financial Leverage} = \frac{\text{Percentage change in EPS}}{\text{Percentage change in EBIT}}$$

### Answer 6A(iv)

Safety stock is a buffer to meet unanticipated increase in usage. The usage of inventory cannot be perfectly forecast. The demand for inventory may fluctuate and delivery of inventory may also be delayed. In such a situation, the firm can face a problem of stock out, the stock out can prove costly by affecting the smooth working of the concern. To protect against the stock out arising out of usage fluctuations, firms usually maintain some margin of safety stocks. The basic problem is to determine the level of quantity of safety stocks.

Two costs are involved in the determination of the stock i.e.:

- Opportunity cost of stock outs
- Carrying costs.

The stock outs of raw material cause production disruption resulting in higher costs of production. Similarly, the stock outs of finished goods may result in the failure of the firm in competition as the firm cannot provide proper customer service. If a firm maintains low level of safety stock, frequent stock outs will occur resulting in larger opportunity costs. On the other hand, the larger quantities of safety stocks involve higher carrying costs.

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## NOTES

[illegible]