

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

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GROUP 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

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

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

CS Examinations

December Session

June Session

Applicability of Amendments to Laws

upto 31 May of that Calender year

upto 30 November of previous Calender Year

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JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

GROUP 1 PAPER 1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

- (a) Consideration is one of the essential elements of a valid contract. The requirement of consideration stems from the policy of extending the arm of the law to the enforcement of mutual promises of parties. A mere promise is not enforceable at law. For example, if A promises to make a gift of ₹ 500 to B, and subsequently changes his mind, B cannot succeed against A for breach of promise, as B has not given anything in return. It is only when a promise is made for something in return from the promisee, that such promise can be enforced by law against the promisor. This something in return is the consideration for the promise.

The fundamental principle is that consideration is essential in every contract. The rules governing consideration may be summed up as follows :

- (a) Every simple contract must be supported by valuable consideration, otherwise it is formally void subject to some exceptions.
- (b) Consideration may be an act of abstinence or promise.
- (c) There must be mutuality i.e., each party must do or agree to do something. A gratuitous promise is not enforceable.
- (d) Consideration must be real, and not vague, indefinite, or illusory, e.g., a son's promise to "stop being a nuisance" to his father, being vague, is no consideration.
- (e) Although consideration must have some value, it need not be adequate i.e., a full return for the promise.
- (f) Consideration must be lawful, e.g., it must not be some illegal act such as paying someone to commit a crime. If the consideration is unlawful, the agreement is void.
- (g) Consideration must be something more than the promisee is already bound to do for the promisor. Thus, an agreement to perform an existing obligation made with the person to whom the obligation is already owed, is not made for consideration.

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

- (i) Ram by a deed of gift made over certain property to her daughter Mira, directing her to pay an annuity to Ram's brother Raj, as had been done by Ram himself before he gifted his property to Mira. On the same day, Mira executed in writing in favour of the donor's brother agreeing to pay the annuity. Six months later Mira stops the payment and Raj files a civil suit. Mira claimed that because no consideration has moved from Raj to her, there is no binding contract between them. Discuss.

(2 marks)

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

(2 marks)

- (iii) Alex promises to donate ₹ 10,000 to a local animal shelter for their new facility. However, when the shelter requests the donation, Alex refuses to pay. Can the management of animal shelter take legal action against Alex to enforce his promise ? What would be your answer, if the management of the shelter home had initiated some work on the basis of such promise made.

(2 marks)

- (iv) D supplied tyres to a wholesaler X, on a condition that any retailer to whom X re-supplied the tyres, the retailer should promise X not to sell them to the public below Ds price list. X supplied tyres to F upon this condition only, but nevertheless F sold the tyres below Ds price list. Discuss the legality of the case, if D claims any damages from F.

(2 marks)

- (v) The Indian Law recognizes three kinds of consideration but the English law recognizes only two. Discuss.

(2 marks)

- (b) Chapter XVII of the Negotiable Instruments Act, 1881, provides for penalties in case of dishonour of certain cheques for insufficiencies of funds in the accounts. Sections 138 to 147 deal with these aspects.

Chapter XVII has been amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. The amendments have provided the drawer with more time to send notice, made the punishment for the offence more stringent, given power to court for condonation of delay in filing of complaint, excluded liability of government nominated directors, made provision for summary trial of cases under the Chapter and time bound disposal of cases, have relaxed the rules of evidence, and made the offences under the Act compoundable.

Further Chapter XVII amended by the Negotiable Instruments (Amendment) Act, 2015, focused on clarifying the jurisdiction related issues for filing cases for offence committed under section 138 of the Negotiable Instruments Act, 1881. The Negotiable Instruments (Amendment) Act, 2015, provides for retrospective validation for the new scheme of determining the jurisdiction of a court to try a case under Section 138 of the Negotiable Instruments Act, 1881. The Negotiable Instruments (Amendment) Act, 2015 also mandates centralisation of cases against the same drawer.

With a view to address the issue of undue delay in final resolution of cheque dishonour cases, so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation, Parliament enacted the Negotiable Instruments (Amendment) Act, 2018 and notified by the Central Government on 1st September, 2018. The Amendment Act strengthened the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy. The Negotiable Instruments (Amendment) Act, 2018 inserted two new sections i.e. Section 143A dealing with Power to direct interim compensation and Section 148 dealing with Power of Appellate Court to order payment pending appeal against conviction.

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

- (i) Mahesh draws a cheque of ₹ 25,000 on his own account, payable to Mukesh but only has ₹ 20,000 in his account. Mukesh presents the same to the bank after six months from the date on which it is drawn. The cheque bounced due to insufficient funds in Mahesh's account.

Explain the legality of this, with reference to Section 138 of the Negotiable Instruments Act, 1881.

(3 marks)

- (ii) S who was director of R & D Company, issued a cheque in favour of G Associates for the discharge of its debt. The cheque was returned by the bank unpaid because of the amount of money standing to the credit of that account was insufficient to honour the cheque. State, whether S is liable, considering the provisions of Section 141 of the Act ?

(3 marks)

- (iii) Discuss the provisions related to the mode of service of summons by the Court under Section 144 of the Act.

(2 marks)

- (iv) Discuss the provisions under Section 143A(4) with regards to repayment of the amount of interim compensation where the drawer of the cheque is acquitted.

(2 marks)

Answer 1(a)(i)

Section 2(d) of the Indian Contract Act, 1872 (Act) defines consideration. According to it "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise".

The following observation can be made with regard to the question-

- (a) **Consideration at the desire of the promisor:** Section 2(d) of the Act begins with the statement that consideration must move at the desire or request of the promisor. This means that whatever is done must have been done at the desire of the promisor and not voluntarily or not at the desire of a third party.
- (b) **Consideration may move from the promisee or any other person:** In English law, consideration must move from the promisee, so that a stranger to the consideration cannot sue on the contract. But in Indian law, consideration may move from the promisee or any other person, so that a stranger to the consideration may maintain a suit.

The leading case on this judgement is the case of *Chinnaya v. Ramaya (1882) 4 Mad. 137*, where the court held that consideration moving from a third party is sufficient to enforce a contract.

In the given situation, Ram executed a deed of gift, transferring certain property to his daughter, Mira. He instructed her to pay an annuity to his brother Raj, just as Ram had been doing before gifting the property. On the same day, Mira signed a written agreement in favor of her uncle Raj, committing to pay the annuity.

Later on, Mira refused to honor her promise to pay Raj, claiming that no consideration had been provided to her by him.

According to Section 2(d) of the Indian Contract Act, 1872, consideration may come from the promisee or any other person, meaning that a third party can maintain a suit. Therefore, it can be concluded that Raj has the right to sue Mira, even though she did not receive any consideration directly from him. The consideration provided by Ram when he transferred the land to Mira is sufficient. Mira's promise to pay Raj forms part of the consideration for the property she received.

Answer 1(a)(ii)

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

1. If it is expressed in writing and registered and is made out of natural love and affection between parties standing in a near relation to each other; or
2. If it is made to compensate a person who has already done something voluntarily for the promisor, or done something which the promisor was legally compellable to do; or
3. If it is a promise in writing and signed by the person to be charged therewith, or by his agent, to pay a debt barred by the law of limitation.

Nothing in section 25 shall affect the validity, as between the donor and donee, of any gift actually made.

An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Alternate Answer

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

- (1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other ; or unless
- (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless;
- (3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Answer 1(a)(iii)

A gratuitous promise to subscribe to a charitable cause cannot be enforced, but if the promisee is put to some detriment as a result of his acting on the faith of the promise and the promisor knew the purpose and also knew that on the faith of the subscription an obligation might be incurred, the promisor would be bound by promise.

It may be noted that it is not necessary that the promisor should benefit by the consideration, it is sufficient if the promisee has done some act from which a third person is benefited and he would not have done that act but for the promise of the promisor.

The fundamental principle is that consideration is essential in every contract. Every contract must be supported by valuable consideration. Thus, a gratuitous promise as in the case of subscription for charity, is not enforceable.

In the given situation, the management of animal shelter would not be able to take legal action to enforce Alex's promise to donate ₹ 10,000, as the promise is gratuitous and without consideration.

But if on the basis of the promise made by Alex to donate ₹10,000, the management of the shelter home had initiated some work, Alex would be liable if know the purpose and also know that on the faith of the subscription an obligation might be incurred. This is because the management undertook liability by initiating some work which they would not have done but for the promise of the promisor.

Alternate answer to above paragraph

But, if, based on Alex's promise to donate ₹10,000, the management of the shelter home initiated some work, but Alex was unaware that an obligation might be incurred in reliance on his promise, he would not be held liable under the Indian Contract Act

Answer 1(a)(iv)

A stranger to a contract cannot sue both under the English and Indian law for want of privity of contract. Accordingly, a person who is not a party to a contract cannot sue upon it even though the contract is for his benefit.

In the given situation D supplied tyres to a wholesaler X, on a condition that any retailer to whom X re-supplied the tyres should promise X, not to sell them to the public below D's price list. X supplied tyres to F upon this condition only, but nevertheless F sold the tyres below the price list.

In the given situation, it can be seen that there was a contract between D and X and a contract between X and F. D cannot claim for damages in the given circumstances as only a party to the contract can claim it and he was not a party to the contract between X and F. Secondly D had not given any consideration to F and therefore there was no binding contract between these parties and thirdly D was not listed as an agent within the contract and therefore could not be included as a valid third party who had rights to claim on the contract.

In view of the above discussion, it may be concluded that D will not be able to claim damages from F in the given circumstances.

Answer 1(a)(v)

Consideration may be of three kinds:

- (a) Executory or future which means that it makes the form of promise to be performed in the future, e.g., an engagement to marry someone; or
- (b) Executed or present in which it is an act or forbearance made or suffered for a promise. In other words, the act constituting consideration is wholly or completely performed, e.g., if A pays today ₹100 to a shopkeeper for goods which are promised to be supplied the next day, A has executed his consideration but the shopkeeper is giving executory consideration-a promise to be executed the following day. If the price is paid by the buyer and the goods are delivered by the seller at the same time, consideration is executed by both the parties.
- (c) Past which means a past act or forbearance, that is to say, an act constituting consideration which took place and is complete (wholly executed) before the promise is made.

According to English law, a consideration may be executory or executed but never past. The English law is that past consideration is no consideration. The Indian law recognizes all the above three kinds of consideration.

Answer 1(b)(i)

Section 138 of the Negotiable Instruments Act, 1881 (Act) 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.

The proviso to this section provides that nothing contained in this section shall apply unless the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

In the given situation, the cheque bounced due to insufficient funds in Mahesh's account as Mahesh has drawn a cheque of ₹25,000 on his own account but only ₹ 20,000 was there in his account. But here Mukesh presented the cheque to the bank after six months from the date on which it was drawn. Hence, the liability of Mahesh under Section 138 does not arise.

Answer 1(b)(ii)

According to Section 141(1) of the Negotiable Instruments Act, 1881 (Act) if the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under Chapter XVII.

Further, Section 141(2) states that notwithstanding anything contained in sub-section(1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In the given situation, S who was director of R & D Company himself issued a cheque in favour of G Associates for the discharge of the company's debt. Hence, he would be deemed to be guilty of the offence under Section 138 of the Act and shall be liable to be proceeded against and punished accordingly.

Answer 1(b)(iii)

According to section 144(1) of the Negotiable Instruments Act, 1881 (Act), notwithstanding anything contained in the Code of Criminal Procedure, 1973 and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to

be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

Further according to section 144(2), where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

Answer 1(b)(iv)

According to section 143A(4) of the Negotiable Instruments Act, 1881, if the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

Question 2

- (a) Discussing the case of *Rylands Vs. Fletcher*, state the rule of strict or absolute liability. Reyansh owns a large, well-maintained dog, which is kept in a secure kennel in Reyansh's backyard. The kennel has a gate which is generally locked and a high fence to ensure that the dog does not escape. One day, Vedant, a neighbour, climbs over the fence and opens the kennel gate, allowing the dog to run free. The dog then bites Kartik, another neighbour, who was walking by. Kartik files a suit for damages against Reyansh under the law of torts. Is Reyansh liable for damages under the rule of strict liability ?

(5 marks)

- (b) Mahendra is an accused in a high-profile murder case. The investigating authorities want to conduct a narco-analysis test without his consent to obtain evidence. Mahendra's advocate argues that the use of this test violates his fundamental rights. With reference to *Selvi v. State of Karnataka*, AIR 2010 SC 1974, discuss as to whether the use of narco-analysis test on Mahendra, without his consent, constitutes a violation of his fundamental rights. Is this right available to all persons ?

(5 marks)

- (c) A filed a suit against B in 2019, claiming that B had wrongfully evicted him from a property. The court in its judgment in 2021, ruled in favor of B, stating that the eviction was lawful and dismissed A's claim. In 2023, A files a new suit against B on the same grounds, seeking to reopen the case. B argues that the new suit is barred under the Civil Procedure Code, 1908. Discuss. What are the requirements necessary for the applicability of the principles of res judicata ?

(5 marks)

Answer 2(a)

Strict or Absolute Liability: In some torts, the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part.

The Rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330 is that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants.

The facts of this case were as follows: B, a mill owner employed independent contractors, who were apparently competent to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir which the contractors failed to observe because they were filled with earth. The contractors therefore, did not block them. When the water was filled in the reservoir, it bursts through the shafts and flooded the plaintiff's coal mines on the adjoining land. It was found as a fact that B did not know of the shafts and had not been negligent, though the independent contractors, had been, B was held liable.

It was held in this case that the true rule of law is that the person, who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and if, he does not do so is, *prima facie* answerable for all the damage which is the natural consequence of its escape.

The case of *Rylands v. Fletcher* establishes a rule of strict liability for those who keep dangerous things on their property that escape and cause damage. However, there are several exceptions to this rule, one of which is the "act of a third party".

Accordingly, "If the harm has been caused due to the act of a stranger, who is neither defendant's servant nor agent nor the defendant has any control over him, the defendant will not be liable."

In *Box v. Jubh* (1879) 4 Ex. D. 76, the overflow from the defendant's reservoir was caused by the blocking of a drain by stranger, the defendant was held not liable. But if the act of the stranger, is or can be foreseen by the defendant and the damage can be prevented, the defendant must, by due care prevent the damage. Failure on his part to avoid such damage will make him liable. This means that if the escape and resulting damage are caused by the unforeseeable and deliberate actions of a third party, the property owner may not be held liable.

In the given situation, Vedant intentionally climbed over the fence and opened the kennel gate, allowing the dog to run free. This action was not something that Reyansh could have reasonably anticipated or prevented. Therefore, Reyansh may not be held liable for the damages to Kartik because the escape and subsequent injury were caused by Vedant i.e., the third party.

Answer 2(b)

According to Article 20(3) of the Constitution of India, no person accused of any offence shall be compelled to be a witness against himself. In other words, an accused cannot be compelled to state anything which goes against him. But it is to be noted that a person is entitled to this protection, only when all the three conditions are fulfilled:

1. that he must be accused of an offence;
2. that there must be a compulsion to be a witness; and
3. such compulsion should result in his giving evidence against himself.

So, if the person was not an accused when he made a statement or the statement was not made as a witness or it was made by him without compulsion and does not result as a statement against himself, then the protection available under this provision does not extend to such person or to such statement.

The 'right against self-incrimination' protects persons who have been formally accused as well as those who are examined as suspects in criminal cases. It also extends to cover witnesses who apprehend that their answers could expose them to criminal charges in the ongoing investigation or even in cases other than the one being investigated. [*Selvi v. State of Karnataka*, AIR 2010 SC 1974].

In the given situation, the investigating authorities wanted to conduct a narco-analysis test without

Mahendra's consent to obtain evidence against himself. This is a violation of his fundamental rights under Article 20(3) which has the protection against self-incrimination. Therefore, the use of narco-analysis tests on Mahendra without his consent would constitute a violation of his fundamental rights under Article 20(3).

This fundamental right under Article 20(3) is available to all persons - whether citizens or non-citizens.

Answer 2(c)

Section 11 of the Code of Civil Procedure, 1908 deals with the doctrine of *res judicata*. According to this provision, no Court shall try any suit or issue in which the matter has been directly and substantially in issue in a former suit (i.e., suit previously decided) either between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and finally decided by such Court. It is a pragmatic principle accepted and provided in law that there must be a limit or end to litigation on the same issues.

In the given situation, A filed a suit against B in 2019 claiming that B had wrongfully evicted him from a property. The court in its judgment in 2021, decided in B's favour, stating that the eviction was lawful and dismissed A's claim. In 2023, A files a new suit against B on the same grounds, seeking to reopen the case. In the given situation, the principle of *res judicata* prevents re-opening of the case based on the same grounds, as it was already adjudicated by the court. Therefore, B's argument is valid. The new suit filed by A in 2023, based on the same cause of action, is barred by the doctrine of *res judicata*.

The doctrine of *res judicata* underlines the general principle that no one shall be twice vexed for the same cause (*S.B. Temple v. V.V.B. Charyulu*, (1971) 1 SCJ 215).

It prevents two different decrees on the same subject. Section 11 says that once a *res* is *judicata*, it shall not be adjudged again. The principle applies to suits in Section 11 of the Code; but even where Section 11 does not apply, the principle of *res judicata* has been applied by Courts for the purpose of giving finality to litigation. For the applicability of the principle of *res judicata* embodied in Section 11, the following requirements are necessary:

- (1) The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit. The expression "directly and substantially in issue" means an issue alleged by one party and denied or admitted by the other either expressly or by necessary implications.
- (2) The former suit has been decided - former suit means which is decided earlier.
- (3) The said issue has been heard and finally decided.
- (4) Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above.

In short, this principle applies where an issue which has been raised in a subsequent suit was directly and substantially in issue in a former suit between the same parties and was heard and decided finally.

Question 3

- (a) A is the owner of a field. He decides to sell it to B. There is a right of way from the field that only A has knowledge of, but he conceals it from B. Discuss whether the contract can be rescinded by B. What are the conditions where the court may refuse to rescind the contract?
- (b) Aman and Manish have a dispute regarding the possession of an immovable property. The

dispute arose when Aman was 8 years old. Aman wants to file a civil suit for the recovery of possession of the immovable property against Manish. The Limitation Act specifies a limitation period of 12 years for the recovery of possession in such disputes. However, since Aman was a minor when the limitation period commenced, how much time does he have to file a suit after the cessation of his minority under the Limitation Act, 1963. Explain.

What happens when there is a joint entitlement of filing a suit or application ?

- (c) A public authority received an RTI application demanding information about strategically placed troops and related information when the country was at war with one of its neighbouring countries. The authority denied its disclosure as it belonged to a category which was exempted under the Right to Information Act, 2005. Discuss whether the authority could deny such information with reference to the relevant provisions of the Act ?

(5 marks each)

Answer 3(a)

Section 27 of the Specific Relief Act, 1963 deals with when rescission may be adjudged or refused. "Rescission" means putting an end to a contract which is still operative and making it null and void *ab initio*. It does not apply to void contracts.

Section 27(1) states that any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:-

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

In the given situation, A is the owner of a field. He decides to sell it to B. There is a right of way from the field that only A has knowledge of but he conceals it from B. B is entitled to have that contract rescinded as concealment of facts may be covered under misrepresentation and therefore voidable under the Indian Contract Act, 1872.

As per Section 27(2) of the Specific Relief Act, 1963 the court may refuse to rescind the contract-

- (a) where the plaintiff has expressly or impliedly ratified the contract; or
- (b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or
- (c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or
- (d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

The 'contract' in this section, in relation to the territories to which the Transfer of Property, 1882, does not extend, means a contract in writing.

Answer 3(b)

Section 5 of the Limitation Act, 1963 (Act) 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. 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.

The provisions related to persons under legal disability are given in Sections 6-8. Section 6 is an enabling section to enable persons under disability to exercise their legal rights within a certain time. Section 7 supplements Section 6, Section 8 controls these sections, which serves as an exception to Sections 6 and 7. The combined effect of Sections 6 and 8 is that where the prescribed period of limitation expires before the cessation of disability, for instance, before the attainment of majority, the minor will no doubt be entitled to a fresh period of limitation from the attainment of his majority subject to the condition that in no case the period extended by Section 6 shall by virtue of Section 8 exceeds three years from cessation of disability, i.e., cessation of minority.

Sections 6, 7 and 8 must be read together. Section 8 imposes a limitation on concession provided under Sections 6 and 7 to a person under disability up to a maximum of three years after the cessation of disability. The Section applies to all suits except suits to enforce rights of pre-emption.

The period of three years under Section 6 of this Act has to be counted, not from the date of attainment of majority by the person under disability, but from the date of cessation of minority or disability.

In the given situation, the dispute arose when Aman was 8 years old. Aman wants to file a civil suit for the recovery of possession of the immovable property against Manish. Section 5 of the Limitation Act, 1963 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. According to Section 6 where the prescribed period of limitation expires before the cessation of disability, for instance, in this given situation before the attainment of majority, the minor will no doubt be entitled to a fresh period of limitation from cessation of minority subject to the condition that in no case the period extended shall by virtue of Section 8 exceeds three years from cessation of disability, i.e., cessation of minority.

Hence, Aman can only get 3 years from cessation of disability, i.e., cessation of minority to file a civil suit by virtue of Section 8 of the Limitation Act. Hence, Aman must file a suit within 3 years of his cessation of minority.

Section 7 deals with the situation where there is joint entitlement of filling a suit or application. It gives rise to two situations:

1. When discharge may be given by any other person without concurrence- In this situation, time will run against them all.
2. When discharge cannot be given by any other person without concurrence- In this situation, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased.

Answer 3(c)

Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005 (Act). These are:

1. Disclosure prejudicially affecting: Where disclosure prejudicially affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State leads to incitement of an offence.
2. Expressly forbidden by Court or Tribunal: Information which have been expressly forbidden by Court or Tribunal or the disclosure of which may constitute contempt of court.
3. Breach of privilege of Parliament or State legislature: where disclosure would cause a breach of privilege of Parliament or State legislature.
4. Harming competitive position: Information including commercial confidence, trade secrets or intellectual property where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants.

5. Confidence from a third party: Information received in confidence from a foreign government.
6. Disclosure endangering life or public safety- Information, the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance.
7. Impede the process of investigation or apprehension or prosecution: Information that would impede the process of investigation or apprehension or prosecution.
8. Cabinet papers: Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.
9. Personal information: Any personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

Thus, the application demanding information from the public authority in case of a war or invasion, revealing or giving out information about strategically placed troops and related information, may be treated as information protected under section 8 of the Right to Information Act, 2005. Such disclosure may prejudicially affects the sovereignty and integrity of India.

In view of the above discussion, it may be said that the authority can deny such information with reference to the relevant provisions of the Act.

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

Question 4

- (a) The Municipal Corporation of Indore has a legal obligation to provide clean drinking water to its residents as per the Madhya Pradesh Municipal Corporation Act, 1956. However, for the past six months, the residents of Ward 12 have been complaining about the lack of clean drinking water supply. Despite repeated complaints to the municipal authorities, no action has been taken to rectify the situation.

Patel, a resident of Ward 12, decides to take legal action. He wants to file a writ petition in the Madhya Pradesh High Court to compel the Municipal Corporation to fulfill its statutory duty of providing clean drinking water to the residents of Ward 12. What type of writ Patel can file with the High Court in this case ? Discuss and give reasons for your conclusions.

(5 marks)

- (b) What do you mean by joint venture or foreign collaboration agreements ? State the factors to be kept in mind while drafting foreign collaboration agreements.

(5 marks)

- (c) What is the purpose of the Digital Personal Data Protection Act, 2023. What are the key provisions under Section 3 regarding the applicability and non-applicability of the Act to the processing of digital personal data ?

X, an individual, while blogging her views, has publicly made available her personal data on social media. Do the provisions of this Act apply on her ?

(5 marks)

Answer 4(a)

The word 'Mandamus' literally means 'we command'. The writ of mandamus is, a command issued

to direct any person, corporation, inferior court, or Government requiring him or it do a particular thing specified therein which pertains to his or its office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction while resort to certiorari and prohibition arises when the tribunal has wrongly exercised jurisdiction or exceeded its jurisdiction and are available only against judicial and quasi-judicial bodies. Mandamus can be issued against any public authority. It commands activity. The writ is used for securing judicial enforcement of public duties.

In a fit case, the Court can direct executives to carry out Directive Principles of the Constitution through this writ [*State of Maharashtra v. MP Vashi, 1995 (4) SCALE*]. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed for. It is not issued if the authority has a discretion.

The Constitution of India by Articles 226 and 32 enables mandamus to be issued by the High Courts and the Supreme Court to all authorities.

Mandamus does not lie against the President or the Governor of a State for the exercise of their duties and power (Article 361). It does not lie also against a private individual or body except where the state is in collusion with such private party in the matter of contravention of any provision of the Constitution of a statute. It is a discretionary remedy and the High Court may refuse if alternative remedy exists except in case of infringement of fundamental rights.

In the given situation, it can be observed that the Municipal Corporation of Indore which is under legal obligation to provide clean drinking water to its residents as per the Madhya Pradesh Municipal Corporation Act, 1956. However, it does not address the repeated complaints by the residents of Ward 12 about lack of clean drinking water supply. By filing a writ petition for mandamus, Mr. Patel can seek judicial intervention to ensure that the Municipal Corporation of Indore fulfils its statutory obligation, thereby safeguarding the resident's right to clean drinking water.

Answer 4(b)

International business professionals use the term "modes of entry" to describe the different methods and approaches available to enter markets and conduct business in other countries. Important mode of entries are joint ventures or foreign collaborations where two or more organizations join together in a cooperative effort to further their business goals. The joint venture or foreign collaborations are the most common and effective means of conducting business internationally.

The joint venture or foreign collaboration documents and agreements are critical to the success of the venture. It is difficult to prepare a set frame of the terms and conditions. The conditions may differ according to the requirements.

While drafting a foreign collaboration agreement, the following factors should be kept in mind:

1. Capability of the collaborator and the requirements of the party are clearly indicated.
2. Clear definitions of technical terms are given.
3. Specify if the product shall be manufactured/sold on exclusive or non-exclusive basis.
4. Terms and conditions regarding nature of technical know-how, disclosure of drawings, specifications and other documents, furnishing of technical information in respect of processes with flow charts etc., plant outlay list of equipment, machinery and tool with specification have to be provided.
5. Provisions for making available the engineers and/or skilled workers of the collaborator on payment of expenses relating to their stay per diem etc. are given.
6. Details regarding specification and quality of the product to be manufactured are given.

7. Quality control and trademarks to be used are also specified.
8. Responsibility of the collaborator in establishing or maintaining assembly plants should be clearly determined and provided for.
9. If sub-contracting of the work is involved, clarify if there would be any restrictions.
10. The rate of royalty, mode of calculation and payment etc. Also, make provision as to who will bear the taxes/cess on such payments.
11. Use of information and industrial property rights should also be provided for in the agreement.
12. A clause on force majeure should be included.
13. A clause that the collaborating company has to train the personnel of Indian company within a specified period should be incorporated. The clause should also specify the terms and conditions of such assistance, place of training, period of training and fees payable.
14. A comprehensive clause on arbitration containing a clear provision as to the kind of arbitrator and place of arbitration should be included.
15. There should be provision in the agreement for payment of interest on delayed payments.

Answer 4(c)

The purpose of Digital Personal Data Protection Act, 2023(Act) is to provide the law relating to the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected therewith or incidental thereto.

According to Section 3, subject to the provisions of this Act, it shall-

- (a) apply to the processing of digital personal data within the territory of India where the personal data is collected-
 - (i) in digital form; or
 - (ii) in non-digital form and digitised subsequently;
- (b) also apply to processing of digital personal data outside the territory of India, if such processing is in connection with any activity related to offering of goods or services to Data Principals within the territory of India;
- (c) not apply to-
 - (i) personal data processed by an individual for any personal or domestic purpose; and
 - (ii) personal data that is made or caused to be made publicly available by-
 - (A) the Data Principal to whom such personal data relates; or
 - (B) any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.

X, an individual, while blogging her views, has publicly made available her personal data on social media. In such case, the provisions of this Act do not apply on her.

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

Question 4A

- (i) Ravi had a longstanding grudge against Govind. Out of spite, Ravi had falsely accused Govind of theft. Based on Ravi's false report, criminal proceedings were initiated against

Govind. During the trial, the court found that the allegations were baseless and subsequently acquitted Govind. After the acquittal, what remedy does Govind have against Ravi under the law of tort ? Discuss in detail.

- (ii) Define the term 'mediation' and 'mediator' under The Mediation Act, 2023. Distinguish between arbitration and mediation.
- (iii) "The general rule is that opinion of a witness on a question whether of fact or law, is irrelevant". However, there are some exceptions to this general rule. Explain.

(5 marks each)

Answer 4A(i)

Malicious prosecution consists in instigating judicial proceedings (usually criminal) against another, maliciously and without reasonable and probable cause, which terminate in favour of that other and which results in damage to his reputation, personal freedom or property.

The following are the essential elements of this tort:

- (i) There must have been a prosecution of the plaintiff by the defendant.
- (ii) There must have been want of reasonable and probable cause for that prosecution.
- (iii) The defendant must have acted maliciously (i.e. with an improper motive and not to further the end of justice).
- (iv) The plaintiff must have suffered damages as a result of the prosecution.
- (v) The prosecution must have terminated in favour of the plaintiff.

To be actionable, the proceedings must have been instigated actually by the defendant. If he merely states the fact as he believes them to a policeman or a magistrate, he is not responsible for any proceedings which might ensue as a result of action by such policeman or magistrate on his own initiative.

In the given situation, Ravi falsely accused Govind out of spite and that the court found the allegations baseless and acquitted Govind. Therefore, Govind can seek a remedy against Ravi under the law of tort by filing a suit for malicious prosecution under the law of tort.

Answer 4A(ii)

According to Section 3(h) of the Mediation Act, 2023 (Act) "mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute.

According to Section 3(i) of the Mediation Act, 2023 "mediator" means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council.

Explanation: Where more than one mediator is appointed for a mediation, reference to a mediator under this Act shall be a reference to all the mediators;

Difference between Arbitration and Mediation are:

1. Mediation is when a neutral third party aims to assist the parties in arriving at a mutually agreeable solution whereas arbitration is like litigation which is outside the court and which results in an award like an order.

2. Mediation is more collaborative; arbitration is more adversarial.
3. The process of mediation is more informal than that of arbitration.
4. The outcome in mediation is controlled by the parties whereas in arbitration it is controlled by the arbitrator.
5. In mediation, the dispute may or may not be resolved whereas in arbitration it is always settled in either party's favour.

Answer 4A(iii)

The general rule is that opinion of a witness on a question whether of fact or law, is irrelevant. However, there are some exceptions to this general rule under Indian Evidence Act, 1872. These are:

- (i) Opinions of experts. (Section 45): As a general rule the opinion of a witness on a question whether of fact, or of law, is irrelevant. Witness has to state the facts which he has seen, heard or perceived, and noted the conclusion, form of observations. The functions of drawing inferences from facts is a judicial function and must be performed by the Court. However, to this general rule, there are some exceptions as indicated in Section 45. Opinions of experts are relevant upon a point of:
 - (a) foreign law
 - (b) science
 - (c) art
 - (d) identity of hand writing
 - (e) finger impression special knowledge of the subject matter of enquiry become relevant.
- (ii) Opinion of Examiner of Electronic Evidence (Section 45A): When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79A of the Information Technology Act, 2000, is a relevant fact.

Explanation- For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.
- (iii) Facts which support or are inconsistent with the opinions of experts are also made relevant.

(Section 46): The Facts which are not otherwise relevant becomes relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.
- (iv) Others: In addition to the opinions of experts, opinion of any other person is also relevant in the following cases:
 - (a) Opinion as to the handwriting of a person if the person giving the opinion is acquainted with the handwriting of the person in question; (Section 47)
 - (b) Opinion as to the electronic/digital signature of any person, the opinion of the Certifying Authority which has issued the electronic/digital signature certificate; (Section 47A)
 - (c) Opinion as to the existence of any general right or custom if the person giving the opinion is likely to be aware of the existence of such right or custom; (Section 48)
 - (d) Opinion as to usages etc. words and terms used in particular districts, if the person has special means of knowledge on the subject; (Section 49)

- (e) Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject. (Section 50)

Alternate Answer

The general rule is that opinion of a witness on a question whether of fact or law, is irrelevant. However, there are some exceptions to this general rule under Bharatiya Sakshya Adhiniyam, 2023. These are:

- (i) Opinions of experts. (Section 39(1)): As a general rule the opinion of a witness on a question whether of fact, or of law, is irrelevant. Witness has to state the facts which he has seen, heard or perceived, and noted the conclusion, form of observations. The functions of drawing inferences from facts is a judicial function and must be performed by the Court. However, to this general rule, there are some exceptions as indicated in Section 39(1). Opinions of experts are relevant upon a point of:
 - (a) foreign law
 - (b) science
 - (c) art
 - (d) identity of hand writing
 - (e) finger impression special knowledge of the subject matter of enquiry become relevant.
 - (f) or any other field
- (ii) Opinion of Examiner of Electronic Evidence (Section 39(2)): When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79A of the Information Technology Act, 2000, is a relevant fact.
 Explanation- For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.
- (iii) Facts which support or are inconsistent with the opinions of experts are also made relevant. (Section 40): The Facts which are not otherwise relevant becomes relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.
- (iv) Others: In addition to the opinions of experts, opinion of any other person is also relevant in the following cases:
 - (a) Opinion as to the handwriting and signature of a person if the person giving the opinion is acquainted with the handwriting of the person in question; (Section 41(1))
 - (b) Opinion as to the electronic/digital signature of any person, the opinion of the Certifying Authority which has issued the electronic/digital signature certificate; (Section 41(2))
 - (c) Opinion as to the existence of any general right or custom if the person giving the opinion is likely to be aware of the existence of such right or custom; (Section 42)
 - (d) Opinion as to usages etc. words and terms used in particular districts, if the person has special means of knowledge on the subject; (Section 43)
 - (e) Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject. (Section 44)

Question 5

- (a) (i) What are the four principal sources of administrative law ?
(ii) Rule of law was developed by British Jurist A.V. Dicey, which he gave in his book ‘‘Rule of Law’’. Discuss.
(5 marks)
- (b) (i) A puts bait for dogs in his pocket and induces Z's dog to follow it. A dishonestly takes the dog out of Z's possession without Z's consent. Explain the offence committed by A under the Indian Penal Code, 1860. What is the punishment for the offence committed ?
(ii) In another case A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. Explain the offence committed by A under the Indian Penal Code, 1860.
(5 marks)
- (c) What do you mean by lease under the Transfer of Property Act, 1882 ? Discuss the duties of the lessee ?
(5 marks)

Answer 5(a)

(i) Four principal sources of Administrative Law

There are four principal sources of administrative law in India. They are as under:

1. Constitution of India: It is the primary source of administrative law. Article 73 of the Constitution provides that the executive power of the Union shall extend to matters with respect to which the Parliament has power to make laws. Similar powers are provided to States under Article 62. Indian Constitution has not recognized the doctrine of separation of powers in its absolute rigidity. The Constitution also envisages tribunals, public sector and government liability which are important aspects of administrative law.
2. Acts/ Statutes: Acts passed by the Central and State Governments for the maintenance of peace and order, tax collection, economic and social growth empower the administrative organs to carry on various tasks necessary for it. These Acts list the responsibilities of the administration, limit their power in certain respects and provide for grievance redressal mechanism for the people affected by the administrative action.
3. Ordinances, Administrative directions, Notifications Circulars: Ordinances are issued when there are unforeseen developments and the legislature is not in session and therefore cannot make laws. Ordinances allow the administration to take necessary steps to deal with such developments. Administrative directions, notifications and circulars are issued by the executive in the exercise of power granted under various Acts.
4. Judicial decisions: Judiciary is the final arbiter in case of any dispute between various wings of government or between the citizen and the administration. In India, we have the supremacy of Constitution and the Supreme Court is vested with the authority to interpret it. The courts through their various decisions on the exercise of power by the administration, the liability of the government in case of breach of contract or tortuous acts of Governments servants lay down administrative laws which guide their future conduct.

(ii) Rule of Law

Rule of Law was developed by British Jurist A.V. Dicey. He derived this term from French Principle '*La principe de legalite*' which means the principle of legality. It states that the government should be governed by Rule of Law instead of Rule of Individual. Any dictator, monarch or one particular person should not govern the functioning of any nation. Each country should follow legality of law.

Three major principles given by Dicey in his book "Rule of Law" are:

1. Supremacy of law: It means that ordinary or regular laws shall remain supreme. Supremacy here means absolute and pre-dominance of regular laws as against arbitrary or wide discretionary powers.
2. Equality before the law: According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. He states that there should be equality between people. According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. It provides that all are equal before law and everyone will be subjected to the same law.
3. The predominance of a legal spirit: Legal Spirit refers to the judicial precedents upon any dispute raised by any individual. The judgment given in any case will be the legal spirit of that particular case. It basically refers to the law as set by the precedents that have evolved over time.

Answer 5(b)

- (i) According to Section 378 of the Indian Penal Code, 1860 (IPC) "Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

The essentials elements of theft are:

1. There should be an intention to dishonestly take the property.
2. The property should be movable property.
3. The property should be taken out of the possession without that person's consent.
4. The property should be moved in order to take that property.

In the instant case, A has committed the offence of theft as A dishonestly takes the dog out of Z's possession without Z's consent.

Section 379 of IPC provides the punishment for theft and states that whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Alternate Answer

- (i) According to Section 303(1) of the Bharatiya Nyaya Sanhita, 2023 "Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

The essentials elements of theft are:

1. There should be an intention to dishonestly take the property.
2. The property should be movable property.

3. The property should be taken out of the possession without that person's consent.
4. The property should be moved in order to take that property.

In the instant case, A has committed the offence of theft as A dishonestly takes the dog out of Z's possession without Z's consent.

Section 303(2) of BNS provides the punishment for theft and states that whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. In case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine.

Provided that in cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.

- (ii) According to Section 383 of the Indian Penal Code, 1860 (IPC) "whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

The essentials elements of extortion are:

1. There should be an intention to put any person in fear of any injury.
2. By that fear of injury, dishonestly induces the person so put in fear to deliver any property, or valuable security or anything signed or sealed which may be converted into a valuable security.

In the instant case, A threatened Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A, a promissory note binding Z to pay certain monies to A. Z signed and delivered the note. A has committed the offence of extortion as he has put fear of injury to Z thereby dishonestly inducing the person so put in fear to deliver any property, or valuable security or anything signed or sealed which may be converted into a valuable security.

Alternate Answer

- (ii) According to Section 308(1) of the Bharatiya Nyaya Sanhita, 2023 (BNS) "whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

The essentials elements of extortion are:

1. There should be an intention to put any person in fear of any injury.
2. By that fear of injury, dishonestly induces the person so put in fear to deliver any property, or valuable security or anything signed or sealed which may be converted into a valuable security.

In the instant case, A threatened Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A, a promissory note binding Z to pay certain monies to A. Z signed and delivered the note. A has committed the offence of extortion as he has put fear of injury to Z thereby dishonestly inducing the person so put in fear to deliver any property, or valuable security or anything signed or sealed which may be converted into a valuable security.

Answer 5(c)**Meaning of Lease**

According to Section 105 under the Transfer of Property Act 1882 (Act), a "lease" of immoveable property is a transfer of a right to enjoy property. Since it is a transfer to enjoy and use the property, possession is always given to the transferee. The lease of immoveable property must be made for a certain period. For example, you may give a lease of property for a definite number of years, or for life, or even permanently.

The transferor is called the lessor, the transferee is called the lessee, the price is called premium and the money, share, service or any other thing of value to be so rendered is called the rent.

Duties of the lessee

The lessee has the following duties:

- (a) The lessee is bound to disclose to the lessor any fact as to nature or extent of the interest that the lessee is about to take, of which the lessee is, and the lessor is not aware and which materially increases the value of such interest.
- (b) The lessee is bound to pay or tender at the proper time and place, the premium or rent to the lessor or his agent in this behalf. We have already seen that in case the lessee does not pay the rent, he may incur forfeiture of the tenancy. The liability to pay the rent commences from the date the tenant is put into possession.
- (c) The next duty of the lessee is that he uses the property as a person of ordinary prudence would make use of. But he shall not permit another person to use the property for purposes other than that for which it was leased.
- (d) He should not do any act which is destructive of or permanently injurious to the property.
- (e) The lessee must not, without the lessor's consent, erect on the property any permanent structure except for agricultural purpose. If he wants to erect certain fixtures or chattel on the leased property, it must be done without causing any damage to the property. Before the termination of the lease, he can remove all the things attached to the earth. If permanent fixtures are to be made, the lessee must obtain the consent of the landlord.
- (f) If the lessee comes to know of any proceedings by way of suit to recover the property of the lessor, the lessee should immediately inform the lessor. Since, the tenant is in possession of the property he is the person who is not likely to know of any encroachment on the landlord's property and he should therefore inform the landlord.
- (g) The lessee should hand over the property at the end of the lease.

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

Question 6

- (a) Kunal buys a refrigerator from a shopkeeper, Rohit, and the property has passed from Rohit to Kunal. Kunal does not take delivery as he has his own pick-up and does not want to pay freight. Kunal and Rohit agree on taking possession the next day. So, the refrigerator remains in Rohit's shop and the price is unpaid. Before delivery, Rohit's shop is flooded due to heavy rain and the refrigerator is destroyed. Is Rohit liable to pay the price of the refrigerator ? Explain with reference to the provisions of the Sale of Goods Act, 1930.

(5 marks)

- (b) Rajan made a gift of a house to his son, Ravi, with the condition that if Ravi decides to sell

the house during the lifetime of Rajan's wife, she should have the option to purchase it for ₹10,000, even though the market value of the house is set at ₹ 10,00,000. Decide the validity of this transfer under the Transfer of Property Act, 1882. Would your answer be the same if Rajan, instead of the above condition, imposed a condition that Ravi will not alienate the property outside the family ? When are absolute restraints valid ?

(5 marks)

- (c) Shikha is accused of committing fraud by submitting false documents to obtain a loan from a bank. Her actions constitute an offence under both the Indian Penal Code (IPC) and the Banking Regulation Act. The prosecution initiates legal proceedings against Shikha under both enactments. Explain whether Shikha can be punished twice for the same offense under the IPC and the Banking Regulation Act, with regards to the provisions of the General Clauses Act, 1897 ? What are the provisions mentioned in the Act with regards to the computation of time ?

(5 marks)

- (d) Brother A executed in favour of brother B a gift of all his property. By another deed, brother B made provision for the living expenses of brother A and hypothecating in favour of brother A, a part of the property included in the above mentioned gift deed, in order to secure the payment of the living expenses. Discuss whether the two documents are part of the same transaction explaining the relevant provisions of the Indian Stamp Act, 1899 ?

(5 marks)

Answer 6(a)

The given situation is based on the rule "*resperit domino*" i.e., the loss falls on the owner. The general rule is that goods remain at the seller's risk until ownership is transferred to the buyer. After ownership has passed to the buyer, the goods are at the buyer's risk, whether delivery has been made or not.

According to Section 26 of the Sale of Goods Act, 1930, unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer. However, once the property is transferred to the buyer, the goods are at the buyer's risk, regardless of whether delivery has been made:

Provided that: Where delivery has been delayed through the fault of either the buyer or the seller, the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.

Provided also that: Nothing in this section shall affect the duties or liabilities of either the seller or the buyer as a bailee of the goods of the other party.

Therefore, based on the provisions of the Sale of Goods Act, 1930, and the property has passed from Rohit to Kunal. Therefore, Rohit is not liable for the destruction of the refrigerator. Hence Rohit is not liable to pay the price of the refrigerator. Kunal, as the owner, must bear the loss and is required to pay the price of the refrigerator.

Answer 6(b)

Section 10 of the Transfer of Property Act, 1882(Act) states that when property is transferred, the transferee should not be absolutely restrained from alienating the property. One may transfer property to another subject to a condition, but the condition should not be one which absolutely prevents the transferee from alienating the property. The transfer takes effect and is valid, while the condition to not alienate the property is void.

In the first case, based on the precedent set by *Rosher v. Rosher* and the principles under the Act, the condition that Rajan imposed on Ravi's ability to sell the house shall be deemed invalid under the Act, as condition was an absolute restraint. However, the transfer shall be valid and the condition shall be void. It will be presumed that no condition was imposed by the Rajan.

Though absolute restraints are bad in law, partial restraints are valid. A partial restraint is a condition which partially takes away the right of the transferee to dispose of his interest in the property. Here, the right is not taken away completely. Therefore, in second case, conditions which restrain the transferee not to alienate the property outside the family is partial restrain and valid.

There are two exceptions to the rule that absolute restraints are void:

Firstly, in the case of a lease, the lessor can impose a condition that the lessee shall not sublet the property or sell his leasehold interest. Such conditions are valid.

The second exception is made in respect of a woman who is not a Hindu, Buddhist or Muslim.

In such a case, a condition to the effect that she shall not have power during her marriage to transfer the property is valid.

Answer 6(c)

According to Section 26 of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

According to the Supreme Court in *Baliah v. Rangachari*, AIR 1969 SC 701, a plain reading of section 26 shows that there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice for the same offence.

In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.

Shikha cannot be punished twice for the same offense under both the Indian Penal Code, 1860 (IPC) and the Banking Regulation Act, as per Section 26 of the General Clauses Act, 1897. While she can be prosecuted under both enactments, any conviction and punishment must be confined to one enactment to avoid double jeopardy and ensure compliance with the law.

Section 10 of General Clauses Act, 1897, provides the provisions relating to Computation of time. Sub section 1 of section 10 states:

Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

Answer 6(d)

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

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

In the given situation, brother A executed in favour of brother B a gift of all his property. By another deed, brother B made provision for the living expenses of brother A and hypothecating in favour of brother A, a part of the property included in the above-mentioned gift deed, in order to secure the payment of the living expenses.

In view of the above provisions, it can be said that the two documents were part of the same transaction. This amounts to a settlement and Section 4 will apply as per the decision in a similar situation in the case of *Maharaj Someshar Dutt*, ILR 37 All 264).

OR (Alternate question to Q. No. 6)

Question 6A

- (i) Judicial precedents are an important source of law. Discuss various kinds of precedents.
- (ii) A pharmaceutical company, Moon Pharma Ltd., filed a patent infringement lawsuit against a small Biotech startup, Deep Ltd. The case was heard by Judge M, who held significant shares in the Moon Pharma Ltd. Judge M ruled in favour of Moon Pharma Ltd. Should Judge M have abstained himself from the case on the basis of principle of Natural Justice ? Elaborate.
- (iii) What do you understand by National Electronic Funds Transfer (NEFT) ? State the advantage of NEFT.
- (iv) In which offences can a case be tried summarily under Section 260(1) of the Criminal Procedure Code, 1973 ?

(5 marks each)

Answer 6A(i)

Judicial precedents are an important source of law. They have enjoyed high authority at all times and in all countries.

Precedents may be classified as:

- (a) Declaratory and Original Precedents: According to Salmond, a declaratory precedent is one which is merely the application of an already existing rule of law. An original precedent is one which creates and applies a new rule of law. In the case of a declaratory precedent, the rule is applied because it is already a law. In the case of an original precedent, it is law for the future because it is now applied. In the case of advanced countries, declaratory precedents are more numerous. The number of original precedents is small but their importance is very great. They alone develop the law of the country. They serve as good evidence of law for the future. A declaratory precedent is as good a source of law as an original precedent. The legal authority of both is exactly the same.
- (b) Persuasive Precedents: A persuasive precedent is one which the judges are not obliged to follow but which they will take into consideration and to which they will attach great weight as it seems to them to deserve. A persuasive precedent, therefore, is not a legal source of law; but is regarded as a historical source of law. Thus, in India, the decisions of one High Court are only persuasive precedents in the other High Courts. The rulings of the English and American Courts are persuasive precedents only. Obiter dicta also have only persuasive value.
- (c) Absolutely Authoritative Precedents: An authoritative precedent is one which the judges must follow whether they approve of it or not. Its binding force is absolute and the judge's discretion is altogether excluded as he must follow it. Such a decision has a legal claim to implicit obedience, even if the judge considers it wrong. Unlike a persuasive precedent which is merely historical, an authoritative precedent is a legal source of law.

Every court in India is absolutely bound by the decisions of courts superior to itself. The subordinate courts are bound to follow the decisions of the High Court to which they are subordinate. A single judge of a High Court is bound by the decision of a bench of two or more judges. All courts are absolutely bound by decisions of the Supreme Court.

- (d) Conditionally Authoritative Precedents: A conditionally authoritative precedent is one which, though ordinarily binding on the court before which it is cited, is liable to be disregarded in certain circumstances. The court is entitled to disregard a decision if it is a wrong one, i.e., contrary to law and reason.

Answer 6A(ii)

Rule against bias (*nemo judex in causa sua*)

According to this rule no person should be made a judge in his own cause. Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. It is a presumption that a person cannot take an objective decision in a case in which he has an interest. The rule against bias has two main aspects- one, that the judge must not have any direct personal stake in the matter at hand and two, there must not be any real likelihood of bias.

Bias can be of the following three types:

- (1) Pecuniary bias: The judicial approach is unanimous on the point that any financial interest of the adjudicatory authority in the matter. Howsoever small, would vitiate the adjudication. Thus, a pecuniary interest, howsoever insufficient, will disqualify a person from acting as a Judge.
- (2) Personal bias: There are number of situations which may create a personal bias in the Judge's mind against one party in dispute before him. He may be friend of the party, or related to him through family, professional or business ties. The judge might also be hostile to one of the parties to a case. All these situations create bias either in favour of or against the party and will operate as a disqualification for a person to act as a Judge.
- (3) Subject matter bias: A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute.

The judicial approach is unanimous on the point that any financial interest of the adjudicatory authority in the matter, however small, would vitiate the adjudication. Thus, a pecuniary interest, however insignificant, will disqualify a person from acting as a judge.

Judge M's significant financial interest in Moon Pharma Ltd. creates a clear conflict of interest, violating the principle of *nemo judex in causa sua* and compromising judicial impartiality. Therefore, Judge M should have abstained himself from the case on the basis of the principle of Natural Justice.

Answer 6A(iii)

National Electronic Funds Transfer (NEFT) is a nation-wide payment system facilitating one-to-one funds transfer. Under this Scheme, individuals, firms and corporates can electronically transfer funds from any bank branch to any individual, firm or corporate having an account with any other bank branch in the country participating in the Scheme. NEFT is an electronic fund transfer system that operates on a Deferred Net Settlement (DNS) basis which settles transactions in batches. In DNS, the settlement takes place with all transactions received till the particular cutoff time.

Advantages of NEFT

- Round the clock availability on all days of the year.
- Near-real-time funds transfer to the beneficiary account and settlement in a secure manner.
- Pan-India coverage through large network of branches of all types of banks.
- The beneficiary need not visit a bank branch for depositing the paper instruments.
- Remitter can initiate the remittances from his / her home / place of work using internet banking, if his/her bank offers such service.
- Positive confirmation to the remitter by SMS / e-mail on credit to beneficiary account.
- Penal interest provision for delay in credit or return of transactions.
- No levy of charges by Reserve Bank of India (RBI) from banks.
- No charges to savings bank account customers for online NEFT transactions.
- The transaction charges have been capped by RBI.
- Besides funds transfer, NEFT system can be used for a variety of transactions including payment of credit card dues to the card issuing banks, payment of loan EMI, inward foreign exchange remittances, etc.
- The transaction has legal backing.

Answer 6A(iv)

Section 260 of the Code of Criminal Procedure, 1973(Code) provides the provisions relating to Power to try summarily. Section 260(1) states that:

Notwithstanding anything contained in this Code– (a) any Chief Judicial Magistrate; (b) any Metropolitan Magistrate; (c) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:–

- (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
- (ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code, where the value of the property stolen does not exceed two thousand rupees;
- (iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code, where the value of the property does not exceed two thousand rupees;
- (iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code, where the value of such property does not exceed two thousand rupees;
- (v) offences under sections 454 and 456 of the Indian Penal Code;
- (vi) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under section 506 of the Indian Penal Code;
- (vii) abetment of any of the foregoing offences;
- (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
- (ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871.

Alternate Answer

Section 283 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) provides the provisions relating to Power to try summarily. Section 283(1) states that:

Notwithstanding anything contained in this Code– (a) any Chief Judicial Magistrate; (b) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:–

- (i) theft, under section 301, section 303 or section 304 of the Bharatiya Nyaya Sanhita, 2023 where the value of the property stolen does not exceed twenty thousand rupees;
- (ii) receiving or retaining stolen property, under section 315 of the Bharatiya Nyaya Sanhita, 2023, where the value of the property does not exceed twenty thousand rupees;
- (iii) assisting in the concealment or disposal of stolen property under section 315 of the Bharatiya Nyaya Sanhita, 2023, where the value of such property does not exceed twenty thousand rupees;
- (iv) offences under section 330 of the Bharatiya Nyaya Sanhita, 2023;
- (v) insult with intent to provoke a breach of the peace, under section 350, and criminal intimidation, under section 349 of the Bharatiya Nyaya Sanhita, 2023;
- (vi) abetment of any of the foregoing offences;
- (vii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
- (viii) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871.

COMPANY LAW & PRACTICE

GROUP 1 PAPER 2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

Case Study :

Background :

Lalit, Bisen, Roma, Raunak, and Rasik, a practicing company secretary, have formed a brainstorming group to discuss, deliberate, and resolve various issues they encounter in their daily works related to company law. They decided to meet every Sunday evening to share their views on issues brought before the group. Several meetings have taken place, and the important issues discussed in detail are outlined below :

- (i) **Change in the name of the company and issues connected therewith :** Lalit began the discussion by informing the group that his client, Roopam Leathers Limited (the Company), changed its name to Rakshak Leathers Limited in January 2024, following the due process of law. Before this change, the company had filed a suit against one of its suppliers in May 2023 to recover compensation due to a breach of contract. However, in April 2024, the supplier applied to the Court for dismissal of the suit, arguing that Roopam Leathers Limited ceased to exist after the name change and the issuance of a new certificate of incorporation by the Registrar. The Managing Director of the Company has expressed concern about the fate of the litigation against the supplier.
- (ii) **Employees Stock Option Scheme (ESOP/Scheme) :** Bisen mentioned that his client, JK Aluminium Limited, is planning a public issue of equity shares and intends to offer options to the directors, officers, or employees of the company under an ESOP. The CFO of the company expressed doubt about whether all employees, directors, and independent directors are eligible for share allotment under this scheme. He also questioned whether the vesting period can be set at 2 years and if a lock-in period of five years can be provided in the scheme.
- (iii) **Books of Account in respect of Branch Office :** Roma stated that she has been appointed as the Secretarial Auditor of Janak Textile Limited, which has its registered office in Chennai, India, and a branch office in California, USA. While conducting the secretarial audit for the financial year 2023-24, she noticed that one director of the company had requested financial information beyond the financial returns maintained at the registered office concerning the branch office. However, his request was denied by the Board, which contended that a director can only inspect the summarized quarterly returns sent by the branch office to the registered office. She asked the other group members to analyse the situation.
- (iv) **Dormant status of the company by ROC :** Raunak brought up the issue of a dormant company for discussion. He said that his client MM Consultancy Ltd. (the company) received a notice from the Registrar of Companies (the ROC/Registrar) for entering its name in the register

maintained for dormant companies. Upon reviewing the company's records, he found that it had not filed its financial statements for two consecutive financial years and an annual return for the preceding financial year i.e. for only one year. He requested the group to discuss and deliberate on this situation, particularly in light of the Managing Director's concern about the validity of the Registrar's notice, and sought clarification on the provisions governing the status of a dormant company at the Registrar's behest

- (v) **Inviting deposits from public by a government company** : Rasik mentioned that he is a legal advisor to MNO Corporation Ltd; a government company. The balances extracted from the latest audited financial statements of the company are as follows :

Sr. No.	Particulars	Rs. in crore
1	Paid-up equity share capital	10
2	Free Reserves	4
3	Securities Premium Account	2
4	Turnover	300

The company proposes to invite deposits of Rs. 4 crore from public. He analysed the proposal and observed that the deposit amount is within the prescribed statutory limit. He then invited comments from the other group members on the proposal.

Based on the above scenarios, analyse the issues, and provide legal opinions on each case, sequentially, in accordance with the provisions of the Companies Act, 2013, as detailed below :

- (a) Explain the effect of the change in the company's name and advise the Managing Director on whether the Supplier's application for dismissal of the case is tenable.
(3 marks)
- (b) Regarding the Employees Stock Option Scheme (ESOP), explain the following :
- Whether all employees, directors, and independent directors are eligible for allotment of shares under this scheme ?
 - Whether a lock-in period of five years can be provided under the ESOP ?
(3 marks)
- (c) As brought up by Roma, the request of a director for financial information related to a branch office – beyond the summarized quarterly returns maintained at the registered office of Janak Textile Limited – was rejected by the Board. Analyse the situation and determine, whether the Board's decision to deny the requested information to the director is valid.
(3 marks)
- (d) Considering the discussion on the topic of dormant companies, elucidate the provisions under which the Registrar may declare a company as dormant. Also, determine the validity of the notice issued by the Registrar to MM Consultancy Ltd.
(3 marks)
- (e) As informed by Rasik under Para (v), the government company proposes to invite deposits of Rs. 4 crore from the public. Explain the prescribed limit up to which a government company can invite deposits from the public, and assess whether MNO Corporation Ltd. can invite deposits of Rs. 4 crore.
(3 marks)

Answer 1(a)

Effect of Change in Name Clause

The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company in its former name may be continued by or against the company in its new name. By change of name, constitution of company does not change, the only thing change is its name, all the rights and obligations under the law of old company pass to the new company.

Case Laws:

It was held in the case of *Re Malhati Tea Syndicate Ltd. v. Revenue Officer*, (1973) 43 Com Cases that where a company changes its name and the new name has been registered by the Registrar, the commencing of legal proceedings in the former name is not valid.

In *Re Pioneer Protective Glass Fibre (P) Ltd. v. Fibre Glass Pilkington Ltd.*, (1986) 60 Com Cases 707 (Cal) it was held that inspite of a change in name the entity of the company continues. The company is not dissolved or does any new company come into existence. If any legal proceeding is commenced, after change in the name, against the company in its old name, the company should be treated as if it is not in existence. It is not an incurable defect and the plaint can be amended to substitute the new name.

Considering the above points, the contention of the supplier that the company is ceased to be in existence after change of name is not correct. Hence, the application filed by him for dismissal of the case shall not be tenable. However, the case will continue with its new name.

Answer 1(b)

- (i) As per the provisions under section 62(1)(b) of the Companies Act, 2013 and Rule 12 of the Companies (Share Capital and Debenture) Rules, 2014 the following employees including directors shall be eligible for ESOP:
 - (a) a permanent employee of the company who has been working in India or outside India; or
 - (b) a director of the company, whether a whole time Director or not but excluding an Independent Director; or
 - (c) an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does not include -
 - (i) an employee who is a promoter or a person belonging to the promoter group: or
 - (ii) a director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.

The conditions mentioned in sub-clause (i) and (ii) shall not apply to a startup company up to ten years from the date of its incorporation or registration.

Accordingly, all permanent employees subject to exceptions and all directors shall be eligible but the independent directors shall not be eligible for ESOP.

(ii) Company has freedom to specify lock-in period

Rule 12(6)(b) of the Companies (Share Capital and Debenture) Rules, 2014 states that the

company shall have the freedom to specify the lock-in period for the shares issued pursuant to exercise of option, Hence, a lock-in period for five years can be provided under ESOP.

Answer 1(c)**Books of Account in respect of branch office**

As per Section 128(2) and (3) of the Companies Act, 2013 read with rule 4(1) of the Companies (Accounts Rules) 2014, proper summarized return of the books of account of the company kept and maintained outside India shall be sent to the registered office at quarterly intervals, which shall be kept and maintained at the registered office of the company and which shall be kept open to directors for inspection.

As per rule 4 of the Companies (Accounts) Rules, 2014 where any other financial information maintained outside the country is required by a director, the director shall furnish a request to the company setting out the full details of the financial information sought and the period for which the information is sought.

The company shall produce such financial information to the director within 15 days of the date of receipt of the written request. The financial information required by the director shall be sought for by the director himself and not by or through his holder of power of attorney or agent or any representative.

In the light of the above provisions and the rule, the director concerned has a right to seek any other financial information maintained outside the country by giving a proper request with full details of the information sought. Hence, the contention of the Board is not correct and its decision to deny the information is not valid.

Answer 1(d)**Dormant status of the company by ROC**

As per Section 455(4) of the Companies Act, 2013, in case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar of Companies (ROC) shall issue a notice to the company and enter the name of such company in the register maintained for dormant companies.

Hence, it is not always the company which applies for the status of the dormant company; even the ROC is empowered *suo moto* to change the status of a company into a dormant company.

The section provides that the failure in filing either the financial statements or the annual returns for two consecutive financial years shall give a cause of action to the Registrar of Companies for issuing a notice and entering the name of the company in the register of dormant companies.

In this case, the company has failed to file the financial statements for 2 financial years consecutively. Non-filing of annual return only for one year will not absolve the company from the violation done. Hence, the Registrar shall issue such a notice and the notice issued by the Registrar of Companies to the company is valid.

Answer 1(e)

As per rule 3(5) of the Companies (Acceptance of Deposits) Rules, 2014, no Government Company eligible to accept deposits under section 76 of the Companies Act 2013, shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty-five per cent of the aggregate of its Paid-up share capital, free Reserves, and securities premium account of the company.

As per section 76(1) of the Companies Act, 2013 read with Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014- To become an 'Eligible Company' the net worth of the company should not be less than Rs. 100 crore or the turnover should be at least Rs. 500 crore. Hence, eligible government company may accept deposits from public to the extent of specified limit.

In the given case scenario MNO Corporation Ltd, a government company does not fulfil any of the criteria of net worth or turnover, as it is less than the threshold limit. Thus, it is not an eligible company. Although the amount of proposed deposits of Rs. 4 crore is within the stipulated limit of 35% of the paid-up share capital, free reserves, and security premium the company cannot invite deposits of Rs. 4 crore from public as it is not an eligible company.

Question 2

- (a) NSG Ltd. created a charge in favour of Bank A for a loan it took, and the particulars of the charge have already been registered with the Registrar of Companies. Later, Bank A transferred or assigned this charge to Bank B as part of a loan portfolio sale, without altering any other terms and conditions of the original loan agreement. Are there any compliance requirements related to the registration of charges under the Companies Act, 2013, in this case ?

(3 marks)

- (b) Abbas is a member of PTR Ltd., an unlisted company that has adopted Articles of Association as per Article 84 of Table F of Schedule I under the Companies Act, 2013, concerning the adjustment of dividends. Abbas owes to the company a total sum of Rs. 10,000, broken down as follows :

- (1) Calls in arrears : Rs. 3,000
- (2) Unpaid Securities Premium : Rs. 5,000
- (3) Other Debts : Rs. 2,000

PTR Ltd. has declared a dividend of Rs. 10,000 on the shares owned by Abbas. The company proposes to adjust the total debts of Abbas of Rs. 10,000 against the dividend payable to him.

As the Company Secretary of PTR Ltd., how would you respond to the company's proposal to adjust the debts against the dividend payable to Abbas in accordance with the provisions of the Companies Act, 2013 ?

(3 marks)

- (c) RK Info Pvt. Ltd. (the company) has the following financial details as of 31st March, 2024, according to its financial statements :

- Paid-up share capital : Rs. 60 crore
- Turnover :Rs. 180 crore
- Outstanding deposits : Rs.30 crore

The company is planning to appoint Salim, who is currently serving as the wholetime Company Secretary, as its internal auditor.

You are requested to assess the following :

- (i) Is RK Info Pvt. Ltd. mandatorily required to appoint an internal auditor under the provisions of the Companies Act, 2013 ?

- (ii) Can a Company Secretary who is in the whole-time employment with a company be appointed as the internal auditor of the same company according to the applicable provisions of the Companies Act, 2013 ?

(3 marks)

- (d) The debenture trustee of DC Limited has observed that the company's management is suspected of siphoning off funds, leading to financial losses for the debenture holders. Is the situation a valid reason for the debenture trustee to make an application to the Tribunal for an investigation into the affairs of the company ? Is the debenture trustee competent to make such an application to the Tribunal ? If so, who is the competent authority to appoint the inspectors to conduct the investigation ? Explain with reference to the provisions of the Companies Act, 2013.

(3 marks)

- (e) S Ltd. has equity shares with voting rights that are pari passu. X Ltd., Y Ltd., and Z Ltd. each hold 20% of the equity shares in S Ltd. The remaining 40% of the shares are held by retail investors. R Ltd. controls the composition of the Board of Directors of X Ltd., Y Ltd., and Z Ltd. Based on the provisions of the Companies Act, 2013, determine whether R Ltd. qualifies as a holding company of S Ltd.

(3 marks)

Answer 2(a)

Registration of Modification of Charge

As per section 79 of the Companies Act, 2013: The provisions of section 77 of the Companies Act, 2013, relating to registration of charges shall, so far as may be, apply to –

- (a) a company acquiring any property subject to a charge within the meaning of that section; or
- (b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest, increase / decrease in amount of borrowings, change / swap of security, extension of time for repayment, which may be by mutual agreement or by operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification of charge.

Section 79 of the Companies Act, 2013 read with Rule 3 of the Companies (Registration of Charges) Rules, 2014, makes it clear that the requirement of registering the charge shall also apply to a company acquiring any property subject to charge or any modification in terms and conditions of any charge already registered.

On assignment of loan from Bank A to Bank B, the charge holder is changed. Hence, as per Section 79 of the Companies Act, 2013 read with Rule 3 of the Companies (Registration of Charges) Rules, 2014, NSG Ltd. is advised to file Form-CHG-1 for registration of modification of charge for change in charge holder.

Answer 2(b)

Article 84 of Table F of Schedule I to the Companies Act, 2013 provides that, Board may deduct from any Dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

According to Section 127(d) of Companies Act, 2013, no offence under this section shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

In the given case PTR Ltd. may adjust the entire dividend amount of Rs. 10,000 against the total dues of Rs. 10,000 consisting of calls in arrears (Rs. 3,000), unpaid securities premium (Rs. 5,000) and other debts (Rs. 2000/-).

However, if PTR Ltd. has adopted Article 84 of the Table F of Schedule I, it is entitled to adjust the dues on account of calls in arrears (Rs.3,000) and unpaid securities premium (Rs.5,000) against the dividend, being related to the shares. The “other debts” of Rs. 2,000 which are unrelated to the shares cannot be adjusted against the dividend.

Answer 2(c)

(i) Mandatory appointment of Internal Auditor:

As per Section 138 of Companies Act, 2013 read with Rule 13(1)(c) of the Companies (Accounts) Rules, 2014-

Every private company having –

- (i) Turnover of two hundred crore rupees or more during the preceding financial year; or
- (ii) Outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

From the above provision the criteria of paid-up share capital or outstanding deposits is not applicable to private company. RK Info Pvt. Ltd. is a private company having turnover of Rs. 180 crore which is less than the stipulated limit of Rs. 200 crores.

Hence, it is not mandatory for RK Info Pvt. Ltd. to appoint an internal auditor.

(ii) Appointment of whole-time company secretary as an internal auditor:

As per section 138 read with explanation to rule 13 of the Companies (Accounts) Rules, 2014 the internal auditor may or may not be an employee of the company. Hence, a company secretary in whole-time employment can be appointed internal auditor of the same company, if so, decided by the Board.

Answer 2(d)

Investigation into the company's affairs on application made by members or other persons

As per section 213 of the Companies Act, 2013, the Tribunal may make such order on an application made to it by the members of requisite numbers or voting power or any other person or otherwise, if it is satisfied that the circumstance suggest, including *inter alia*, that –

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

It was held in the case of *Comfort Intech Ltd vs. Ravi Kumar Distilleries Ltd (2019) 108 NCLT Chennai* that the Lead Managers for IPO is entitled to file an application before the Tribunal alleging that the directors of the company are involved in diverting IPO proceeds of company to their associates under provisions of Section 213 of the Companies Act 2013.

In this case scenario it is seen that the business of the company is being conducted with intent to defraud its creditors, members, or any other person (i.e. debenture holders) or otherwise for a fraudulent or unlawful purpose. This is a good/valid reason for making such an application.

An application can be made by any person other than the members. Hence, Debenture-trustee can make an application for necessary order of the Tribunal.

If the Tribunal issues the order that the affairs of the company ought to be investigated, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company and to report thereon.

Hence, by applying the above provisions debenture trustee of DC Limited can make application to National Company Law Tribunal and Central Government shall appoint competent person to conduct investigation.

Answer 2(e)

As per Section 2(87) the Companies Act, 2013 a “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company –

- (i) Controls the composition of the Board of Directors; or
- (ii) Exercises or controls more than one half of the total voting power either at its own or together with one or more of its subsidiary companies.

Explanation: For the purposes of this clause –

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
- (c) the expression “company” includes anybody corporate;
- (d) “layer” in relation to a holding company means its subsidiary or subsidiaries.

R Ltd. controls the composition of the Board of directors of X Ltd. Y Ltd. and Z Ltd. Therefore, these three companies are the subsidiary companies of R Ltd. The shareholding of X Ltd. Y Ltd. and Z Ltd. together in S Ltd. is 60%. As such, R Ltd. exercises or controls more than one half of the total voting power of S Ltd. through its subsidiary companies. Hence, R Ltd. qualifies as a holding company of S Ltd.

Question 3

- (a) Guddi Logistics Limited offered 1,00,000 equity shares of Rs. 10 each to a select group of 250 persons, including 60 qualified institutional buyers. The share application money was received by the company on 1st August 2024. However, the company failed to allot the shares by 30th September 2024. During this period, the company utilized this money to pay interest on a cash credit limit sanctioned by its banker. The company secretary raised an objection to the utilization of the share application money for interest payment and suggested the CFO to refund it to the share applicants with interest at 12% per annum, effective from 1st October 2024. The CFO holds the view that the interest will be payable from 15th October, 2024.

Considering the provisions of the Companies Act, 2013, examine the validity of the offer made to the select group of 250 persons, as well as the objection and suggestion made by the company secretary to the CFO.

(5 marks)

- (b) Soya Products Ltd. has been operating successfully for several years. In the financial year 2020-21, the company reported a significant increase in revenue and profits. However, in 2024-25, a whistleblower within the company revealed that the financial statements for 2020-21 were manipulated by the company's top management to inflate profits and conceal losses. The whistleblower filed a complaint with the Central Government, providing supporting documents. The Central Government conducted an investigation based on the whistleblower's evidence and concluded that the accounts for 2020-21 should be re-opened and the financial statements re-cast. Referring to the provisions of the Companies Act, 2013, examine the feasibility of re-opening the accounts and re-casting the financial statements for the financial year 2020-21.

(5 marks)

- (c) RSV Private Limited., incorporated five years ago, passed a special resolution during its Annual General Meeting (AGM) held on 30th September, 2024, to issue 10 lakh sweat equity shares at a discount to a class of directors and permanent employees. The company's latest financial statement shows an issued, subscribed, and paid-up equity share capital of Rs. 5 crore, divided into 50 lakh equity shares of Rs. 10 each. Considering the provisions of the Companies Act, 2013 :

- (i) Assess the validity of issuing 10 lakh sweat equity shares with a lock-in period of 5 years.
- (ii) Would your answer change, if RSV Pvt. Ltd. were classified as a Start-up company as defined by the Ministry of Commerce and Industry, Government of India ?

(5 marks)

Answer 3(a)

Validity of offer to select group of 250 persons.

As per section 42(2) of the Companies Act 2013 read with rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014, a private placement shall be made only to a select group of persons who have been identified by the Board, whose numbers shall not exceed 200 in aggregate in a financial year, excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employee's stock option in terms of provisions of clause(b) of sub-section (1) of section 62 of the Companies Act, 2013 in a financial year subject to such conditions as may be prescribed. It is further clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

In this present case, Guddi Logistics Limited made a private placement offer to 250 persons, including 60 qualified institutional buyers. Excluding these 60 QIBs, the offer was made to 190 select persons, which is within the prescribed limit of 200 persons. Therefore, the offer made to a total of 250 select persons is valid under provisions of the Companies Act, 2013.

Objection and Suggestion by the Company Secretary Regarding Utilization of Application Money and Refund with Interest:

As per Section 42(6) of the Companies Act, 2013, a company must allot the securities within 60 days from the receipt of the application money. If the company fails to allot the securities within this period, it is required to refund the application money within 15 days from the expiry of the 60-day period.

If the refund is not made within these 15 days, the company is liable to pay interest at 12% per annum from the expiry of the 60 days.

Additionally, the application money cannot be used for any purpose other than the allotment of securities or for the repayment of monies where the company is unable to allot securities.

In the present case, the company failed to allot the shares by 30th September 2024, which is the 60th day from the receipt of the application money on 1st August 2024. The application money should therefore be refunded by 15th October 2024. If not refunded by this date, interest at 12% per annum will be payable from 1st October 2024.

Hence, the utilization of the application money for the payment of interest on a cash credit limit is not permissible under the provisions of the Companies Act, 2013, making the company secretary's objection valid. Furthermore, the suggestion to refund the application money with interest at 12% per annum from 1st October 2024, if not refunded by 15th October 2024, is also correct. The view of CFO is therefore not correct.

Answer 3(b)

Section 130 of the Companies Act 2013, provides for provisions relating to re-opening of books of account or re-casting of its financial statements of the company. Accordingly,

- (i) A company shall not re-open its books of account and shall not recast its financial statements, unless an application to the tribunal or by court of competent jurisdiction, in this regard is made by any one or more of the following -
 - (a) the Central Government, or
 - (b) the Income-tax authorities, or
 - (c) the Securities and Exchange Board of India (SEBI), or
 - (d) any other statutory regulatory body or authority or any person concerned, and
 - (e) An order in this regard is made by a court of competent jurisdiction or the Tribunal.
- (ii) The re- opening and recasting of financial statements is permitted only for the following reasons -
 - (a) the relevant earlier accounts were prepared in a fraudulent manner; or
 - (b) The affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.
- (iii) The Tribunal shall give the notice to-
 - (a) the Central Government,
 - (b) the Income-tax authorities,
 - (c) the Securities and Exchange Board,
 - (d) any other statutory regulatory body or authority concerned or any other person concerned and shall take into consideration the representations, if any, made by Central Government or the authorities, Securities and Exchange Board or the body or authority concerned or any other person concerned before passing any order under this section.
- (iv) The accounts so revised or re-cast under this section shall be final.

No order shall be made under Section 130 (1) of Companies Act, 2013 in respect of re-

opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

Provided that where a direction has been issued by the Central Government under the proviso to sub-section 5 of section 128 of the Companies Act, 2013 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.

The Central Government is the competent authority to make an application to the Tribunal for re-opening of the accounts and re-casting of the financial statements for the financial year 2020-21. The company's relevant earlier accounts were prepared in a fraudulent manner which is a permitted ground for moving an application by the Central Government and issuing the order by the Tribunal. The application is sought for re-opening of the accounts for 2020-21 which is the 4th year preceding to the current financial year 2024-25 and it is within the block of permitted 8 years preceding to the current financial year. Hence, it is feasible that the Central Government can make an application to the Tribunal and the Tribunal may order for re-opening of accounts and re-casting of financial statements for the financial year 2020-21.

Answer 3(c)

(i) Section 54(1) of Companies Act 2013 provides that notwithstanding anything contained in Section 53, of Companies Act 2013 a company can issue sweat equity shares, of a class of shares already issued, if the following conditions, are satisfied:

1. **Authorisation by Special Resolution:** The issue has been authorized by a special resolution passed by the company in the general meeting. The resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued.
2. **Limitations on issue of sweat equity shares:** Rule 8(4) of the Companies (Share Capital and Debenture) Rules 2014 states that, the company shall not issue sweat equity shares for more than fifteen percent of the existing paid-up equity share capital in a year or shares of the issue value of rupees five crores, whichever is higher. The issuance of sweat equity shares in the company shall not exceed twenty five percent, of the paid-up equity capital of the company at any time.
3. **Three Years Locking Period:** Rule 8(5) of the Companies (Share Capital and Debenture) Rules 2014-The sweat equity shares issued to directors or employees shall be locked for a period of three years from the date of allotment and the fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate.

The sweat equity shares may be issued at a discount. It has been correctly authorised by passing a special resolution. The size of issue of shares should not exceed 7,50,000 shares (15%*50 lakh shares). However, the company has issued 10,00,000 sweat equity shares which is in excess of the prescribed limit of 15% in any year though it is within the limit of 25% of total shares at any time. The lock-in period should be 3 years but the company has fixed it for 5 years. Considering this the company has violated the conditions regarding size and lock-in period of the issue of sweat equity shares.

However, the value of proposed 10 lakh sweat equity shares @ Rs. 10 per share i.e. Rs. 1 crore does not exceed Rs. 5,00,00,000, the company can issue 10 lakh sweat equity shares, not exceeding the overall limit of 25% of paid-up equity share capital at any time.

(ii) If the company is a Start-up company:

As per proviso to Rule 8(4) of the Companies (Share Capital and Debenture) Rules 2014 -A startup company, as defined by Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding fifty percent of its paid up capital up-to ten years from the date of its incorporation or registration.

The company was incorporated 5 years ago and not crossed the time limit of 10 years from its incorporation. The issue size of 10 lakh equity shares would be within the limit of 50% of the total paid-up shares ($50\% \times 50 \text{ lakh} = 25 \text{ lakh}$) but the lock-in-period of 5 years will be a violation of condition of section 54. Hence, for this reason, the issue of sweat equity shares shall be invalid.

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

Question 4

- (a) Chitra Developers Limited, a listed company, adopted Articles of Association as per Article 84 of Table F of Schedule I under the companies Act, 2013, held a Board of Directors meeting on 1st February 2024, during which an interim dividend of 10% was declared. The dividend amount was transferred to a separate bank account within the prescribed timeline. However, in a subsequent Board meeting on 10th February 2024, the Board resolved to revoke the declared interim dividend. The separate bank account was closed, and the dividend amount was transferred back to the company's general bank account.

In the Board meeting held on 5th August 2024, the financial statements for the year ending 31st March 2024 were approved, and the Board proposed a final dividend of 10%. At the Annual General Meeting (AGM) held on 10th September 2024, the shareholders decided to declare a final dividend at a rate of 20%, considering the earlier revocation of the interim dividend. Considering the provisions of the Companies Act, 2013 :

- (i) Discuss the validity of the Board's decision to declare and subsequently revoke the interim dividend. Additionally, specify the date by which the company should have deposited the interim dividend amount into a separate bank account.
- (ii) Evaluate whether the shareholders' decision to declare a final dividend at the rate of 20%, instead of the 10% proposed by the Board, is legally valid.

(5 marks)

- (b) Alpha Ltd., a parent company, owns 100% of the equity shares of Beta Ltd., its wholly owned subsidiary. The companies have proposed a scheme of merger/amalgamation under Section 232 of the Companies Act, 2013, whereby Beta Ltd. will be merged into Alpha Ltd.

Both companies have submitted an application before the National Company Law Tribunal (NCLT), seeking approval of the scheme without convening meetings of their equity shareholders, secured creditors, and unsecured creditors.

Discuss, whether the National Company Law Tribunal (NCLT) has the jurisdiction to dispense with the requirement of conducting such meetings for the purpose of sanctioning the scheme of amalgamation. Additionally, identify and elaborate on the key factors the Tribunal will consider before issuing an appropriate order. Justify your answer with reference to the provisions of the Companies Act, 2013.

(5 marks)

- (c) Greenfield Infrastructure Ltd., a company engaged in large-scale infrastructure projects, decides to raise funds by issuing 1,00,000 non-convertible secured debentures with a face

value of ₹ 100 each, amounting to Rs. 1 crore. The debentures carry an interest rate of 9% per annum, payable annually, and are redeemable after 17 years from the date of issue. The prospectus for subscription of debentures was issued on 1st April, 2022.

To protect the interests of the debenture holders, the company appoints SafeGuard Trustees Ltd. as the debenture trustee. The debenture trustee noted that the company defaulted on the payment of interest for two consecutive years, specifically for the payments due on 31st March 2023 and 31st March 2024.

Considering the facts given above and the provisions of the Companies Act, 2013 :

- (i) Assess the validity of the redemption period for the debentures.
- (ii) Discuss the mandatory compliance requirements for appointing a debenture trustee, including the time limit for such appointment and the execution of the trust deed.
- (iii) Identify the circumstances under which it is the duty of the debenture trustee to appoint a nominee director on the Board of the Company.

(5 marks)

Answer 4(a)

(i) Validity: Authority to declare interim dividend: As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting.

Time limit to open a separate bank account: In terms of sub-section (4) of Section 123 of the Companies Act, 2013, the amount of Dividend, including Interim Dividend, shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such Dividend.

Revocation of Dividend:

The right of Members to claim Dividend arises only after the Dividend is declared either by the company in an Annual General Meeting or, in the case of Interim Dividend, by the Directors in a Board Meeting. Until and unless it is so declared, no Member has any claim against the company in respect thereof, even though the company may have sufficient profits [*Bacha F. Guzdar v Commissioner of Income Tax 1955 AIR SC 740*].

Members cannot compel the company by any process of law to declare Dividend [*C.W. Spencer V. ITO, (1957) 27 Comp. Cases 15, 25 (Mad)*].

A Dividend once declared becomes a debt due to the Members and hence cannot be revoked. It gives rise to an enforceable obligation or creates a debt enforceable immediately or in the future.

Conclusion: The Board of directors are the competent authority to declare interim dividend in the Board meeting. Hence, the declaration of interim dividend by the Board of directors in its meeting held on 1st February, 2024 is valid.

The interim dividend declared by the Board has become debt and it cannot be revoked. Hence, the revocation of interim dividend by the Board in the board meeting of 10th February, 2024 is not valid.

Time limit: In accordance with the provision, the company should have opened a separate bank account to deposit the interim dividend amount by the latest date of 6th February 2024, which is within 5 days from 1st February 2024, the date of declaration of the interim dividend.

(ii) Shareholders increasing the proposed rate of dividend: The dividend recommended by the board of directors as mentioned in the Directors Report is declared at the annual general meeting of the company.

Article 80 of Table F of schedule 1 Companies Act, 2013, states that “the company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.”

The shareholders have no right to declare a final dividend in the annual general meeting at a rate exceeding the rate proposed by the Board. Hence, the decision of the shareholders to declare the dividend @ 20% which is more than the rate of 10% proposed by the Board, is invalid.

Answer 4(b)

Section 232(1) of the Companies Act 2013, states that when an application is made to the Tribunal under section 230 of the Companies Act, 2013 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal –

- (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and
- (b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply *mutatis mutandis*.

Case Law: In the matter of *Mohit Agro Commodities & Ors.* NCLAT, dated June 28, 2021 When the “Transferor and Transferee Company” involve a Parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured and Unsecured Creditors can be dispensed with as the rights of the Equity Shareholders of the “Transferee Company” are not being affected.

Analysis and Answer:

Based on the statutory provisions and the judicial interpretation in *Mohit Agro Commodities & Ors.*, it is evident that the Tribunal has the jurisdiction to dispense with the meeting of equity shareholders, secured creditors, and unsecured creditors under Section 232 of the Companies Act, 2013. The Tribunal will evaluate:

- (a) whether the proposed scheme alters stakeholders' rights,
- (b) whether there is any internal impact on the creditors/members, and
- (c) whether dispensing with meetings would violate any provisions of the Act.

If satisfied that the rights and liabilities of stakeholders are unaffected and the scheme is fair and reasonable, the Tribunal may exercise its discretion to sanction the merger without requiring these meetings.

Answer 4(c)

As per the provisions of Section 71 of the Companies Act, 2013 read with the Companies (Share Capital and Debenture) Rules, 2014 the answer is provided as below:

(i) The validity of redemption period.

As per Section 71(3) of Companies Act 2013, read with Rule 18(1) of the Companies (Share

Capital and Debentures) Rules, 2014, the Companies engaged in setting up of infrastructure projects may issue secured debentures for a period exceeding 10 years but not exceeding 30 years. Greenfield Infrastructure Ltd., is engaged in large-scale infrastructure projects and the redemption period is 17 years which is more than 10 years but less than 30 years. Hence, the redemption period is valid.

(ii) Mandatory compliance requirement of appointing debenture trustee, the time limit for such appointment and the execution of the trust deed.

As per Section 71(5) of Companies Act 2013, read with Rule 18(2) of the Companies (Share Capital and Debentures) Rules, 2014- No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees. The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders.

The Company shall before the appointment of debenture trustee or trustees obtain a written consent from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

As per Rule 18(1)(c) of the Companies (Share Capital and Debentures) Rules, 2014-The company shall appoint the debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of the debentures, execute a debenture trust deed to protect the interest thereon.

(iii) The event under which it is the duty of the debenture trustee to appoint nominee director

The duties of debenture trustee or trustees prescribed under Rule 18(3) of the Companies (Share Capital and Debenture) Rules, 2014 includes *inter alia* the duty relating to appointment of a nominee director on the Board of the company in the event of-

- (i) two consecutive defaults in payment of interest to the debenture holders; or
- (ii) default in creation of security for debentures; or
- (iii) default in redemption of debentures.

OR (Alternate question to Q.No.4)

Question 4A

- (i) (a) Rocky Images Ltd. has Varun, –Chief Financial Officer (CFO) and Prateek– Managing Director (MD). There is no wholtime director in charge of finance in the company. Varun (CFO) is of the opinion that if there is any allegation by shareholders for financial statements not complying with accounting standards then MD Prateek will be held responsible and punished whereas Prateek (MD) believes that Varun (CFO) would be held, so an argument started between the two. Discuss the above scenario in line with provisions of Companies Act, 2013.

(b) Unlisted Resham Cements Ltd. had achieved a turnover two hundred crore in FY 2017-18 and had to file their balance sheet and statement of profit and loss in XBRL mode. Gradually their turnover started declining due to inadequate demand of cements every year and in FY 2023-24 the company could achieve only rupees forty crore turnover. The accountant of the company is of the view that now XBRL mode of filing is not needed any more as the XBRL limit is not reached and five years have expired. Comment on the view of the accountant under Companies Act, 2013.

(3+2=5 marks)

- (ii) Explain the meaning of a "member" under the provisions of the Companies Act, 2013. Can a subsidiary company become a member and shareholder of its holding company ? Can a foreigner be a member of a company ? You are requested to clarify these points with reference to the provisions of the Companies Act, 2013.

(5 marks)

- (iii) The Companies Act, 2013 provides certain protections to employees during the investigation of a company's affairs and grants a remedy of appeal against actions taken by the management. Explain. (5 marks)

Answer 4A(i)

(a) The persons responsible to take all reasonable steps to secure compliance by the company with the requirement of Section 129(7) of the Companies Act 2013, are:

- (i) Managing Director;
- (ii) Whole-Time Director in charge of finance;
- (iii) CFO;
- (iv) Other person of a company charged by the Board with the duty of complying with the requirements of section 129.

Where any of the aforementioned officers are absent, all the directors shall be responsible and punishable.

Therefore, as there is no whole-time director in charge of finance in the company all the directors including MD and CFO will be held responsible and punished. Hence, Mr. Varun CFO and Mr. Prateek, MD will be held responsible and punished.

(b) Pursuant to Rule 3 of the Companies (Filing of Documents and Forms in XBRL) Rules, 2015 the following class of companies shall file their financial statements and other documents under section 137 of the Companies Act, 2013 with the Registrar in e-Form AOC-4 XBRL:

- (i) companies listed with stock exchanges in India and their Indian subsidiaries;
- (ii) companies having paid up capital of five crore rupees or above;
- (iii) companies having turnover of one hundred crore rupees or above;
- (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

The companies which have filed their financial statements under sub-rule (1) of Rule 3 of XBRL Rules, shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years.

Hence, unlisted company Resham Cements Ltd. has to continue filing financial statements in XBRL mode in current FY 2023-24 also. The view of accountant of the company is not tenable

Answer 4A(ii)

According to Section 2(55) of the Companies Act, 2013, member, in relation to a company, means,

- a. The subscribers to the memorandum of a company who shall be deemed to have agreed to become members of the company, and on its registration, shall be entered as members in its register of members;
- b. Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall, be a member of the company;

- c. Every person holding shares of a company and whose name is entered as a beneficial owner in the records of a depository shall be deemed to be a member of the concerned company.

A company is composed of members, though it has its own separate legal entity. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity.

A subsidiary company as member / shareholder of its holding company

As per section 19 of the Companies Act, 2013, a subsidiary company cannot become a member of its holding company.

Exceptions:

However, a subsidiary can hold shares in its holding company only under the following exceptional circumstances –

- where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- where the subsidiary company holds such shares as a trustee; or
- where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Foreigners as members

A foreigner may take shares in an Indian company and become a member subject to the provisions of the Foreign Exchange Management Act, 1999, but in the event of war with his country, he becomes an alien enemy and his power of voting and his rights to receive notices are suspended.

Answer 4A(iii)

No Action against employees without Tribunal's approval

Section 218 of Companies Act, 2013 provides protection to employees during investigation.

During the course of any investigation and during pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company, such company, other body corporate or person shall not discharge or suspend or punish any employee without approval of the Tribunal. This protection is available to employees during the investigation of the affairs or other matters of or relating to a company, other body corporate or person or of the membership, ownership of shares or debentures.

Following actions are not permitted without approval of the Tribunal –

- (a) To discharge or suspend any employee;
- (b) To punish any employee, whether by dismissal, removal, reduction in rank or otherwise; or
- (c) To change the terms of employment to his disadvantage.

Action against Employees – As per Section 218(2) of Companies Act 2013

If the applicant does not receive within thirty days of making of application, the approval of the Tribunal, only then applicant concerned may proceed to take against the employee the action proposed.

Appeal against Tribunal to Appellate Tribunal – as per the Section 218(3) and (4) of Companies Act 2013

If the applicant is dissatisfied with the objection raised by the tribunal it may within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal. The decision of the Appellate Tribunal on such appeal shall be final and binding on the Parties concerned.

Over-riding effect Section 218(5)

For the removal of doubts, it is hereby declared that the provisions of this section shall have without prejudice to the provisions of any other law for the time being in force.

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

Disha Beauty Products Limited (the company), incorporated five years ago with its registered office in Mumbai, India, began manufacturing cosmetic products under the brand name 'Kasturi.' The product range includes nail enamel, foundation cream, compact, mascara, eye pencil, etc. Due to its organic composition and maintaining the consistency in the quality the company's products quickly gained popularity, capturing a significant share of the Indian market. Under the leadership of Disha, the Managing Director, the company experienced growth in turnover and profitability, earning a strong reputation in both consumer and industry circles.

Additional Directors :

To facilitate future expansion, the company intended to appoint Joe and Jogesh as additional directors due to their extensive experience and business acumen. Disha had previously proposed Joe for a regular director position at the Annual General Meeting (AGM), but the motion failed, and Joe was not appointed. Jogesh is proposed to be appointed as an additional director for the first time. The Board of Directors, exercising powers conferred by the Articles of Association, appointed both Joe and Jogesh as additional directors in the board meeting held on 31st March 2024.

The AGM, originally due on 30th September 2024, could not be held on the due date. The company obtained a three-month extension from the Registrar of Companies and held the AGM on 31st December 2024.

Loan/Security to other Company :

The company provided security for a loan of ₹ 25 lakh taken by Rupa Chemicals Limited (RCL), in which Harshal and Sujit, directors of the company, hold 10% and 15% equity shares, respectively, with voting rights. The Secretarial Auditor observed that this transaction might be invalid. The company argues that it has complied with all legal formalities and asserts that none of the directors is interested in RCL as per the law.

Board Meeting :

The Board of Directors planned to issue equity shares to the public and held a meeting on 15th May 2024 to approve the prospectus. Out of the 12 directors, three attended the meeting physically, and one attended via audio-visual means. One other director had informed the company secretary on 1st April 2024, of his intention to attend the next board meeting electronically. The company advised him to attend in person, stating that electronic arrangements could not be made as the intimation of his intention to attend the meeting electronically was not given at the beginning of the calendar year 2024.

Appointment of relative of the Managing Director :

Juley, a company secretary and sister of Disha, the Managing Director, is proposed to be appointed as a 'Consultant' with a monthly remuneration of Rs. 2.75 lakh. Disha seeks clarification on the applicable legal provisions concerning this appointment.

Based on the above information and referring to the provisions of the Companies Act, 2013 you are requested to address the following :

- (a) Examine the validity of the appointment of Joe and Jogesh as additional directors of Disha Beauty Products Limited. Also, discuss the tenure of their appointment.

(5 marks)

- (b) The Secretarial Auditor has observed that the transaction involving Disha Beauty Products Limited providing security for a Rs. 25 lakh loan taken by Rupa Chemicals Limited is invalid. Analyse the validity of this transaction.

(5 marks)

- (c) Determine, whether the quorum was present at the Board meeting held on 15th May, 2024 for the approval of the Prospectus. Additionally, assess whether the company's advice to a director to attend the meeting in person instead of electronically – due to the notice of electronic participation not being given at the beginning of the calendar year – was valid.

(5 marks)

- (d) Determine, discussing the relevant provisions of the Companies Act, 2013, whether the appointment of Juley as a consultant for Disha Beauty Products Limited constitutes a related party transaction. Additionally, explain the necessary approval and disclosure compliance requirements for such transactions.

(5 marks)

Answer 5(a)

Validity of appointment and tenure of Additional Director:

Provision:

Section 161(1) of the Companies Act, 2013, provides that the articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

Analysis and Answer:

In case of default in holding annual general meeting, the additional director shall vacate his office on the last day on which the annual general meeting ought to be held. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director. Section 161(1) of the Companies Act, 2013 applies to all companies, whether public or private.

Joe was previously proposed to be appointed as a regular director in the Annual General Meeting (AGM) by completing the required formalities. However, the motion to appoint him a director failed and he could not, therefore, be appointed as proposed. Hence, the Board of Directors can't appoint him as an additional director. His appointment is invalid ab initio and the question of tenure in his case does not arise as he has not occupied his office of director at any point of time.

Jogesh is validly appointed as an additional director by the Board in term of the power conferred by the Articles. Since, the company has obtained from the Registrar an extension of time for holding the AGM till 31st December, 2024 the company is not in default in not-holding the AGM on 30th September, 2024. The applicable due date of AGM in this case is 31st December, 2024 on which date the company has held the AGM. Hence, Joseph shall vacate his office at the commencement of the AGM held on 31st December, 2024, if not appointed as a regular director at that meeting.

Answer 5(b)

According to section 185(2) of Companies Act 2013, a company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that –

- (a) A special resolution is passed by the company in general meeting:

Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

- (b) the loans are utilised by the borrowing company for its principal business activities.

Explanation-For the purposes of this sub-section, the expression “any person in whom any of the director of the company is interested” means –

- (a) any private company of which any such director is a director or member;
- (b) anybody corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
- (c) anybody corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

Analysis and Answer

Section 185(2) of the Companies Act, 2013 is applicable in the situation where the lending corporate is giving loan or providing guarantee or security in connection with the loan taken by the other corporate in which the director/s of lending are interested. Harshal and Sujit, directors of lending company- Disha Beauty Products Limited are together holding 25% voting powers in Rupa Chemicals Limited, Hence, in term of clause (b) of explanation to Section 185(2) Rupa Chemicals Limited is a body corporate in which the directors of the lending company are interested. The transaction of providing security shall be valid, if the following two conditions are fulfilled:

1. Disha Beauty Products Limited should pass a special resolution in the general meeting, and
2. A declaration should be given by Rupa Chemicals Limited that the loans are utilised for its principal business.

The transaction would be invalid if Disha Beauty Products Limited had passed a resolution in the general meeting but not a special resolution. The requirement of declaration has been satisfied.

In view of above, as Disha Beauty Products Limited (the lending company) failed to pass a special resolution in the general meeting the security has been provided in violation of section 185(2) of the Companies Act, 2013 and hence the observation of the Secretarial Auditor that the transaction is invalid is correct.

Answer 5(c)

Quorum for the Board meeting: As per Section 174(1) of the Companies Act, 2013, one third of total strength or two directors, whichever is higher, shall be the quorum for a Board meeting.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio-visual means shall also be counted, unless he is to be excluded for any item of business under any provisions of the Act or the rules.

Para 1.2.3 of SS-1 provides that any Director may participate through Electronic Mode in a Meeting unless the Act or any other law specifically prohibits such participation through Electronic Mode in respect of any item of business

The MCA vide Notification dated June 15, 2021 has omitted Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 which was related to the matters not to be dealt with in a meeting through video conferencing or other audio-visual means. Approval of prospectus was such an item which was included in the list of restricted items prior to this notification. Accordingly, with the said amendment, now the previously restricted matters including *inter alia* the item of approval of the prospectus can be considered in a Board Meeting held through video conferencing or other audio-visual means.

Total directors on the Board of the company are 12 and one third of them i.e. 4, being higher than 2, shall constitute the quorum. 3 directors participated in the meeting through physical presence and 1 director through electronic mode who will also be counted for the quorum making the presence of total 4 directors. Hence, the quorum in the Board meeting was present.

Validity of the advice of the company:

Para 1.3.4 of SS-1 provides that the Notice shall inform the Directors about the option available to them to participate through Electronic Mode and provide them all the necessary information.

If a Director intends to participate through Electronic Mode, he shall give sufficient prior intimation to the Chairman or the Company Secretary to enable them to make suitable arrangements in this behalf.

The Director may intimate his intention of participation through Electronic Mode at the beginning of the Calendar Year also, which shall be valid for such Calendar Year. Though such declaration shall not debar him from participation in the meeting in person, in such case a sufficient intimation of attending in person is required to be sent to the company.

In view of above it is to be noted that a director is required to give sufficient prior intimation of his intention to participate in the Board meeting not necessarily at the beginning of the calendar year.

In the case scenario, the director concerned has given sufficient prior intimation of his intention to participate in the Board meeting through electronic means. Hence, he will be entitled to attend the meeting through electronic means or in person as per his discretion. Giving such a notice at the beginning of the year is an enabling provision and not the mandatory requirement.

Hence, the advice of the company to the director concerned to attend the meeting in person and not through electronic mode for the reason that he had not given the intimation at the beginning of the calendar year is not valid.

Answer 5(d)

The appointment of Juley as a consultant of Disha Beauty Products Limited attracting the relevant provisions regarding related party transaction are identified as below:

Related Party

Under Section 2(76) of Companies Act 2013, inclusive definition of "related party", with reference to a company, has been given which include *inter alia* (i) a director or his relative;

Relative: As per Section 2(77) Companies Act, 2013 the sister is deemed to be a relative of another being related to another person.

Nature of Related Party Transactions:

Section 188 of the Companies Act, 2013 provides that except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, no company shall enter into any contract or arrangement with a related party with respect to :

- (vi) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company:

Office or Place of Profit

As per Explanation to Sub-Section (i) of Section 188 the expression "office or place of profit" means any office or place where such office or place is held by:

- (a) a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
- (ii) an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise.

Prior Approval of the Company by a Resolution

First Proviso to the Section 188 (1) of the Act provides that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed, shall be entered into except with the prior approval of the company by a resolution.

Rule 15 of the Companies (Meetings of board and its Powers) Rules, 2014 provides that except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into, -

- (a) as contracts or arrangements with respect to clauses (a) to I of sub-section (1) of section 188, with criteria as mentioned below-

Clause V: Appointment to any office or place of profit in the company, its subsidiary company or associate company- Monthly remuneration exceeding Rs. 2.50 lakh.

Disclosure in Board's Report

Section 188(2) of the Companies Act, 2013 provides that every related party contracts or arrangement shall have to be disclosed in the Board's report and referred to shareholders along with the justification for entering into such type of transactions in the prescribed form i.e., Form no. AOC-2 [pursuant to Section 134(3)(h) and Section 188(2)]. Form AOC-2 shall be signed by the persons who have signed the Board's Report.

Analysis and Answer

Nature of transaction and approval compliance: Appointment of Juley who is a sister (i.e. relative) of Disha, a managing director of a company is a related party transaction by way of holding office or place of profit. Since the monthly remuneration involved in this related party transaction is exceeding Rs. 2.50 lakh (which is Rs. 2.75 lakh in this case) the prior approval of the Board of directors and the shareholders by passing an ordinary resolution in the general meeting of the company is required.

Disclosure compliance:

The related party transaction of appointing Juley shall be disclosed by the company in the Board's report and referred to shareholders along with the justification for entering into such type of transactions in the prescribed form i.e., Form no. AOC-2.

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

Question 6

- (a) Draft a specimen notice for the Annual General Meeting (AGM) in accordance with the provisions of the Companies Act, 2013, ensuring that there is no special business to be transacted.
(5 marks)
- (b) Explain the requirement for constitution, composition, and functions of the Stakeholders Relationship Committee as per the provisions of the Companies Act, 2013 and SEBI (LODR) Regulations, 2015.
(5 marks)
- (c) XYZ Ltd. intends to allot equity shares on a private placement basis. These equity shares will rank pari-passu with the existing equity shares in all respects. You are requested to provide a specimen draft of the board resolution approving the private placement of shares, in compliance with the provisions of the Companies Act, 2013.
(5 marks)
- (d) You are requested to draft sample minutes of a board meeting in which the transaction of a share transfer, along with the usual items of business, was conducted, in accordance with the provisions of the Companies Act, 2013
(5 marks)

Answer 6(a)

Specimen Notice of Annual General Meeting

Name of the Company

Registered Address

CIN..... Email..... Telephone..... Website.....

NOTICE OF ... (Meeting Number) ANNUAL GENERAL MEETING

NOTICE is hereby given that the ... (Meeting Number) Annual General Meeting of the Members of ... (Name of the Company) will be held on (day), the(date), 20..... at.....a.m/p.m at.....(address) to transact the following business:

Ordinary Business:

1. To receive, consider and adopt the standalone and consolidated Financial Statements of the Company for the financial year ended 31st March, and the Reports of the Board of Directors and the Auditors.
2. To declare dividend for the financial year ended 31st March,
3. To appoint a director in place of Mr..... (DIN.....), who retires by rotation and being eligible, offers himself for reappointment.

4. To appoint Statutory Auditors and to determine their remuneration. For this purpose, to consider and if deemed fit, to pass, with or without modification, the following Resolution as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 139 and other applicable provisions if any, of the Companies Act, 2013 and the Rules framed thereunder, as amended from time to time, M/s., Chartered Accountants, (Firm Registration No.....) be and are hereby appointed as Auditors of the Company to hold office from the conclusion of this Annual General Meeting till the conclusion of the Annual General Meeting of the Company, and the Board of Directors be and are hereby authorised to fix their remuneration.”

“RESOLVED FURTHER THAT the Board of Directors of the Company (including a Committee thereof), be and is hereby authorised to do all such acts, deeds, matters and things as may be considered necessary, desirable or expedient to give effect to this Resolution.”

Order of the Board of Directors

For.....

..... (Signature)

Place: (Name)

Date 20..... Company Secretary

Notes:

1. A Member entitled to attend and vote at the Meeting is entitled to appoint a Proxy to attend and, on a poll, to vote instead of himself and the Proxy need not be a Member of the Company.
2. Proxies, in order to be effective, must be received in the enclosed Proxy Form at the Registered Office of the Company not less than forty-eight hours before the time fixed for the Meeting.
3. The Register of Members and the Share Transfer Books of the Company will remain closed from.....to..... (both days inclusive).
4. Electronic copy of the Annual Report is being sent to all the Members whose email IDs are registered with the Company/Depository Participant(s) for communication purposes unless any Member has requested for a hard copy of the same. For Members who have not registered their email address, physical copy of the Annual Report is being sent in the permitted mode. In case you wish to get a physical copy of the Annual Report, you may send your request to (email) mentioning your folio/DP ID and Client ID. Annual Reports is also available in the Financials section on the website of the Company at
5. Voting through electronic means

In compliance with provisions of Section 108 of the Companies Act, 2013 and Rule 20 of the Companies (Management and Administration) Rules, 2014, the Company is pleased to provide members the facility of exercising their right to vote electronically on the items mentioned in this Notice. The Company has appointed Mr. as scrutinizer for conducting the e-voting process in a fair and transparent manner.

The voting period begins on, 202.... at 10:01 hrs. and will end on 202.... at 17:00 hrs. During this period shareholders of the Company, holding shares either in physical form or in dematerialised form, as on the cut-off date of.....202.....may cast their vote electronically. The e-voting module shall be disabled for voting thereafter.

The Company has signed an agreement with (agency) for facilitating e-voting to enable the Shareholders to cast their vote electronically. The instructions for shareholders voting electronically are given at page no. of the Annual Report.

6. The Results shall be declared on or after the Annual General Meeting of the Company and shall be deemed to be passed on the date of Annual General Meeting. The results along with the Scrutinizer's Report shall be placed on the website of the Company within 2 days of passing of the resolutions at the Annual General Meeting of the Company and shall be communicated to (Stock Exchange).

Answer 6(b)

Stakeholders Relationship Committee

Constitution of Stakeholders Relationship Committee (SRC)

Section 178(5) of the Companies Act, 2013 provides for constitution of the stakeholder's relationship committee. The Board of Directors of a company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholders Relationship Committee.

As per regulation 20 of the SEBI (LODR) Regulations, 2015, the listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders.

Composition of Stakeholders Relationship Committee

Category	Provision of Section 178(5) of the Companies Act, 2013	Provision of Regulation 20 of the SEBI (LODR) Regulations, 2015
Number of directors	SRC shall consist of a chairperson and such other members as may be decided by the Board	(i) Minimum 3 directors as members with at least one being an independent director; (ii) In case of a listed entity having outstanding SR equity shares, at least two thirds of the SRC shall comprise of independent directors
Chairperson	Chairperson shall be a non-executive director	Chairperson shall be a non-executive director

Functions of SRC:

Section 178(6) of the Companies Act, 2013, the main function of the committee is to consider and resolve the grievances of security holders of the company.

On similar terms Regulation 20 read with Part D of the Schedule II of the SEBI (LODR) Regulations, 2015 provides the role of the committee which inter-alia include the following:

- Resolving the grievances of the security holders of the listed entity including complaints related to transfer/ transmission of shares, non-receipt of annual report, nonreceipt of declared dividends, issue of new/ duplicate certificates, general meetings etc.
- Review of measures taken for effective exercise of voting rights by shareholders.
- Review of adherence to the service standards adopted by the listed entity in respect of various services being rendered by the Registrar & Share Transfer Agent.

- Review of the various measures and initiatives taken by the listed entity for reducing the quantum of unclaimed dividends and ensuring timely receipt of dividend warrants/annual reports/statutory notices by the shareholders of the company.

Answer 6(c)

Specimen of the Board Resolution Approving Private Placement of Shares

"RESOLVED THAT pursuant to the provisions of Section 42, 62(1)(c) and other provisions, applicable, if any, of the Companies Act, 2013 read with the Companies (Prospectus and Allotment of Securities) Rules, 2014 and the Companies (Share Capital and Debentures) Rules, 2014, the consent of the Board of Directors of the Company be and is hereby accorded for an allotment of _____ (_____) Equity Shares of Rs. (Rupees _____) each of the Company at par, distinctively numbered from _____ to _____ (both inclusive), to _____ from whom the Company has received share application money aggregating to Rs. _____ / (Rupees _____).

RESOLVED FURTHER THAT the said Equity Shares shall rank pari-passu with the existing Equity Shares in all respects.

RESOLVED FURTHER THAT any of the Directors of the Company be and is hereby authorized to file Return on Allotment of aforesaid shares in E-Form No. PAS-3 or such other applicable form from time to time with the Registrar of Companies by affixing Digital Signature thereto.

RESOLVED FURTHER THAT the Share Certificate for the shares allotted as aforesaid be issued to abovementioned allottee under the signatures of any two Directors and Mr. _____ as Authorised signatory of the Company and the Common Seal (if any) of the company be affixed on the share certificate as per the Articles of Association of the Company.

RESOLVED FURTHER THAT necessary entries in respect of issue and allotment of aforesaid shares be made in the Register of Members.

RESOLVED FURTHER THAT any of the Director of the Company be and is hereby authorized to intimate the above allotment to Depositories and/or R&T agents by submitting necessary documents and to do all such acts, deeds, matters and things which may deem necessary, pertinent, desirable, incidental in this regard."

Answer 6(d)

Sample Minutes of the Board Meeting

Minutes of the..... Meeting of the Board of Directors of (Company Name) held on(Day).....(Date, Month and Year), at..... (Venue) from (Time of Commencement)

PRESENT:

A.BChairman

C.D..... Directors

E.F..... Directors

I.JDirectors

K.L..... Managing Director

IN ATTENDANCE

X..... Secretary

INVITEES

YChief Financial Officer

1. Chairman for the Meeting

Mr/Ms... was elected as the Chairman for the Meeting.

2. Leave of absence

Leave of absence from attending the Meeting was granted to Mr. M.N. and Mr. O.P. who expressed their inability to attend the Meeting owing to their preoccupation.

3. Quorum

The business before the Meeting was taken up after having established that the requisite quorum was present.

4. Minutes of the previous Board Meeting

The Minutes of the Meeting of the Board of Directors of the company held on.....as circulated, were noted by the Board and signed by the Chairman.

5. Minutes of the Committee Meetings

The Minutes of the Meeting of the Committee held on, as circulated, were noted by the Board.

6. Resolution passed by circulation since the last Meeting.

The following Resolution was passed by circulation on (Date of passing of the Resolution) in terms of the provisions of Section 175 of the Companies Act, 2013.

“RESOLVED THAT
Mr....., Director dissented on the Resolution.

7. Action Taken Report

The following action taken was noted by the Board:

Item No. Item Action Taken

8. Register of Contracts

The Register of Contracts in which Directors are interested under Section 189 of the Companies Act, 2013 and the Rules thereunder was signed by all the Directors present.

9. Notices of Disclosure of Interest of Directors

- (a) The following Notices received from the Directors of the company, notifying their interest in other bodies corporate pursuant to the provisions of Section 184 of the Companies Act, 2013, were read and recorded:

Name of the Director Nature of Interest Date of Notice

- (b) A Notice dated received from Mr. LJ. pursuant to the provisions of Section 170 of the Companies Act, 2013, disclosing his shareholding and the shareholding of Mrs. L.J. in the company was read and recorded.

10. Share Transfers

Reference was made to Mr. 's note dated on the subject, as circulated. The Share Transfer Register. of the company was also placed before the Meeting. The Board, after discussion, passed the following Resolution unanimously:

“RESOLVED THAT Share Transfers Nos to (Both inclusive) consisting of Equity shares of

the company, be approved and the names of the transferees be entered in the Register of Members.

RESOLVED FURTHER THAT Mr. X, Secretary, be and is hereby authorised to take necessary action with regard to the aforesaid transfer of shares approved by the Board."

11. Conclusion of the Meeting

There being no other business, the Meeting concluded at (Time) with a vote of thanks to the Chair.

Date.....

Place.....

OR (Alternate to Q. No. 6)

Question 6A

- (i) Some members of a company with share capital intend to request the Board of Directors to convene an Extraordinary General Meeting (EGM) to transact the business of buying back shares. If the Board fails to convene the EGM, the members plan to call the meeting themselves. You are requested to explain the provisions of the Companies Act, 2013, regarding the calling and holding of an EGM by the Board upon requisition by members, and the timeline for calling an EGM by the requisitionists, if the Board fails to do so. Additionally, examine the feasibility of conducting such an EGM for the buy-back of shares and outline the consequences, if the quorum is not present at a meeting called by the members.

(5 marks)

- (ii) You are requested to explain the provisions of the Companies Act, 2013, and the SEBI (LODR) Regulations, 2015, regarding the vigil mechanism/whistleblower policy, addressing the following points :

- (a) Which companies are required to establish a vigil mechanism ?
- (b) What safeguards against victimization must be provided, and who are they meant to protect ?
- (c) Who is responsible for overseeing the vigil mechanism in companies with and without an audit committee ?
- (d) What are the disclosure requirements related to the vigil mechanism ?

(5 marks)

- (iii) Explain the provisions of Rule 7 of the CSR Rules, 2014, under the Companies Act, 2013, concerning :

- (i) the CSR expenditure,
- (ii) the ceiling on administrative overheads,
- (iii) the treatment of surplus arising from CSR activities,
- (iv) the handling of excess CSR spending, and
- (v) the acquisition of capital assets.

(5 marks)

- (iv) Describe the disqualifications for a person to be appointed or to continue as a Managing

Director, Whole-time Director, or Manager under the provisions of the Companies Act, 2013, read with the relevant conditions stipulated in Part I of Schedule V thereto.

(5 marks)

- (iv) Describe the disqualifications for a person to be appointed or to continue as a Managing Director, Whole-time Director, or Manager under the provisions of the Companies Act, 2013, read with the relevant conditions stipulated in Part I of Schedule V thereto.

(5 marks)

Answer 6A(i)

(a) Calling and holding of an extra-ordinary general meeting (EGM) by the Board on requisition of members [Section 100(2) of the Companies Act, 2013]

The Board shall call an extraordinary general meeting on receipt of the requisition from the number of members who hold, on the date of the receipt of the requisition, not less than one tenth of such of the paid-up share capital of the company as on that date carries the right of voting.

Matters set out for consideration in requisition: The requisition made as above, shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. [Section 100(3) of the Companies Act 2013]

Time period for calling the meeting: The Board is required to proceed to call a meeting within 21 days from the date of receipt of a valid requisition, which should be held within 45 days of such deposit of the requisition with the company.

(b) Timeline for convening the EGM by the requisitionists [Section 100(4) of the Companies Act 2013]

(1) If the Board does not within 21 days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than 45 days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves. However, in such case, the meeting should be held within a period of 3 months from the date of the requisition.

(c) Feasibility of such a meeting for the proposed business: Section 100(4) provides that such requisition shall not pertain to any item of business that is required to be transacted mandatorily through postal ballot. As per Rule 22 of the Companies (Management and Administration) Rules, 2014 that the items of business of buy-back of shares by the company shall be transacted through postal ballot. Hence, convening an EGM on requisition by the members for buy-back of shares shall not be feasible.

(d) Consequence, if quorum is not present at such a meeting: In case, the quorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists, the meeting shall stand cancelled. [Section 103(2)(b) of the Companies Act, 2013]

It may be noted that convening an EGM on requisition by the members for buy-back of shares shall be feasible, if e-voting is mandatory for the company as per Section 108 and Section 110(1).

Answer 6A(ii)

(a) Establishment of vigil mechanism:

Section 177(9) of the Companies Act 2013 read with Rule 7(1) of the Companies (Meetings of Board and its Powers) Rules, 2014 provides for establishment of Vigil Mechanism for their directors and employees to report their genuine concerns or grievances as under:

- (1) Every listed company;
- (2) the companies which accept deposits from the public;
- (3) the companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

Regulation 4(2)(d)(iv) of SEBI (LODR) Regulations, 2015 provides that the listed company shall devise an effective vigil mechanism/whistle blower policy enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

(2 Marks)

(b) Safeguards: Section 177(9) of the Companies Act, 2013 read with Rule 7(4) of the Companies (Meetings of Board and its Powers) Rules, 2014- The vigil mechanism set up as above, shall provide for adequate safeguards against victimisation of employees and Directors who use such mechanism and make provision for direct access to the Chairperson of the Audit Committee or the Director nominated to play the role of Audit Committee in appropriate or exceptional cases.

In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

Further, Regulation 22 of the SEBI (LODR) Regulations, 2015 provides that the listed company shall formulate a vigil mechanism/ whistle blower policy for directors and employees to report genuine concerns and such mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

It may therefore be noted that while section 177(9) of the Companies Act, 2013 mandates to establish a vigil mechanism for directors and employees to report genuine concerns, in case of a listed company, such mechanism is available to all stakeholders.

(c) To oversee the vigil mechanism: Rule 7(2) and (3) of the Companies (Meetings of Board and its Powers) Rules, 2014-The companies which are required to constitute an Audit Committee shall oversee the vigil mechanism through the Committee and if any of the members of the Committee have a conflicted of interest in a given case, they should recuse themselves and the others on the Committee would deal with the matter on hand.

In case of other companies (not required to constitute Audit Committee), the Board of Directors shall nominate a Director to play the role of Audit Committee for the purpose of vigil mechanism to whom other Directors and employees may report their concerns.

Regulation 18(3) of SEBI (LODR) Regulations, 2015 prescribes the role of committee as specified in PART C of Schedule II to review the functioning of whistle blower mechanism.

(d) Disclosure requirement: As per proviso to section 177(10) of the Companies Act, 2013-The details of establishment of the Vigil Mechanism is required to be disclosed by the company on its website, if any, and in the Board's report.

Answer 6A(iii)

(i) CSR Expenditure

The Board of every eligible company u/s 135 (5) of the Companies Act, 2013 shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the

company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy, this amount will be CSR expenditure.

The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

(ii) Administrative Overheads

As per rule 7(1) of the Companies (Corporate Social Responsibility) Rules, 2014-The board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year.

(iii) Surplus arising out of the CSR Activities

As per rule 7(2) of the Companies (Corporate Social Responsibility) Rules, 2014, any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(iv) Excess CSR spends may be set off

As per rule 7(3) of the Companies (Corporate Social Responsibility) Rules, 2014-Where a Company spent on CSR in excess of the requirement (i.e. 2%), such excess amount may be set-off against the requirement of the CSR Spending u/s 135(5) upto the immediate succeeding 3 financial years subject to the conditions that:

- The excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule;
- The Board of the company shall pass a resolution to that effect.

(v) Acquisition of Capital Assets

As per rule 7(4) of the Companies (Corporate Social Responsibility) Rules, 2014-The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –

- Section 8 Company, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number;
- beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities;
- a public authority.

Answer 6A(iv)

Disqualification of Managing Director, Whole-Time Director or Manager - Section 196 (3) of Companies Act 2013.

No company shall appoint or continue the employment of any person as managing director, whole-time director, or manager who –

- (a) is below the age of twenty-one years or has attained the age of seventy years.

However, the appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

- (b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
- (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- (d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

(Conditions to be fulfilled for the Appointment of Managing or Whole-Time Director or a Manager without the approval of the Central Government as Per Schedule V of the Companies Act, 2013 (Part I-Schedule V of the Companies Act, 2013))

No person shall be eligible for appointment as a managing or whole-time director or a manager of a company unless he satisfies the following conditions, namely: -

- (a) The person had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the Acts as specified under Schedule V of the Companies Act, 2013.
- (b) The person had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained mentioned above, as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

- (c) The person is resident of India.
- (d) He has completed the age of 21 years and not attained the age of 70 years.

Other disqualifications: Further, the disqualification for appointment of director under Section 164 shall also be applicable to a person being appointed as a managing director or a whole-time director because they are essentially the director of the company.

SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

GROUP 1 PAPER 3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

XYZ Appliances Pvt. Ltd. is carrying on the business of manufacturing and trading of kitchen appliances at Sadar Bazar, Delhi. X, Y and Z are the three directors of the company who also hold shares of the company in the ratio of 35 : 35 : 30. The business of the company is flourishing and the company has opened its branches in the cities of Noida, Gurgaon and Faridabad.

In order to protect their personal interests, X, Y and Z propose that any amendment in the Articles of Association of the company should be made only with the approval of all the shareholders of the company. They approach M, a practicing company secretary to seek his advice on the alteration of Articles of Association of the company only with the approval of all the shareholders. M advises them suitably.

XYZ Appliances Pvt. Ltd. receives an export order from a company based at France. In order to export the goods, the company requires Importer Exporter Code (IEC). The directors of the company again approach M who explains them the procedure to apply for IEC on the DGFT portal. After getting the IEC in the name of the company, the export order is successfully completed by the company.

A company based at Japan approaches XYZ Appliances Pvt. Ltd. to form an alliance for sharing of latest technical advancements in the industry for mutual benefit of both the companies. The directors of XYZ Appliances Pvt. Ltd. discuss on the objectives of the foreign collaboration. Thereafter, a technical collaboration is made between both the companies.

The scale of operations of XYZ Appliances Pvt. Ltd. increases multifold and the directors intend to convert it into a public limited company. With the professional assistance of M, the company is converted into a public limited company. M also advises on the post conversion requirements to be arranged by XYZ Appliances Ltd.

Y goes on a business trip to Singapore and meets his friend John, who is a director in a company based at Singapore in the name of JSS Realtech Pte. Ltd. JSS Realtech Pte. Ltd. is engaged in the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing. John advises Y that the company, XYZ Appliances Ltd. may invest in JSS Realtech Pte. Ltd. to earn more profits. On return, Y informs X and Z that XYZ Appliances Ltd. may invest in JSS Realtech Pte. Ltd., engaged in real estate activity at Singapore. However, Z is of the view that the Overseas Direct Investment (ODI) in a foreign entity engaged in real estate activity is prohibited.

In view of the above, answer the following :

- (a) What is the advice of M to X, Y and Z on their proposal regarding alteration of Articles of Association of XYZ Appliances Pvt. Ltd. only with the approval of all the shareholders ?

(3 marks)

(b) What is the process to apply for Importer Exporter Code (IEC) on the DGFT portal as advised by M to the directors of XYZ Appliances Pvt. Ltd. ?

(3 marks)

(c) What are the objectives of the foreign collaboration as discussed by the directors of XYZ Appliances Pvt. Ltd. ?

(3 marks)

(d) What are the post conversion requirements to be arranged by XYZ Appliances Ltd. after conversion from a private limited company to a public limited company ?

(3 marks)

(e) Is the view of Z regarding the Overseas Direct Investment (ODI) by XYZ Appliances Ltd. in JSS Realtech Pte. Ltd. correct ?

(3 marks)

Answer 1(a)

M advised X, Y and Z regarding entrenchment provisions of the Articles of Association under the Companies Act, 2013 on their proposal regarding alteration of Articles of Association of XYZ Appliances Pvt. Ltd. only with the approval of all the shareholders. These provisions are given hereunder:

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with. [Section 5(3) of the Companies Act, 2013]

The provisions for entrenchment referred to in section 5(3) shall be made either

- (a) on formation of a company, or
- (b) by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. [Section 5(4) of the Companies Act, 2013]

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar in Spice+ form at the time of the incorporation of the Company or E-form MGT-14 in case of existing Companies.

The articles must be printed, divided into paragraphs, numbered consecutively, stamped adequately, signed by each subscriber to the memorandum and duly witnessed and filed along with the memorandum. The articles must not contain anything illegal or ultra vires the memorandum, nor should it be contrary to the provisions of the Companies Act 2013.

Answer 1(b)

M advised the following process to apply for Importer Exporter Code (IEC) on the DGFT portal to the directors of XYZ Appliances Pvt. Ltd:

Process to apply for Importer Exporter Code (IEC) on the DGFT portal (<https://dgft.gov.in>):

- a) Valid Login Credentials to DGFT Portal (After Registering on DGFT Portal)
- b) The user should have an active Firm Permanent Account Number (PAN) and its details like Name as per PAN, Date of Birth or Incorporation.

These details will be validated with the Income Tax Department site.

- c) Scanned Documents for Upload in the System (PDF Only and Max file size of 5 MB).
 - a. Proof of establishment/incorporation/registration.
 - i. Partnership
 - ii. Registered Society
 - iii. Trust
 - iv. HUF
 - v. Others
 - b. Proof of Address can be any one of the following documents:
 - i. Sale Deed, rent agreement, lease deed, electricity bill, telephone landline bill, mobile, postpaid bill, MoU, Partnership deed;
 - ii. Other acceptable documents (for proprietorship only): Aadhar card, passport, voter ID;
 - iii. In case the address proof is not in the name of the applicant firm, a no objection certificate (NOC) by the firm premises owner in favor of the firm along with the address proof is to be submitted as a single PDF document.
 - c. Proof of Firm's Bank Account
 - i. Cancelled Cheque
 - ii. Bank Certificate
- d) The user should have an active DSC or Aadhaar of the firm's member for submission.
- e) Active Firm's Bank account for entering its details in the Application and to make online payment of the application fee.

Answer 1(c)

The following objectives of the foreign collaboration were discussed by the directors of XYZ Appliances Pvt. Ltd:

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

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

Answer 1(d)

The following are the post conversion requirements to be arranged by XYZ Appliances Ltd. after conversion from a private limited company to a public limited company:

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

- A fresh PAN card has to be applied to reflect the conversion done.
- The bank account details of the company need to be updated.
- Proper intimation needs to be given to tax authorities and other regulatory authorities about the conversion.
- Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be. The company's name and its public status should be clearly displayed in compliance with Section 15(1) of the Companies Act, 2013.
- A fresh rubber stamp is required to be arranged with the new name of the Company.
- Paint or affix or print, new name along with the former name so changed on the outside of every office. The company's new status needs to be visibly affixed at all locations and on all relevant documents, as mandated by Section 12 of the Companies Act, 2013. This includes legal documents, company seals, business letters, and promotional materials.
- Inform about the conversion from private limited to public limited to various Government authorities like GST department, Regional Provident Fund department, Income tax department, etc.
- Intimate all the banks where the current accounts of the company are opened about the conversion with regard to change in the name and status of the Account holder.
- Ensure that the company has a minimum of 7 members (if it had fewer members earlier).
- Ensure compliance with the minimum number of directors required for a public company, which is 3 directors
- Ensure the dematerialization of shares

Answer 1(e)

As per Rule 19(1) of the Foreign Exchange Management (Overseas Investment) Rules, 2022, no person resident in India shall make ODI in a foreign entity engaged in—

- real estate activity;
- gambling in any form; and
- dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

The expression “real estate activity” means buying and selling of real estate or trading in Transferable Development Rights but does not include the development of townships, construction of residential or commercial premises, roads or bridges for selling or leasing.

Accordingly, the view of Z regarding the Overseas Direct Investment (ODI) by XYZ Appliances Ltd. in JSS Realtech Pte. Ltd. is not correct as JSS Realtech Pte. Ltd. is not engaged in real estate activity as per the aforesaid provisions.

Question 2

- (a) ABC Group is a combination of dairy farmers operating in two States, Maharashtra and Gujarat. They have been operating successfully under separate state cooperative societies for several years. However, due to growing demand for their products and the need to streamline operations across state boundaries, the group is considering the formation of a Multi-State Cooperative Society (MSCS) under the Multi-State Cooperative Societies Act, 2002.

What are the legal and procedural steps involved in registering a Multi-State Cooperative Society under the Multi-State Cooperative Societies Act, 2002 ?

(3 marks)

- (b) Resilience Asset Reconstruction Company (RARC) emerged in response to the growing crisis of non-performing assets (NPAs) in the Indian banking sector by offering innovative solutions for asset recovery and management.

How does RARC contribute to improving the financial health of banks ?

(3 marks)

- (c) MNC LLP, a consulting firm, faced serious allegations of financial misconduct involving a senior partner, Kumar, who was accused of falsifying financial reports. Employees felt unsafe reporting these concerns internally until Priya, a junior consultant, decided to blow the whistle. She submitted a formal complaint along with evidence to the Whistleblower Committee, citing Section 31(1) of the Limited Liability Partnership Act, which protects whistleblowers from retaliation.

What are the protections provided to Priya for reporting misconduct under Section 31(1) of the LLP Act, 2008 ?

(3 marks)

- (d) GreenTech Innovations is a micro enterprise founded in 2020 by Raj, an engineering graduate with a passion for renewable energy. Based in a small town, the company specializes in manufacturing solar-powered lamps aimed at rural areas that lack reliable access to electricity. Raj's vision is to provide affordable, sustainable lighting solutions that improve the quality of life in these communities.

Explain the role of Micro, Small, and Medium Enterprises (MSMEs) like GreenTech Innovations in economic development and community empowerment.

(3 marks)

- (e) Global Tech Solutions, a prominent software development company headquartered in the United States, has successfully established its initial branch office in Bengaluru. Following the success of this office, the company has identified the need to establish an additional branch office in Hyderabad to further expand its market presence and enhance service delivery.

What are the critical steps and activities involved in establishing an additional branch office in India for foreign entities like Global Tech Solutions ?

(3 marks)

Answer 2(a)

The following are legal and procedural steps involved in registering a Multi-State Cooperative Society under the Multi-State Cooperative Societies Act, 2002.

Registration Procedure:

1. For the purposes of registration of a multi-state cooperative society under this Act, an application shall be made to the Central Registrar in such form and with such particulars as may be prescribed.
2. The application shall be signed
 - a. in the case of a multi-state cooperative society of which all the members are individuals - by at least fifty persons from each of the state concerned;

- b. in the case of a multi-state cooperative society of which the members are cooperative societies – by duly authorised representatives on behalf of at least five such societies as are not registered in the same state; and
 - c. in the case of a multi-state cooperative society of which another multi-state cooperative society and other cooperative societies are members, by duly authorized representatives of each of such societies: Provided that not less than two of the cooperative societies referred to in this clause, shall be such as are not registered in the same state;
 - d. in the case of a multi-state cooperative society of which the members are cooperative societies or multi-state cooperative societies and individuals, by at least
 - i. fifty persons, being individuals, from each of the two states or more; and
 - ii. one cooperative society each from two states or more or one multi-state cooperative society.
3. The application shall be accompanied by four copies of the proposed bye-laws of the multi-state cooperative society and the persons by whom or on whose behalf such application is made shall furnish such information in regard to the society as the Central Registrar may require.
4. If the Central Registrar is satisfied
 - a. that the application complies with the provisions of this Act and the rules;
 - b. that the proposed multi-state cooperative society satisfies the basic criterion that its objects are to serve the interests of members in more than one state;
 - c. that its bye-laws provide for social and economic betterment of its members through self-help and mutual aid in accordance with the cooperative principles;
 - d. that the proposed bye-laws are not contrary to the provision of this Act and the rules, he may register the multi-state cooperative society and its bye-laws.
5. The application for registration shall be disposed of by the Central Registrar within a period of four months from the date of receipt thereof by him.
6. Where the Central Registrar refuses to register a multistate cooperative society, he shall communicate, within a period of four months from the date of receipt of the application for registration, the order of refusal together with the reasons thereof to the applicant or applicants,

as the case may be. Provided that no order or refusal shall be made unless the applicants have been given a reasonable opportunity of being heard.

The application for registration of the Multi- State Cooperative Society shall be disposed of by the Central Registrar within a period of four months from the date of receipt thereof by him and if the application for registration is not disposed of within a period of four months specified above or the Central Registrar fails to communicate the order of refusal within that period, the application shall be deemed to have been accepted for registration and the Central Registrar shall issue the registration certificate in accordance with the provisions of the MSCS Act, 2002 and the rules made thereunder.

Answer 2(b)

RARC being an asset reconstruction company contributes to improving the financial health of banks in the following manner.

- As the cash realization activity from defaulting borrowers is a lengthy and cumbersome procedure, relieving banks of the burden of NPAs will allow them to focus better on managing the core business including providing new business opportunities for the ARC.
- The transfer should help restore depositor and investor confidence by ensuring the lender's financial health. The banks use it as a method to hive off the bad loans from their balance sheet. ARCs can maximize recovery value while minimizing costs.
- ARCs also help in building industry expertise in loan resolution and restructuring management, besides serving as a catalyst for important legal reforms in bankruptcy procedures and loan collection.
- ARCs play an important role in developing capital markets through secondary asset instruments.

Answer 2(c)

Section 31(1) of the Limited Liability Partnership Act, 2008 states that:

- (1) the Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that:
 - (a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or
 - (b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.
- (2) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

The aforesaid protections are provided under Section 31(1) of the LLP Act, 2008 to Priya for reporting misconduct.

Answer No.2(d)

- Micro, Small and Medium Enterprises (MSME) sector has emerged as a highly vibrant and dynamic sector of the Indian economy over the last five decades.
- MSMEs not only play crucial role in providing large employment opportunities at comparatively lower capital cost than large industries but also help in industrialization of rural & backward areas, thereby, reducing regional imbalances, assuring more equitable distribution of national income and wealth.
- MSMEs are complementary to large industries as ancillary units and this sector contributes enormously to the socio-economic development of the country.
- The Government of India has enacted the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 in terms of which the definition of micro, small and medium enterprises is specified.
- The Act was notified to address policy issues affecting MSMEs as well as the coverage and investment ceiling of the sector.
- The Act seeks to facilitate the development of these enterprises as also enhance their competitiveness.

Thus, micro, small, and medium enterprises (MSMEs) like GreenTech Innovations play an important role as explained above in economic development and community empowerment.

Answer 2(e)

Foreign company must apply for approval from the Reserve Bank of India (RBI) under provisions of the Foreign Exchange Management Act (FEMA), 1999 to open a branch office in India.

If the foreign entity wishes to establish a branch office in more than one location in India, it must register the branch, or seek approval from the RBI for each of the location separately. The RBI approval is also necessary for each activity the branch office intends to undertake in India.

The procedures for registration require a foreign company to deposit the following set of forms:

- FNC form duly signed by authorised representative (AR);
- Information about the parent company along with its certificate of incorporation attested by a Notary Public or the Indian Embassy in the country of registration;
- The incorporation documents of the branch office to be established in India;
- Proof of registered office;
- Note on location or proposed activity;
- The latest audited balance sheet of the applicant entity;
- Board resolution to open a branch office;
- KYC of the authorized signatory; and
- Information about the local representatives of the parent company in the branch office.

Accordingly, Global Tech Solutions must adhere to the aforesaid regulatory guidelines set by the Reserve Bank of India (RBI) to establish an additional branch office in India.

Question 3

- (a) Anil wants to incorporate a company in the name 'National Electricity Corporation Limited'. However, the application was rejected with the reason that the name is identical to the name of an existing company i.e., 'Rashtriya Vidyut Nigam Limited'. Anil objects to this rejection.

Referring to the provisions of Rule 8 of the Companies (Incorporation) Rules, 2014, examine the validity of objection of Anil.

(3 marks)

- (b) The Green Future Trust operates transparently and focuses on charitable purposes, adhering to legal requirements for trusts in India. According to the Indian Trust Act, 1882, what are the constituents of The Green Future Trust ?

(3 marks)

- (c) Chitra Chit Fund Company, established in 2015, operates in a small town in India, providing a platform for local residents to save and borrow money through a traditional chit fund system. With a growing customer base, the company aims to expand its operations while ensuring compliance with regulatory requirements.

What are the restrictions imposed by the RBI on chit fund companies like Chitra Chit Fund Company ?

(3 marks)

- (d) QuickTech Solutions, a small software development company based in Pune, specializes in creating customized software applications for businesses across India. Initially, the company operated under the composition scheme due to its modest revenue. However, in the financial year 2022-23, QuickTech's turnover surpassed ₹ 30 lakh, and it began offering services to clients in other states.

What are the implications of Section 24 of the CGST Act, 2017, for QuickTech Solutions in terms of compulsory GST registration ?

(3 marks)

- (e) BrightFuture Foundation wants to apply for section 8 company license while engaging in commercial activities, such as offering paid online courses, to fund its charitable activities. How would these commercial activities align with the eligibility criteria for a section 8 company, which focuses on promoting charitable objectives over profit-making ventures ?

(3 marks)

Answer 3(a)

Rule 8 of the Companies (Incorporation) Rules, 2014 deals with Names which resemble too nearly with name of existing company.

As per Provisions under Rule 8 of the Companies (Incorporation) Rules, 2014 before granting any name, it will be examined whether name is identical with name of any other company/LLP or any other name already allowed to a company/LLP.

Similarity in Meaning:

- (i) Rule 8 specifies that names are undesirable if they are identical or too closely resemble existing company names. This includes names that are identical in meaning, even if they are in different languages.
- (ii) "National" translates to "Rashtriya" and "Electricity" to "Vidyut" in Hindi. Therefore, "National Electricity Corporation Ltd." and "Rashtriya Vidyut Nigam Ltd." have the same meaning, making them effectively identical under the rules.

Conclusion:

Given the above points, Anil's objection to the rejection is not valid. The Registrar of Companies is correct in rejecting the proposed name under Rule 8, as the name "National Electricity Corporation Ltd." is considered identical to "Rashtriya Vidyut Nigam Ltd." due to the similarity in meaning, which could lead to confusion.

Answer 3(b)

Trust is defined in section 3 of the Indian Trust Act, 1882 as "an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner. In other words, it is simply a transfer of property by one person (the settlor/author of the trust) to another (the "trustee") who manages that property for the benefit of someone else (the "beneficiary"). The settlor must legally transfer ownership of the assets to the trustee of the trust.

Thus, the settlor, trustee, beneficiary, the trust property, beneficial interest and instrument of trust are the constituents of The Green Future Trust defined as follows:

"*author of the trust*": the person who reposes or declares the confidence is called the "author of the trust":

“trustee”: the person who accepts the confidence is called the “trustee”:

“beneficiary”: the person for whose benefit the confidence is accepted is called the “beneficiary”:

“trust-property”: the subject-matter of the trust is called “trust-property” or “trust-money”:

“beneficial interest”: the “beneficial interest” or “interest” of the beneficiary is his right against the trustee as owner of the trust-property; and

“instrument of trust”:- the instrument, if any, by which the trust is declared is called the “instrument of trust”:

Answer 3(c)

Following are the restrictions imposed by RBI on chit fund business:

- Chit fund business can be conducted only by a (to be awarded registered company. Running of Chit business by family or partnership firms are restricted.
- Chit companies must register with the Registrar of Chit Company in every state, furnishing full particulars about their chit company.
- The maximum discount that could be taken in a bid was restricted to 30% of the total chit amount. However, in 2001, the same has been enhanced to 40% (in the case of a chit for Rs. 1 lakh, not more than Rs. 40,000/- can be the bid amount).
- Details of each and every chit must be furnished to the Reserve Bank of India along with the personal particulars of the subscribers.
- It is mandatory to keep one month's chit amount of all the subscribers/members with the Reserve Bank of India till the end of a particular chit.

The aforesaid restrictions have been imposed by the RBI on chit fund businesses like Chitra Chit Fund Company.

Answer 3(d)

Section 24 of Central Goods and Services Tax Act, 2017 provides for compulsory registration for certain category of persons irrespective of their turnover that is to say, the threshold exemption of 40 lakh rupees or 20 lakh rupees as the case may be is not available to them.

The following categories of persons shall be required to be registered under this Act:

- Inter State Suppliers persons making any inter-State taxable supply;
- casual taxable persons;
- persons taxable under reverse charge;
- person who are required to pay tax under sub-section (5) of section 9;
- non-resident taxable persons;
- persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- Input Service Distributors;
- Suppliers who supply goods through electronic commerce operators;

- every electronic commerce operator who is required to collect tax;
- every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person

Thus, Section 24 of the CGST Act, 2017 mandates compulsory registration for businesses engaged in inter-state supply of goods or services, among other criteria.

For QuickTech Solutions, this means that as they began providing services to clients in other states, they were legally required to obtain GST registration regardless of their turnover. The implications include the necessity to comply with tax regulations, the ability to claim input tax credits on business expenses, and enhanced credibility with clients.

Answer 3(e)

As per Section 8 of the Companies Act, 2013, Section 8 Company is a company that is established for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members.

Section 8 of the Companies Act, 2013 provides that:

- (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—
 - (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
 - (b) intends to apply its profits, if any, or other income in promoting its objects; and
 - (c) intends to prohibit the payment of any dividend to its members,

the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited", and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

BrightFuture Foundation can qualify as a Section 8 company while offering paid online courses, as long as all profits are applied promoting its charitable objectives and not distributed as dividends to members. The foundation should clearly outline this in its application to the Registrar of Companies to demonstrate that its commercial activities support, rather than conflict with, its non-profit mission. This compliance ensures the foundation maintains its Section 8 status and can effectively fund its charitable initiatives.

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

Question 4

- (a) Differentiate between an Equity based Joint Venture and a Contractual Joint Venture.
- (b) Explain the concept of Life Cycle of Start-up.
- (c) 'Contracts lie at the crux of running any business'. Elucidate.
- (d) Prepare a note on 'Infrastructure Debt Fund : Non-Banking Financial Company (IDF-NBFC)'
- (e) What are the benefits of incorporating a Nidhi Company ?

(3 marks each)

Answer 4(a)

Following are the differences Between Equity-Based Joint Venture and Contractual Joint Venture

1. Nature of the Entity

- Equity-Based Joint Venture:
 - A separate legal entity is created, usually a limited liability company, distinct from the parties involved.
 - The entity owns the resources contributed by the parties.
- Contractual Joint Venture:
 - No separate legal entity is created. The joint venture operates based on a contractual agreement between the parties.
 - The parties do not share ownership of a business entity.

2. Ownership and Investment

- Equity-Based Joint Venture:
 - Shared ownership of the newly created entity.
 - Parties contribute capital or other resources and own equity in the company.
 - Profits and losses are generally shared in proportion to the capital contribution.
- Contractual Joint Venture:
 - No shared ownership of an entity; the focus is on collaboration rather than equity.
 - The parties may bring money, technology, or materials, but ownership of these inputs remains with the contributing party unless otherwise agreed.
 - Profits and losses are shared according to the contractual agreement, which may not be tied to the capital contribution.

3. Management and Control

Equity-Based Joint Venture:

- Shared management responsibilities The parties usually have a say in the management and operation of the joint venture entity.
- The level of control each party exercises is often nproportional to their equity stake, though exceptions can exist.
- Contractual Joint Venture:
 - Control is exercised according to the terms of the contract, rather than ownership.
 - The degree of control each party has is defined by the contractual agreement, and may not be equal or proportional to contributions.

4. Duration and Scope

- Equity-Based Joint Venture:
 - Typically formed for a long-term business relationship or a wide scope of activities.
 - The entity can continue indefinitely, subject to the agreement of the parties.
- Contractual Joint Venture:
 - Often used for specific projects, narrow tasks, or a limited period.

- The relationship may be temporary, terminating upon completion of the agreed-upon task or project.

5. Regulatory Considerations

- Equity-Based Joint Venture:
 - The creation of a separate legal entity involves more regulatory scrutiny and legal formalities
 - It may be used in cases where foreign direct investment is permitted.
- Contractual Joint Venture:
 - Simpler to establish as it doesn't involve creating a new entity.
 - Useful in scenarios where regulatory or legal constraints prevent the establishment of a new legal entity, such as restrictions on foreign ownership.

6. Examples

- Equity-Based Joint Venture:
 - A multinational corporation and a local company forming a joint entity to operate in a new market.
- Contractual Joint Venture:
 - A franchise agreement where the franchisee operates a business using the franchisor's brand and systems without creating a new joint entity.

These distinctions highlight the different legal, financial, and operational implications of choosing between an equity based or contractual joint venture.

Answer 4(b)

The stages of a startup lifecycle are clearly demarcated owing not only to the promulgation of clarity but also to the exponential growth rate of the startup ecosystem. Each stage presents a new set of challenges and hurdles for entrepreneurs, elucidating the imperativeness of its understanding. Largely, the startup lifecycle is segregated into 4 stages.

Stage 1: Ideation and Development

The first stage of the startup lifecycle is ideation. It is categorized by the importance of testing feasibility of the products/service offered. It is at this stage that garnering a variety of opinions to further assess a business model takes precedence. Testing the potential viability of an entrepreneurs' business can help answer larger questions about government aid, regulations and other aiding factors as the business inches to the next stage.

Stage 2: Validation

Once an entrepreneur has evaluated feasibility of the idea and has highlighted broad scale business strategies, it is important to validate the product or services offered. The process involves defining goals, developing a value proposition and validating the same through customer feedback. This stage of a startup exudes high relevance as it drives the understanding of potential outcomes. Moreover, it highlights the features as considered in the ideation stage by giving the entrepreneur viability proof through testing.

Stage 3: Early Traction

It is at the Early Traction stage that a set of target customers may test efficacy of the product/

service offered validation of a product can portray definitive results to the outside world, a stage that may present its own set of challenges and visibly express revenue and cash flow. It may be helpful to iterate that a market for this product is created and developed at this stage.

The customer retention rate confirms the early traction of the company and its product. Startup acquires more customers by actively seeking funds from crowd funding agencies, angel investors or networks, incubators and seed grants from Government.

Stage 4: Growth/Exit

In the fourth stage of the startup lifecycle, the company has attained true economic health, has sufficient size and product-market penetration to ensure economic success, and earns average or above-average profits. The company can stay at this stage indefinitely, provided environmental changes do not hinder its market niche or ineffective management reduce its competitive abilities. At this stage, the company may choose to scale up or expand its market through mergers and acquisitions or preparing for an Initial Public Offering (IPO). Depending upon the strategy followed, some of the companies are successfully able to sustain the growth stage, rapidly scaling up their business to achieve valuation of more than \$1 billion and become unicorns. These businesses offer ideal business for other startup across sectors and encourage them to scale up.

Answer 4(c)

Contracts lie at the crux of running any business. A contract is required to ensure the smooth functioning of work and is a great mechanism to ensure recourse in case of non-fulfilment of work. Having basic knowledge about various aspects of contract management can prove to be useful for entrepreneurs. As per the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration with a lawful object, and are not expressly declared to be void.

Employee contracts are one of the most crucial aspects to be looked into while starting a venture. Founders many a time collaborate with their own trusted circle of friends in the beginning and while this ensures a certain ease and efficiency to business operations, outlining and formalizing employee contracts with details about salary, scope of work and stock options (if any) with even your first few employees is always recommended. Having this clarity from the very beginning helps the new businesses to reduce risks at a later point in time.

Contract management involves overseeing agreements made with suppliers, customers, partners and employees. Effective oversight is critically important because sales can be lost and regulatory penalties can ensue from poor contract management. In the early stage of operations and post operation too, there are various contracts that a company has to abide by, therefore, the adherence to contract law is one of the most important requirements for the company.

Answer 4(d)

Infrastructure Debt Fund: Non-Banking Financial Company (IDF-NBFC) is a company registered as NBFC to facilitate the flow of long-term debt into infrastructure projects. IDF-NBFC raise resources through issue of Rupee or Dollar denominated bonds of minimum 5-year maturity. Only Infrastructure Finance Companies (IFC) can sponsor IDF-NBFCs.

IDFs are investment vehicles which can be sponsored by commercial banks and NBFCs in India in which domestic/offshore institutional investors, especially insurance and pension funds can invest through units and bonds issued by the IDFs.

IDFs would essentially act as vehicles for refinancing existing debt of infrastructure companies, thereby creating fresh headroom for banks to lend to fresh infrastructure projects. IDF-NBFCs would take over loans extended to infrastructure projects which are created through the Public Private

Partnership (PPP) route and have successfully completed one year of commercial production. Such take-over of loans from banks would be covered by a Tripartite Agreement between the IDF, Concessionaire and the Project Authority for ensuring a compulsory buyout with termination payment in the event of default in repayment by the Concessionaire.

Answer 4(e)

Benefits of incorporating a Nidhi Company are as follows:

1. A Nidhi mobilizes small savings, mostly of the middle class and disburses loans to eligible borrowers. Owing to their small size and closeness to the customers, disbursement of loans is speedy. This is especially useful in case the borrower is in urgent needs of funds.
2. The repayment is guaranteed, as the loans are secured and due to peer pressure, borrowers ensure that loan is repaid on due dates.
3. Nidhis offer a higher rate of interest on deposits. This makes it an attractive investment opportunity for people, especially the senior citizens.
4. The Board of Directors of a Nidhi normally consists of senior persons who have experience in handling finances and who are well respected in social circles. This lends credibility to the institution and instills confidence in the minds of borrowers and depositors.

OR (Alternate question to Q. No. 4)

Question 4A

- (i) 'The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organization'. Explain
- (ii) Which are the technological aspects that should be considered before choosing a business location outside India ?
- (iii) State the method of calculating Net Owned Funds as per RBI definition for obtaining NBFC license.
- (iv) Differentiate between Partnership Agreement and Trust Deed.
- (v) What is meant by Joint Hindu Family Business ?

(3 marks each)

Answer 4A(i)

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

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

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

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

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

Answer 4A(ii)

Following are the Technological Aspects that should be considered before choosing a business location outside India:

- *Intellectual property protection*: create, maintain and extract IP at the location or provision thereof from on overall another location to the nation with free entry and egress.
- *Power, communication, telecom* — availability, quality and cost issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time, it is necessary to factor in global tax costs and plan to the possible extent within the framework of law.

Answer 4A (iii)

Calculating Net Owned Funds as per RBI Definition

- The NOF should be computed on the basis of last audited Balance Sheet and any capital raised after the Balance Sheet date should not be accounted for while computing NOF
- Net owned Fund will consist of paid-up equity capital, free reserves, balance in share premium account and capital reserves representing surplus arising out of sale proceeds of assets but not reserves created by revaluation of assets. From the aggregate of items will be deducted accumulated loss balance and book value of intangible assets, if any, to arrive at owned funds. Further, investments in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of ten percent of the owned fund mentioned above will be deducted to arrive at the Net Owned Fund.

Net owned funds

= Paid up equity capital

+ free reserves

+ balance in share premium account

+ capital reserves representing surplus arising out of sale proceeds of assets (not created by revaluation of assets)

(-) accumulated losses

(-) book value of intangible assets

(-) investments in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of ten percent of the owned fund mentioned above.

Answer 4A(iv)

Sl. No.	Partnership Agreement	Trust Deed
1.	Partners, as mentioned in the deed runs the Partnership Firm. The procedure to admit a partner in the firm is mentioned in the Deed.	Trustees are generally appointed or elected. The Procedure to elect/ appoint the trustees is set out in Deed.
2.	A partnership Deed can be between two or more persons. The Maximum no. of partners in a partnership firm can be 50 partners.	Three parties must be involved with any deed of trust.
3.	The Deed may mention a fixed term of partnership or for a specific undertaking or may mention the condition of dissolution by notice of intention to dissolve, if mutually agreed by the partners.	A Trust deed can provide for trust to be wound up within certain number of years.
4.	The Deed states the rights and duties of the Partners. Partners owe a fiduciary duty to each other, based on loyalty, trust and confidence.	The Trust Deed states the rights and duties of the Trustees as well as Beneficiaries. Trustees have fiduciary duties to beneficiaries.
5.	Expectations of Partners are more limited to the financial success of business ventures. More easily measured.	Expectations of trustees can be high-difficult to satisfy beneficiaries with so many choices on where to spend income.

Answer to No. 4A(v)

The Joint Hindu Family Business is a distinct form of organization peculiar to India. Joint Hindu Family Business is created by the operation of law. It does not have any separate and distinct legal entity from that of its members.

The laws that govern Hindu Undivided Family (HUFs) are not codified and are read along with the Hindu Succession Act, 1956 and the Income tax Act, 1961.

The business of Joint Hindu Family is controlled under the Hindu Law instead of Partnership Act, 2008. The membership in this form of business organization can be acquired only by birth or by marriage to a male person who is already a member of Joint Hindu Family.

“When two or more families agree to live and work together, throw their resources and labour with joint stock and share profits and the losses together, then this family is known as composite family.”

There are two schools of Hindu Law-one is Dayabhaga which is prevalent in Bengal and Assam and the other is Mitakshara prevalent in the rest of the-country. According to Mitakshara law, there is a son's right by birth in the property of joint family. It means, when a son is born in family, he acquires an interest in the property jointly held by the family.

The business of the Joint Hindu Family is controlled and managed by one person who is called 'Karta' or 'Manager'. The Karta or manager works in consultation with other members of the family but ultimately, he has a final say. The liability of Karta is unlimited while the liability of other members is limited to their shares in the business.

PART-II**Question 5**

Hindustan Power Supply Ltd. (HPSL) is a wholly owned Government Company. The company employed a diverse workforce, including both full-time employees and contractual workers, who played important roles in the company's success. However, as the company expanded, disparities in pay and benefits between these two groups began to surface.

Rajesh, holds a degree in Electrical Engineering (BE) from UGC recognized university having over 10 years of experience in the company. He has been working on projects alongside full-time employees and had been a key contributor to HPSL for over a decade. As an Assistant Engineer, he worked on numerous high-profile power generation and transmission projects, often collaborating closely with full-time employees. Despite his contributions being at par with those of his full-time colleagues, Rajesh's compensation remained significantly lower.

He also lacked the job security and benefits, such as health insurance and paid leave, that were provided to full-time employees.

Over the years, the disparity between Rajesh's compensation and that of his full-time counterparts, like Meera, a full-time Executive Engineer, who joined the company around the same time as Rajesh, enjoying higher pay, benefits, and job security became more pronounced. Meera, who had great respect for Rajesh's skills and work ethic, was aware of the inequity but felt uncertain about how to address it within the corporate structure. Meanwhile, Rajesh's growing frustration began to affect his motivation and sense of loyalty to the company.

One evening, after discussing his situation with a friend, Rajesh was introduced to Anjali, a renowned Advocate in service matters and employee related issues. Rajesh shared his concerns with Anjali, who informed him about a significant legal precedent in India– 'Dhirendra Chamoli Vs. State of U.P.', whereas Hon'ble Apex Court passed the doctrine of equal pay for equal work. Anjali also referenced the recent judgement of Hon'ble Supreme Court in the matter of State of Punjab & Ors. vs Jagjit Singh & Ors., in which the Court primarily addressed the regularization of temporary employees and strongly affirmed the principle of "equal pay for equal work." According to this principle, Rajesh, who was performing the same duties as full-time employees, was entitled to equal compensation, regardless of his contractual status.

Empowered by this information, Rajesh decided to take action. With Anjali's guidance, he and several other contractual workers in the company submitted a formal grievance to Patel, the Chief General Manager, Human Resources of the company. The grievance outlined their concerns about the pay disparity and referenced the various judgements of Supreme Court, requesting the company to review its compensation practices to ensure fairness.

Patel, a seasoned HR professional with a strong commitment to ethical business practices, took the grievance seriously. He initiated a comprehensive review of the company's compensation policies and consulted with legal experts to understand the implications of the judgements of Supreme Court with respect to 'Equal pay for Equal work' in the corporate context. Recognizing that maintaining the current pay disparity was both legally risky and ethically questionable, Patel decided to take corrective action.

Over the next few weeks, Patel led the development of a new compensation policy in the company. The policy introduced a standardized pay scale for all employees, ensuring that those performing similar roles received equal pay, irrespective of their employment status. This change was communicated transparently across the company, with efforts made to address any concerns and ensure a smooth transition. The Management also took the steps for registration under Atal Beemit Vyakti Kalyan Yojna (ABVKY).

The implementation of the new pay structure had a positive impact on the company's workforce. Contractual workers, who had long felt undervalued, now experienced a renewed sense of commitment and motivation. Rajesh, in particular, felt a deep sense of satisfaction and loyalty towards the Company, knowing that his contributions were finally being recognized and rewarded fairly. Meera and other full-time employees also welcomed the change, appreciating the company's commitment to fairness.

Under Patel's leadership, the Company not only resolved the pay disparity but also set a precedent for other companies in the industry. The company's proactive approach to addressing the issue enhanced employee morale, reduced employee turnover, and reinforced its reputation as a fair and progressive employer.

In view of the above, answer the following :

- (a) Define the term 'Equal Pay for Equal Work' in the light of Constitutional provisions.
- (b) In the above situation, if some workers, who are on contractual employment, do not get the regular employment and retrenched by the company, how will they be facilitated under Atal Beemit Vyakti Kalyan Yojna ?
- (c) Discuss the prohibition of employment of contract Labour.
- (d) Rajesh and other contractual workers decided to go on strike. However, the company is in public utility service. Describe the prohibition of strikes and lock-outs in public utility service.

(5 marks each)

Answer 5(a)

Article 39 (d) of the Constitution of India requires the state, in particular, to direct its policy towards securing that there is equal work for both men and women. Section 4 of Equal Remuneration Act, 1976 also states the duty of employer to pay equal remuneration to men and women workers for same work or work of a similar nature.

In the case of *Randhir Singh v. Union of India* (1982 AIR 879) the Supreme Court has held that the principle of "Equal pay for equal work though not a fundamental right" is certainly a constitutional goal. Article 39 (d) of the Constitution proclaims "equal pay for equal work for both men and women" as a Directive Principle of State Policy. The doctrine of equal pay for equal work is equally applicable to persons employed on a daily wage basis. They are also entitled to the same wages as other permanent employees in the department employed to do the identical work. However, the doctrine of 'equal pay for equal work' cannot be put in a strait jacket. Accordingly, it has been held that different scales of pay in the same cadre of persons doing similar work can be fixed if there is difference in the nature of work done and as regards reliability and responsibility.

Answer 5(b)

1. Under the Atal Bimit Vyakti Kalyan Yojna, a worker of the organized sector who loses his job gets financial aid from the Government. This is a type of unemployment allowance, the benefit of which is admissible to the workers covered under the Employees' State Insurance Scheme.
2. In case of job loss, a worker will get benefits under the Atal Bimit Vyakti Kalyan Yojna.
3. At the time of retrenchment, a worker would be provided 15 days' wages for re-skilling. The wages would be credited directly into the bank account of the worker so as to enable him to learn new skills.

Answer 5(c)

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

But before issuing any such notification in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour that establishment and other relevant factors, such as-

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is so of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation- If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

Answer 5(d)

As per Section 22 of the Industrial Disputes Act, 1947 following are prohibitions of strikes and lock-outs in public utility service:

- 1) No person employed in a public utility service shall go on strike in breach of contract--
 - (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
 - (b) within fourteen days of giving such notice; or
 - (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
 - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- (2) No employer carrying on any public utility service shall lock-out any of his workmen--
 - (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking out; or
 - (b) within fourteen days of giving such notice; or
 - (c) before the expiry the date of lock-out specified in any such notice as aforesaid; or
 - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

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

Question 6

- (a) ABC Healthcare is a well-established hospital with a workforce of 100 female employees. One of the nurses, Priya, is expecting her first child and is preparing to take maternity leave.

Priya is not aware of her right to payment of maternity benefits and she is unsure about the procedure for claiming these benefits and the necessary notice she needs to provide to her employer.

Advise Priya on her right to payment of maternity benefits and on the requirements for the notice of claim for maternity benefit under Section 6 of the Maternity Benefit Act, 1961.

(5 marks)

- (b) Techno Soft Solutions, a software development company, has been in operation for over a decade and has a workforce of 150 employees. Recently, one of the senior software engineers, Rajesh, decided to resign after completing 5 years of service with the company. He is inquiring about his entitlement to gratuity under the Payment of Gratuity Act, 1972.

Under what circumstances and to whom is the gratuity payable under the Payment of Gratuity Act, 1972 ?

(5 marks)

- (c) Bright Futures Ltd., is imparting education to the students. It has been facing financial difficulties and has delayed salary payments and other dues to its employees for the past three months. Several employees have resigned due to the non-payment of wages, while those remaining are increasingly concerned about their financial stability. The affected employees have approached the company management several times, but no concrete measures have been taken to resolve the issue. Consequently, the employees have decided to take legal action to recover the amounts due to them under the Payment of Wages Act, 1936.

Explain the measures to be taken by the employees for recovery of amount due from the employer.

(5 marks)

- (d) QualityTech Industries, based in Hyderabad, is a prominent manufacturer of electronic components. To meet its production needs, the company has employed a significant number of contract workers in various roles, including assembly and quality control. In 2023, a Labour Inspector conducted a routine inspection of QualityTech Industries to assess compliance with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970.

Describe the powers of Inspector under section 28 of the Contract Labour (Regulation and Abolition) Act, 1970.

(5 marks)

Answer 6(a)

Section 5 of the Maternity Benefit Act, 1961 provides that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

The average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, the minimum rate of wage fixed or revised under the Minimum Wages Act, 1948 or ten rupees, whichever is the highest.

A woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her expected delivery.

The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery. However, the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery. If a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death.

Where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, entire period. If the child also dies during the said period, then, for the days up to and including the date of the death of the child.

A woman who legally adopts a child below the age of three months or a commissioning mother shall be entitled to maternity benefit for a period of twelve weeks from the date the child is handed over to the adopting mother or the commissioning mother, as the case may be.

In case where the nature of work assigned to a woman is of such nature that she may work from home, the employer may allow her to do so after availing of the maternity benefit for such period and on such conditions as the employer and the woman may mutually agree.

Section 6 of the Maternity Benefit Act, 1961 provides with notice of claim for maternity benefit and payment thereof. As per the section any woman employed in an establishment and entitled to maternity benefit under the provisions of this Act may give notice in writing in prescribed form, to her employer, stating that her maternity benefit and any other amount to which she may be entitled under this Act may be paid to her or to such person as she may nominate in the notice and that she will not work in any establishment during the period for which she receives maternity benefit.

In the case of a woman who is pregnant, such notice shall state the date from which she will be absent from work, not being a date earlier than six weeks from the date of her expected delivery. Any woman who has not given the notice when she was pregnant may give such notice as soon as possible after the delivery.

On receipt of the notice, the employer shall permit such woman to absent herself from the establishment during the period for which she receives the maternity benefit. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof, that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof as may be prescribed that the woman has been delivered of a child.

Answer 6(b)

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

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

The completion of continuous service of five years is not necessary where the termination of the employment of any employee is due to death or disablement.

Further, the period of continuous service is to be reckoned from the date of employment and not

from the date of commencement of this Act (CLA-1996-111-13 Mad.). Mere absence from duty without leave cannot be said to result in breach of continuity of service for the purpose of this Act. [*Kothari Industrial Corporation v. Appellate Authority*, 1998 Lab IC, 1149 (AP)]

It is payable normally to the employee himself. However, in the case of death of the employee, it shall be paid to his nominee and if no nomination has been made, to his heirs and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Answer 6(c)

Section 15 of the Payment of Wages Act, 1936 provides that the appropriate Government may, by notification in the Official Gazette, appoint –

- (a) any Commissioner for Workmen's Compensation; or
- (b) any officer of the Central Government exercising functions as,— (i) Regional Labour Commissioner; or (ii) Assistant Labour Commissioner with at least two years' experience; or
- (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years' experience; or (d) a presiding officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State; or (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims.

Where contrary to the provisions of Payment of Wages Act, 1936 any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed, may apply to such authority for a direction of payment of wages.

When any application is entertained by the authority, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit.

Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final.

Any Amount directed to be paid under section 15 may be recovered— (a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and (b) if the authority is not a Magistrate, by the Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

The above measures may be taken by the employees for recovery of amount due from the employer.

Answer 6(d)

According to section 28 of the Contract Labour (Regulation and Abolition), Act, 1970, the appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed-

- (a) enter, at all reasonable hours, with such assistance (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this. Act or rules made 'thereunder, and require the production thereof for inspection;
- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein;
- (c) require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;
- (d) seize to take copies of such register, record of wages or notices or portions, thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and
- (e) exercise such other powers as may be prescribed.

Any person required to produce any document or thing or to give any information required by an inspector shall be deemed to be legally bound to do so within the meaning of Section 175 and Section 176 of the Indian Penal Code, 1860. The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code.

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

- (i) Discuss the implications of Section 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, regarding punishment for false or malicious complaints.
- (ii) Explain the provisions for novation of contracts of apprenticeship under Section 5 of the Apprenticeship Act, 1961.
- (iii) What are the stipulations regarding the payment of minimum bonus and maximum bonus under the Payment of Bonus Act, 1965 ?
- (iv) Enumerate the matters that need to be provided in Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.

(5 marks each)

Answer 6A(i)

Section 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013) provides strict provisions for Punishment for false or malicious complaint and false evidence.

Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

It is provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section. It is provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

Answer 6A(ii)

Section 5 of the Apprentices Act, 1961 provides that where an employer with whom a contract of apprenticeship has been entered into, is for any reason unable to fulfil his obligations under the contract and with the approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as apprentice under the other employer for the un-expired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser, shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer, and on and from the date of such registration, the contract of apprenticeship with the first employer shall terminate and no obligation under the contract shall be enforceable at the instance of any party to the contract against the other party thereto.

Answer 6A(iii)

Payment of Minimum Bonus

Section 10 of the Payment of Bonus Act, 1965, states that subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of any accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this Section shall have effect in relation to such employee as if for the words one hundred rupees the words sixty rupees were substituted.

Section 10 of the Act is not violative of Articles 19 and 301 of the Constitution. Even if the employer suffers losses during the accounting year, he is bound to pay minimum bonus as prescribed by Section 10 [State v. Sardar Singh Maiithia (1979) Lab. 1.C].

Payment of Maximum bonus

- (1) Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that Section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect

of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.

- (2) In computing the allocable surplus under this Section, the amount set on or the amount set off under the provisions of Section 15 shall be taken into account in accordance with the provisions of that Section. (Section 11)

Answer 6A(iv)

Following are the matters to be provided in Standing Orders as per the schedule under the Industrial Employment (Standing Orders) Act, 1946

1. Classification of workmen, e.g., whether permanent, on overall temporary, apprentices, probationers or badlis.
2. Manner of intimating to workmen periods and hours of work, holidays, pay-days and wage rates.
3. Shift working.
4. Attendance and late coming.
5. Conditions of, procedure in applying for, and the authority which may grant leave and holidays.
6. Requirement to enter premises by certain gates, and liability to search.
7. Closing and reopening of sections of the industrial establishment, and temporary stoppage of work and the rights and liabilities of the employer and workmen arising therefrom.
8. Termination of employment, and the notice thereof to be given by employer and workmen.
9. Suspension or dismissal for misconduct, and acts or omissions which constitute misconduct.
10. Means of redress for workmen against unfair treatment or wrongful exactions by the employer or his agents or servants.
11. Any other matter which may be prescribed.

CORPORATE ACCOUNTING AND FINANCIAL MANAGEMENT

GROUP 1 PAPER 4

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

Komal is a third-generation businesswomen in the dairy business "Bharat Ghee & Co.". The business is run under the brand "Pure Ghee". The company prepares milk-based products and is known for good quality in the market. The sales are made through self-owned stores, other retailers at locations where self-owned stores are not present and online.

The business is run by Komal's family on a strategic and operational basis. However, now the business is growing at a rapid pace. There is a need to get in professional management to run the business. "Bharat Ghee & Co." hires a new CEO - Garima, who has three decades of experience in the dairy industry. Komal will now be Executive Chairman and provide a guiding role in the business. The first task that Garima has on hand is to identify issues that are hindering business growth.

Komal asks Garima to list major concerns that the business is facing :

- Lower margins where sales are made through other retailers and online. Online platforms are charging a big commission for making sales.
- High chance of spoilage due to perishable nature of the raw material. Due to perishable nature of material - inventories are kept at a negligible level.
- Capacity increase may be necessitated in the near future for which capital will have to be raised.

Garima requests the Accounts Head - Naina for key financial metrics of "Bharat Ghee & Co". Naina provides the following details to Garima :

Key Financials of Bharat Ghee & Co :

Credit Revenue (₹)	80,00,00,000/-
Cash Revenue	20% of total sales
Gross Profit ratio	30%
Indirect expenses (₹)	10,00,00,000/-
Tax rate	25%
Interest on debt	12%
Interest amount (₹)	12,00,00,000/-
Debt to equity ratio	2 : 1

Garima does some quick calculations to derive Return on Equity and Return on Capital Employed. Komal indicates willingness to contribute fresh equity in the business and payoff the loans. However, Garima is not in favour of repayment of loans.

Garima has made a business plan to change the strategy to decrease dependence from third party vendors. The new plan recommends creation of infrastructure to enable sales at locations which are serviced by channel partners. A new strategic business unit is to be created for implementation of the business plan.

The following infrastructure facilities need to be created :

Items	(₹)
Cold chain warehousing facility	15,00,00,000
New trucks	5,00,00,000
Office premises	3,00,00,000
Furniture and computers	1,00,00,000

- The aforementioned infrastructure will be set up using debt and equity in the ratio of 2 : 1. The new debt will be raised at a rate of 14%.
- The average depreciation will be 30%.
- The above investment and raising of debt will be done on October 1. The organization follows an April to March financial year.
- The average receivables at the end of the financial year from the new business will be ₹ 10,80,00,000/-. The receivables turnover days will be 45 days. Assume 180 days to calculate receivables turnover ratio.
- The gross profit margin will be 20%.
- Indirect expenses other than depreciation will be ₹ 2,00,00,000/-.
- Income tax rate is 25%.

Komal asks for the projected P&L before approving the required investment amount :

- Calculate current Net Profit Margin, Return on Equity and Return on Capital Employed.
- If debt is paid off using fresh equity, what will be new Net Profit Margin and Return on Equity ? Assume debt is repaid on first day of financial year. Comment on change in return on equity.
- Prepare the projected Profit & Loss Account of the new business unit.

(5+5+5=15 marks)

Answer No. 1(a)

Calculation of Net Profit Margin, Return on Capital Employed and Return on Equity

Amount in ₹

Cash Sales	20% of total sales	20,00,00,000
Credit Sales	80% of total sales	80,00,00,000

Total Sales		1,00,00,00,000
Gross Profit	30% of total sales	30,00,00,000
Less: Indirect Expenses		10,00,00,000
Profit Before Interest and Tax (PBIT)		20,00,00,000
Less: Interest on Debt	@12%	12,00,00,000
Profit Before Tax (PBT)		8,00,00,000
Less: Tax	@25%	2,00,00,000
Profit after Tax (PAT)		6,00,00,000
Debt (A)	Interest/ Interest rate	1,00,00,00,000
Equity (B)		50,00,00,000
Total Capital Employed (A+B)		1,50,00,00,000
Net Profit Margin	$\frac{\text{Profit after Tax}}{\text{Total Sales}}$	6%
Return on Equity	$\frac{\text{Profit after Tax}}{\text{Total Equity}}$	12.00%
Return on capital employed	$\frac{\text{(PBIT)}}{\text{Total Capital Employed}}$	13.33%

Answer 1(b)**Impact on Return on equity if debt is repaid****Amount in ₹)**

Cash Sales	20,00,00,000
Credit Sales	80,00,00,000
Total Sales	1,00,00,00,000
Gross Profit	30,00,00,000
Less: Indirect Expenses	10,00,00,000
Profit Before Interest and Tax (PBIT)	20,00,00,000
Less: Interest	Nil

Profit Before Tax (PBT)	20,00,00,000
Tax@25%	5,00,00,000
Profit after Tax (PAT)	15,00,00,000
Total Equity	1,50,00,00,000
Net Profit Margin = $\frac{\text{Profit after Tax}}{\text{Total Sales}}$	15.00%
Return on Equity = $\frac{\text{Profit after Tax}}{\text{Total Equity}}$	10.00%

Comment on change in return on equity

The return on equity has declined from 12% to 10% on repayment of debt. Since there is no interest expense as debt is now not available in the balance sheet, the decline in return on equity ratio has occurred.

Answer 1(c)**Projected P&L A/c of the New Business Unit****Amount in ₹**

Turnover (WN-i)	43,20,00,000
Gross Profit (20% of the Turnover)	8,64,00,000
Less: Depreciation (WN-ii)	3,60,00,000
Less: Other Indirect Expenses	2,00,00,000
Profit before interest and taxes	3,04,00,000
Less: Interest	1,12,00,000
Profit before taxes	1,92,00,000
Income tax	48,00,000
Profit after tax	1,44,00,000

Working Notes (WN):**i. Turnover**

Average receivables	₹ 10,80,00,000
Receivable days	45
Receivable turnover 180/45	4
Turnover	₹ 43,20,00,000

ii. Calculation of capital investment and depreciation

(Amount in ₹)

Cold chain warehousing facility	15,00,00,000
New trucks	5,00,00,000
Office premises	3,00,00,000
Furniture and computers	1,00,00,000
Total	24,00,00,000
Depreciation	30%
Months of usage	6
Depreciation	3,60,00,000

iii. Capital structure and interest amount

(Amount in ₹)

Debt	16,00,00,000
Equity	8,00,00,000
Interest	14%
Interest amount (for six months)	1,12,00,000

Question 2

(a) Alpha Ltd. has provided you the following information as on 31st March, 2024 :

Particulars	Amt. in ₹
Opening Inventory	2,28,750/-
Purchases	9,66,750/-
Closing Inventory	2,95,500/-
Sales	15,60,000/-
Sales Returns	60,000/-

Calculate Inventory Turnover Ratio and Gross Profit Ratio.

(2+2=4 marks)

(b) Micro Swift Ltd. issued 20,000 8% debentures of ₹ 100 each as per follows :

- (1) Series A of ₹ 5,00,000 (Nominal) for cash at a premium of 20%
- (2) Series B of ₹ 5,00,000 (Nominal) for cash at 90%

- (3) Series C of ₹ 5,00,000 (Nominal) to Bharat Bank against a loan of ₹ 4,00,000 as collateral security.
- (4) Series D of ₹ 5,00,000 to creditor for ₹ 4,50,000 on account of capital expenditure in satisfaction of his claim

Pass Journal Entries. (Ignore writing off discount on issue of debentures)

(8 marks)

- (c) Shree Ltd. issued 5,00,000 equity shares. Applications for 4,50,000 shares were received.

The following are details related to underwriters :

	Underwriter A	Underwriter B	Underwriter C
Underwriting ratio	40%	30%	30%
Marked Applications	1,00,000	50,000	45,000

The remaining applications did not have any stamp. Determine the liability of the underwriters.

(3 marks)

Answer 2 (a)

Amount in ₹

A	Opening Inventory	2,28,750
B	Purchases	9,66,750
C	Closing Inventory	2,95,500
D	Cost of Goods Sold (A+B-C)	9,00,000
E	Average Inventory(A+C)/2	2,62,125
F	Inventory Turnover Ratio (times) = Cost of Goods Sold/Average Inventory (D/E)	3.43
G	Sales Less: Sales Return Net Sales	15,60,000 60,000 15,00,000
H	Gross Profit (Net Sales – Cost of Goods Sold) (G -D)	6,00,000
I	Gross Profit Ratio (Gross Profit/Net Sales) (H/G)	40.00%

Answer 2 (b)**Micro Swift Ltd****Journal Entries**

Series	Particulars	Amount ₹ (Dr.)	Amount ₹ (Cr.)
A	Bank A/c Dr. To Debenture Application and Allotment A/c (Application money received on 5000 debentures at a premium of 20%)	6,00,000	6,00,000
	Debenture Application and Allotment A/c Dr. To 8% Debentures A/c To Securities Premium Account (Transfer of application money)	6,00,000	5,00,000 1,00,000
B	Bank A/c Dr. To Debenture Application and Allotment A/c (Application money received on 5000 debentures at a discount of 10%)	4,50,000	4,50,000
	Debenture Application and Allotment A/c Dr. Discount on issue of Debentures A/c Dr. To 8% Debentures A/c (Transfer of application money)	4,50,000 50,000	5,00,000
C	Bank A/c Dr. To Bharat Bank Loan A/c (Bank Loan secured by issue of debentures)	4,00,000	4,00,000
	Debenture Suspense A/c Dr. To 8% Debentures A/c (Issue of debentures as collateral security)	5,00,000	5,00,000
D	Fixed Assets Account Dr. To Vendor A/c (Capital expenditure made for the purpose of fixed assets)	4,50,000	4,50,000
	Vendor A/c Dr. Discount on issue of Debentures A/c Dr. To 8% Debentures A/c (Issue of debentures to fixed assets vendor)	4,50,000 50,000	5,00,000

Answer 2 (c)**Net Liability of Underwriters**

	Underwriter A	Underwriter B	Underwriter C	Total
Gross Liability (4:3:3)	2,00,000	1,50,000	1,50,000	5,00,000
Less: Marked Applications	1,00,000	50,000	45,000	1,95,000
Balance	1,00,000	1,00,000	1,05,000	3,05,000
Less: Unmarked Applications distributed in gross liability ratio (4:3:3)	1,02,000	76,500	76,500	2,55,000
Balance	-2,000	23500	28500	50000
A's Over subscription	2,000	-1,000	-1,000	-
Net Liability	0	22,500	27,500	50,000

Working:

$$\begin{aligned}
 \text{Total applications} - \text{Marked Applications} &= \text{Unmarked applications} \\
 4,50,000 - 1,95,000 &= 2,55,000
 \end{aligned}$$

Question 3

(a) Campa Ltd. issued 4,00,000 shares of ₹ 50 each at a premium of ₹ 15 per share. Application for 4,50,000 shares was received. The amount was payable as follows :

- On Application ₹ 15
 - On Allotment ₹ 16 (including premium ₹ 6)
 - On First Call ₹ 20 (including premium ₹ 5)
 - On Final Call ₹ 14 (including premium ₹ 4)
- (1) Alpha, who was allotted 6000 shares did not pay allotment and first call and thereafter his shares were forfeited.
 - (2) Beta, who was allotted 4000 shares did not pay first call and thereafter his shares were forfeited.
 - (3) Gama, who was allotted 15000 shares did not pay final call and thereafter his shares were forfeited.

Half of the shares of Alpha and Beta were reissued at ₹ 42 You are required to pass journal entries for the forfeiture and reissue of shares.

(6 marks)

(b) Rama Ltd. issued 5,000, 8% debentures of 1,000/- each at a discount of 5% on April 1, 2020. The debentures are repayable by equal annual drawings in four years.

You are required to show the amount of discount to be written off every year.

(4 marks)

(c) Central Textiles Ltd. has provided you its historical revenue and cost data :

Particulars	Amount (Crore)
Revenues	1,000
Variable Cost 70% of sales	700
Fixed Cost	115
Depreciation	101
Income Tax	25%

Central Textiles Ltd. management is attempting to project profitability for next year under different scenarios. The historical data will be the base case scenario. The details regarding optimistic scenario and worst-case scenario are given below :

Particulars	Optimistic Scenario	Worst-Case Scenario
Revenue change	40% increase	20% decrease
Variable cost	65% of sales	71 % of sales
Fixed cost	113/- crore	120/- crore
Depreciation	Same as base case	Same as base case

Prepare Profitability projection with the given data.

(4 marks)

Answer 3(a)

Campa Ltd.

Journal Entries

Date	Particulars	Amount ₹ (Dr.)	Amount ₹ (Cr.)
	Share Capital A/c (6000 x 40) Dr.	240,000	
	Securities Premium A/c (6000 x 11) Dr.	66,000	
	To Shares Forfeiture A/c (6000 x 15)		90,000
	To Share Allotment A/c (6000 x 16)		96,000
	To Share First Call A/c (6000 x 20)		120,000
	(6000 shares of Alpha were forfeited for non-payment of allotment and first call)		

	Share Capital A/c (4000 x 40) Dr.	160,000	
	Securities Premium A/c (4000 x 5) Dr.	20,000	
	To Shares Forfeiture A/c (4000 x 25)		100,000
	To Share First Call A/c (4000 x 20)		80,000
	(4000 shares of Beta were forfeited for non-payment of first call)		
	Share Capital Account (15000 x 50) Dr.	750,000	
	Securities Premium Account (15000 x 4) Dr.	60,000	
	To Shares Forfeiture A/c (15000 x 40)		600,000
	To Share Final Call A/c (15000 x 14)		210,000
	(15000 shares of Gama were forfeited for non-payment of final call)		
	Bank A/c (5000 x 42) Dr.	210,000	
	Share Forfeiture A/c (5000 x 8) Dr.	40,000	
	To Share Capital A/c (5000 x 50)		250,000
	(Reissue of 5000 shares of ₹ 50 each, issued as fully paid up at a discount ₹ 8 per share)		
	Share Forfeiture A/c Dr.	55,000	
	To Capital Reserve		55,000
	(Profit on reissue of 5000 forfeited shares transferred to capital reserve)		

Working Note: Calculation of the amount transferred to Capital Reserve

50% of Alpha's forfeited share (50% of 90,000)	=	₹ 45000
50% of Beta's forfeited share (50% of 1,00,000)	=	₹ <u>50000</u>
		₹ 95,000
Less: loss on reissue	=	₹ <u>40,000</u>
Capital Reserve	=	₹ 55,000

Answer 3 (b)**Repayment Schedule**

Date	Debentures Issued	Face Value	Outstanding Value at beginning of year	Repayment at end of year
01 April 2020	5000	₹ 1000/-	₹ 50,00,000	₹ 12,50,000

Date	Debentures Issued	Face Value	Outstanding Value at beginning of year	Repayment at end of year
01 April 2021			₹ 37,50,000	₹ 12,50,000
01 April 2022			₹ 25,00,000	₹ 12,50,000
01 April 2023			₹ 12,50,000	₹ 12,50,000

The total discount on issue of debentures will be written off in proportion to the debentures outstanding at the beginning of each year.

Discount on issue	₹ 50,00,000	5%	₹ 2,50,000
	Outstanding value at beginning of year		Discount to be written off at end of the year
01 April 2020	₹ 50,00,000	0.40	₹ 1,00,000
01 April 2021	₹ 37,50,000	0.30	₹ 75,000
01 April 2022	₹ 25,00,000	0.20	₹ 50,000
01 April 2023	₹ 12,50,000	0.10	₹ 25,000

Answer 3 (c)

Profit projections for Central Textiles Ltd.

Amount in ₹ Crore

	Base Case	Optimistic Scenario	Worst -Case Scenario
Revenues (A)	1,000	1,400	800
Less: Variable Cost (B)	700	910	568
Contribution (A-B)	300	490	232
Less: Fixed Cost	115	113	120
Less: Depreciation	101	101	101
Profit before Tax	84	276	11
Income Tax 25%	21	69	2.75
Profit after Tax	63	207	8.25

(Note: Base case scenario does not carry any marks)

Attempt all parts of either Q. No. 4 or Q. No. 4A**Question 4****(a) Super Star Ltd.****Balance Sheet as at March 31, 2024**

Particulars	Amount (₹)	Amount (₹)
I. Equities and Liabilities		
1. Shareholder's funds		
Share Capital Divided in five lakh shares of 10/- each	50,00,000	
Reserves & Surplus	35,25,000	85,25,000
2. Long Term Borrowings		20,00,000
3. Current Liability: Trade Payables		3,00,000
		1,08,25,000
II. Assets		
1. Fixed Assets		66,50,000
2. Non-Current Investment		7,50,000
3. Current Assets		
Trade Receivables	5,00,000	
Inventories	5,00,000	
Cash and Cash Equivalents	24,25,000	34,25,000
		1,08,25,000
Reserves and Surplus include securities premium of ₹10,00,000/-		

On April 1, 2024 – shareholders of the company authorized buyback as under :

- 10% of equity shares would be bought back at ₹ 17/- per share.
- 12% debentures to be issued for ₹ 1,00,000/- to finance the buyback and balance from general reserve to be utilized for this purpose.
- Premium on buyback to be met from securities premium account.
- Investments would be sold for ₹ 11,75,000/-.

Pass necessary journal entries to record above transactions.

(5 marks)

(b)

Balance Sheet of S Ltd. is given below

Particulars	Amount (₹)
Liabilities	
Share Capital of 10/- each fully paid	6,00,000
General Reserve	1,50,000
Profit and Loss Account	1,05,000
Creditors	1,80,000
	10,35,000
Assets	
Fixed Assets	3,00,000
Current Assets	7,35,000
	10,35,000

Other information :

- Holding company H Ltd. has bought 48,000 shares in its subsidiary S Ltd.
- Consideration for purchase of shares in S Ltd. ₹ 9,00,000/-
- General Reserve of S Ltd. on date of acquisition ₹ 1,20,000/-
- Profit and Loss Account on date of acquisition ₹ 24,000/-

Calculate :

- Minority Interest and Goodwill.
- How will goodwill be treated in consolidated books of accounts ?

(4+1=5 marks)

(c) The Capital structure of Sangam Ltd. is given below :

Particulars	₹ (Crore)
Share Capital (divided in shares of 10/- each)	5,000
Secured Loans	4,000
Unsecured Loans	2,500

In the next year the company is undertaking an expansion project of ₹ 1,500/- crore.

The project is to be financed in the ratio of 40% infusion of fresh owner capital and 60% secured debt capital. No old debt is repaid during the year.

The equity capital will be raised at ₹ 15/- per share. The average interest rate of the debt (old + new) will be 13%.

The income tax rate is 25%.

Prepare a statement showing forecast cash flow from financing activities.

(5 marks)

Answer 4 (a)

Super Star Ltd.

Journal Entries

Particulars		Amount ₹	Amount ₹
Share Capital A/c	Dr.	5,00,000	
Share premium A/c	Dr.	3,50,000	
To Shareholders A/c			8,50,000
(Being 50,000 equity shares bought back @ Rs. 17 per share and premium on buyback adjusted against existing securities premium account)			
Bank A/c	Dr.	1,00,000	
To 12% Debentures A/c			1,00,000
(Being issue of debentures for partial financing of buyback)			
Bank A/c	Dr.	11,75,000	
To Investments A/c			7,50,000
To Profit & Loss A/c			4,25,000
(Being sale of investments and profit transferred to Profit & Loss A/c)			
General Reserve A/s	Dr.	4,00,000	
To Capital Redemption Reserve A/c			4,00,000
(Being transfer of general reserve utilized to the extent of nominal values of shares bought back)			
Shareholders A/c	Dr.	8,50,000	
To Bank A/c			8,50,000

Answer 4 (b)

H Ltd.

Minority Interest	₹
Share Capital	1,20,000

Capital Profit (Pre acquisition Capital Reserve + Pre acquisition P&L A/c) x Minority shareholding	28,800
Revenue Profit (General Reserve for the year + P&L A/c addition for the year) x minority shareholding	22,200
	1,71,000

Consideration	₹ 9,00,000
Less: Face value of shares acquired	₹ 4,80,000
Less: General Reserve (₹1,20,000 x4/5)	₹ 96,000
Less: P&L Account (₹24,000 x 4/5)	₹ 19,200
Goodwill	3,04,800

Goodwill will be shown on the Asset side of Consolidated Balance Sheet of H Ltd.

Answer 4(c)

Cash flow from Financing Activities

Particulars	Amount in ₹ Crore	Amount in ₹ Crore
Share Capital raised	400	
Share Premium	200	600
New Secured Debt raised		900
Debt interest		-962
Cash inflow from financing activities		538

Working Notes:

Breakup of Capital

Total Finance required for expansion project	₹ 1500 crore	
Equity Capital	40%	₹ 600 crore
Debt Capital	60%	₹ 900 crore

Amount in ₹ Crore

Secured Loans	4000
Unsecured Loans	2500

Amount raised from secured debt capital for new project	900
Total debt capital	7400
Interest Cost @13%	962

OR (Alternate question to Q. No. 4)

Question 4A

- (i) What are the conditions required to be fulfilled by a company in order to issue ESOP ?
- (ii) What are requirements for consolidation of a subsidiary which is LLP or partnership ?
- (iii) Write a short note on issue of bonus shares. Provide proforma journal entries.

(5 marks each)

Answer 4A(i)

A company issuing the ESOPs has to fulfill following prescribed conditions:

- a) These shares are of the same class of shares already issued,
- b) It is authorized by a special resolution passed by the company;
- c) The resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued,
- d) Not less than one year has, at the date of issue, elapsed since the date on which the company had commenced business; and
- e) These shares are issued in accordance with SEBI regulations, if the shares are listed.

Answer 4A(ii)

Requirements for consolidation of a subsidiary which is LLP or partnership

As per Companies (Accounts) Rules, 2014 under the heading "Manner of Consolidation of Accounts" it is provided that the consolidation of financial statements of a company shall be done in accordance with provisions of Schedule III to the Companies Act, 2013 and the applicable Accounting Standards.

It is noted that relevant Indian Accounting Standards i.e Ind AS110, Consolidated Financial Statements provides that where an entity has control over one or more other entities, the controlling entity is required to consolidate all the controlled entities. Since, the word "entity" includes a company as well as any other form of entity, therefore LLPs and partnership firms are required to be consolidated.

Similarly, under AS 21, as per the definition of subsidiary an enterprise controlled by the parent is required to be consolidated. The term "enterprise" includes a company and any enterprise other than a company. Therefore, under AS also, LLPs and partnership firms are required to be consolidated.

Answer 4A(iii)

A company may issue fully paid-up bonus shares to its members, in any manner, out of

- Free reserves

- Securities premium account
- Capital redemption reserve account

However, no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets.

No company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares under above, unless-

- It is authorized by its articles.
- It has, on the recommendation of the Board, been authorized in the general meeting of the company.
- It has not defaulted in payment of interest or principal in respect of its deposits or issued debt securities.
- It has not defaulted in respect of the payment of statutory dues of the employees, such as contribution to provident fund, gratuity and bonus.
- The partly paid-up shares, if any outstanding on date of allotment, are made fully paid up.
- The company which has once announced the decision of Board recommending a bonus issue, shall not subsequently withdraw the same.
- Bonus shares shall not be issued in lieu of dividend.

Journal entries for issue of Bonus Share

On capitalization of reserve for the issue of shares

Profit & Loss A/c	Dr.
General Reserve A/c	Dr.
Capital Reserve A/c (Realized in cash only)	Dr.
Securities Premium A/c	Dr.
Capital Redemption Reserve A/c	Dr.
To Bonus to Shareholders A/c	

On Issue of bonus shares

Bonus to Shareholders A/c	Dr.
To Share Capital A/c	

PART-II

Question 5

Metadex Ltd. is a clean-tech start-up focused on affordable solar energy solutions for urban households. Founded by two engineers, Amit and Sumit, in 2021, the company developed a new solar panel design that is highly efficient and affordable. The journey begins with Amit, an engineer working in a traditional energy company. For years, Amit had seen the damaging environmental impact of fossil fuels and the inefficiency of the power grid. Concerned about climate change and driven by the desire to make a difference, he started researching alternative energy solutions. Solar energy stood out as an abundant and clean source of power that remained underutilized, especially in underserved communities. In 2020, Amit quit his job and partnered with his college

friend—Sumit, an expert in renewable energy policy and a software engineer. Their vision is to revolutionize the energy industry by making solar power accessible to middle-income families across the globe.

Starting the company was tough. The team faced numerous challenges, including high upfront costs for solar panels, stiff competition from larger energy companies, and difficulties in navigating government regulations. They initially struggled to secure funding, as many investors were sceptical of renewable energy start-up, thinking the market was oversaturated or too slow to provide returns.

Early-stage solar hardware companies often require significant capital for research, development, and manufacturing, making it a tough sell to investors looking for faster returns. The company navigated through the initial stages of challenges. They developed a robust marketing plan to target eco-conscious communities, partnering with influencers in the sustainability space and running ads on social media. The team scaled their operations by working with local solar panel manufacturers, reducing costs, and creating jobs in the communities they served.

Currently in the expansion process, Metadex needed around ₹ 15 lacs to scale up production and penetrate further in the market. Amit and Sumit decided to explore alternative fundraising options that would allow them to keep control of their company and align with their longterm vision.

The firm's condensed Balance sheet for the current year is as follows :

Liabilities	Amount (₹)	Assets	Amount (₹)
Equity Share Capital (₹10)	8,00,000	Fixed Assets	9,00,000
Reserves & surplus	₹ 2,00,000	Current Assets	6,00,000
10% Debentures of ₹100 each	4,00,000		
Current Liabilities	1,00,000		
Total	15,00,000	Total	15,00,000

Currently Earnings Before Interest and Tax (EBIT) = ₹ 8,00,000. Tax Rate 50%. Current Market Price per equity share ₹ 25, market value of debt equals its book value and cost of equity is 14%.

The financial advisors of Metadex Ltd. is assigned the task to calculate :

- (i) the value of the firm and overall cost of capital before infusion of funds.
- (ii) the Economic Value Added and Market Value Added.

The company has proposed to issue 8% 5000 Preference shares of ₹ 100 each and for the balance ₹ 10 lacs, it is considering two alternatives.

Alternative 1 : Raise 90% of funds required by issuing equity shares at current market price and the remaining by issuing 8% redeemable Debentures of ₹ 100 at par.

Alternative 2 : Raise 80% of the funds by issuing 9% Debentures of ₹ 100 at par and redeemable at a premium of 10% after 10 years and the balance by issuing Equity shares at 33.3333% premium.

Again, the financial advisor is asked to :

- (i) Draft the final Capital Structure
- (ii) Calculate the Earnings Per Share and Financial Leverage.

(4+4+8+4=20 marks)

Answer 5(i)**(Amount in ₹)**

Earnings before Interest and Tax (EBIT)	8,00,000
Less: Interest	40,000
PBT	7,60,000
Less: Tax @50%	3,80,000
Shareholders' Earnings (PAT)	3,80,000
Market value of Equity (₹ 3,80,000/14%)	27,14,286
Market value of Debt	4,00,000
Market Value of the Firm	31,14,286
Overall cost of capital = EBIT/Market Value of Firm = ₹ 8,00,000/₹ 31,14,286	25.69%

Note: Rounded off to nearest rupee and Fraction

Answer 5(ii)

Economic Value Added (EVA) = Net operating Profit after Tax - (Weighted Average Cost of Capital x Capital employed)

Where, Capital Employed = Fixed Assets + Working Capital

$$= ₹ 3,80,000 - (25.69\% \times ₹ 14,00,000)$$

$$= ₹ 3,80,000 - ₹ 3,59,660 = ₹ 20,340$$

Market Value Added (MVA) = MV of Equity Shares - Total Shareholders' equity + (Market Value of Debt – Book Value of debt)

$$= (80,000 \text{ shares} \times ₹ 25) - (₹ 8,00,000 + ₹ 2,00,000) + (₹ 4,00,000 - ₹ 4,00,000)$$

$$= ₹ 20,00,000 - ₹ 10,00,000$$

$$= ₹ 10,00,000$$

Answer 5(iii)**Capital Structure Plans**

Amount in ₹

Capital	Alternative 1	Alternative 2
Equity Share Capital (WN 1)	11,60,000	9,50,000
8% Preference shares (₹100)	5,00,000	5,00,000
Reserves & Surplus (WN 1)	7,40,000	2,50,000

10% Redeemable Debentures (₹100)	4,00,000	4,00,000
8% Debentures (₹100)	1,00,000	-
9% Debentures (₹100)	-	8,00,000
Total	29,00,000	29,00,000

Working Notes**WN1 - Equity Share Capital for both Alternatives**

Equity Share Capital = 8,00,000 + 900000 x 10/25 = 8,00,000 + ₹ 3,60,000 = ₹ 11,60,000

Equity Share Capital = ₹ 8,00,000 + ₹ 200000 x 10/13.3333 = ₹ 8,00,000 + ₹ 1,50,000 = ₹ 9,50,000

WN2- Reserve and Surplus for both Alternatives

Reserves & Surplus = ₹ 2,00,000 + ₹ 900000 x 15/25 = ₹ 2,00,000 + ₹ 5,40,000 = ₹ 7,40,000

Reserves & Surplus = ₹ 2,00,000 + ₹ 200000 x 3.3333/13.3333 = ₹ 2,00,000 + ₹ 50,000 = ₹ 2,50,000

Answer 5(iv)**Financial Leverage**

Particulars	Alternative 1	Alternative 2
Earnings before Interest and Tax (EBIT)	8,00,000	8,00,000
Less: Interest	48,000	1,12,000
Profit before Tax (PBT)	7,52,000	6,88,000
Tax @50%	3,76,000	3,44,000
Profit after Tax (PAT)	3,76,000	3,44,000
Preference dividend	40,000	40,000
Earnings available for Equity Shareholders (A)	3,36,000	3,04,000
Number of Equity Shares (B)	1,16,000	95,000
EPS= (A/B)	2.90	3.2
Financial Leverage = EBIT/PBT (Ignoring the Preference Dividend)	1.06	1.16

Alternative Answer

Financial Leverage = $\frac{\text{EBIT} / \text{EBT} - \text{Preference Dividend}}{(1-t)}$ Considering Preference Dividend	1.19	1.32
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Attempt all parts of either Q. No. 6 or Q. No. 6A**Question 6**

(a) Calculate Holding period returns for the following security :

Particulars	(₹)
Investment made on April 1, 2022	50,000/-
Dividends received during the year	2,500/-
Investment sold on March 31, 2023	75,000/-
Income Tax Rate on Dividends	30%
Income Tax Rate on Capital Gains	20%

(b) Zen & Co made sales for a certain period for ₹ 25,00,000/-. The net profit for the same period was ₹ 2,50,000/-. Fixed overheads were ₹ 3,75,000/-.

Calculate :

- P/V Ratio
 - Sales needed to generate a profit of ₹ 3,75,000/-
 - Net profit when sales are ₹ 37,50,000/-
 - Break Even Point.
- (c) A company has an EBIT of ₹ 10,00,00,000 and belongs to a risk class of 15% i.e., its overall cost of capital is 15%. What is the cost of equity capital if it employs 10% debt to the extent of 30%, 40% or 50% of total capital of ₹ 50,00,00,000/- Assume net operating income approach applies.
- (d) Calculate Economic Order Quantity from the following details and also state the number of orders to be placed in a year :

Consumption of materials per annum	50,000 kg
Order placing cost per order	125/-
Cost per unit of raw material	10/-
Storage Costs	5% on average inventory

(5 marks each)

Answer 6(a)**Calculation of Holding Period Return**

	Gross Receipt (₹)	Income Tax Rate	Income Tax (₹)	Net Receipt (₹)
Dividends	2,500	30%	750	1,750

Capital Gains (₹ 75,000 – ₹ 50,000/-)	25,000	20%	5,000	20,000
Total Return				21,750

Total Investment = ₹50,000/-

Holding Period Return = Net Receipt/Total Investment

= ₹ 21,750/₹ 50,000 = 0.435 = 43.50%

Alternative Answer:

$[(₹ 50,000 + ₹ 1,750 + ₹ 20,000) / ₹ 50,000] - 1 = .435$ or 43.50%

Answer 6(b)

(i) Calculation of P/V Ratio

$$\begin{aligned}
 \text{Contribution} &= \text{Fixed Cost} + \text{Profit} \\
 &= 3,75,000 + 2,50,000 \\
 &= 6,25,000
 \end{aligned}$$

$$\text{P/V Ratio} = \frac{\text{Contribution}}{\text{Sales}} = \frac{₹ 6,25,000}{₹ 25,00,000} = 25\%$$

(ii) Sales needed to generate a profit of 3,75,000/-

$$\text{Required Sales} = \frac{\text{Fixed Cost} + \text{Profit}}{\text{P/V Ratio}} = \frac{₹ 3,75,000 + ₹ 3,75,000}{25\%} = ₹ 30,00,000$$

(iii) Net profit when sales are ₹ 37,50,000

Sales	₹ 37,50,000
PV Ratio	25.00%
Contribution = Sales x P/V Ratio	₹ 9,37,500
Fixed Cost	₹ 3,75,000
Profit = Contribution - Fixed Cost	₹ 5,62,500

$$\text{(iv) Break Even Point} = \frac{\text{Fixed Cost}}{\text{P/V Ratio}} = \frac{₹ 3,75,000}{25\%} = ₹ 15,00,000$$

Answer 6(c)

Calculation of Cost of Equity Capital

	Level of Debt Capital		
Particulars	30%	40%	50%
EBIT (A)	10,00,00,000	10,00,00,000	10,00,00,000

Overall Cost of Capital (K_o)	15%	15%	15%
Value of firm ($V = EBIT/K_o$)	66,66,66,667	66,66,66,667	66,66,66,667
Total Capital	50,00,00,000	50,00,00,000	50,00,00,000
Value of debt (D)	15,00,00,000	20,00,00,000	25,00,00,000
Value of Equity ($E = V - D$)	51,66,66,667	46,66,66,667	41,66,66,667
Interest Rate	10%	10%	10%
Interest on Debt (B)	1,50,00,000	2,00,00,000	2,50,00,000
Net Profit available for equity holders (A-B)	8,50,00,000	8,00,00,000	7,50,00,000
K_e (Net Profit for equity holders/ value of equity)	16.45%	17.14%	18.00%

Answer 6(d)

Economic Order Quantity	$\sqrt{(2 \times R \times C_p)/C_h}$
Economic Order Quantity	$\sqrt{(2 \times 50,000 \times 125)/(5\% \times 10)}$ = 5,000 units
Number of Orders per annum	$\frac{\text{Annual Requirement}}{\text{Economic Order Quantity}}$ = 50,000/5,000 = 10 orders

Consumption of materials per annum	R
Ordering Cost per order	C_p
Holding Costs/Storage Cost	C_h

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

- Write a short note on Present Value of Annuity.
- What are Primary Trends in terms of the "Dow Theory" related to Technical Analysis ?
- Define Risk Adjusted Discount Rate and Certainty Equivalent Technique.
- What is the connection between Risk and Leverage in terms of capital structure ?

(5 marks each)

Answer 6A(i)**Present Value of an Annuity**

The present value of an annuity is the current value of future payments from an annuity, given a specified rate of return, or discount rate. The higher the discount rate, the lower the present value of an annuity.

Key points:

- The present value of an annuity refers to how much money would be needed today to fund a series of future annuity payments.
- A sum of money received today is worth more than the same sum at a future date because of time value of money.
- Present value calculation can be used to determine whether more money will be received by taking a lumpsum payout now or an annuity spread out over a number of years.

The formula to compute Present Value of an Annuity is as under:

Present Value of an annuity (P) = $PMT \times 1 - \frac{(1/1+r)^n}{r}$

Where:

PMT = Monetary value of each annuity payment

r = Interest rate (also known as discount rate)

n = Number of periods in which payments will be made

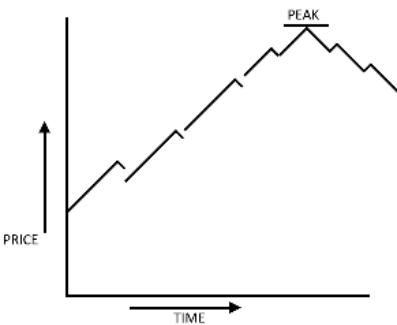
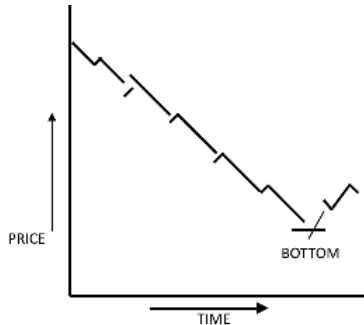
Answer 6A(ii)

Short note on Primary Trends

Technical analysis is an analysis for forecasting the direction of security prices through the study of past market data primarily price and volume. Dow Jones is one of the earliest theories of technical analysis.

The primary trend lasts from one to three years. Over this period, the markets exhibit definite upward or downward movement which is punctuated by shorter spans of trend reversal in the opposite directions. The trend reversal is called the secondary trend. Primary trend is indicative of the overall pattern of movement.

In Dow theory, the primary trend is the major trend of the market, which makes it the most important one to determine. This is because the overriding trend is the one that affects the movements in stock prices. The primary trend will also impact the secondary and minor trends within the market.

Bullish Phase 	Bearish Phase 
In a bullish phase, after each peak, there is a fall but the subsequent rise is higher than the previous one.	In a bearish phase, the overall trend is that of decline in share values. After each fall, there is slight rise but the subsequent fall is even sharper.

Answer 6A(iii)

Risk Adjusted Discount Rate ("RADR") and Certainty Equivalent Technique are measures of risk evaluation

Risk Adjusted Discount Rate:

RADR is the discount rate applicable to a risky investment and is the sum of the risk-free rate and a risk premium relating to that investment. RADR is also known as Varying Discount Rate Method. Under this method discount is adjusted in accordance with the degree of risk.

$$\text{RADR} = \text{Risk Free Rate of Return} + \text{Risk Premium Rate}$$

This is a simplest method of accounting for risk in capital budgeting is to increase the cut-off rate or the discount factor by certain percentage on account of risk. The projects which are more risky and which have greater variability in expected returns should be discounted at a higher rate as compared to the projects which are less risky and are expected to have lesser variability in returns.

Certainty equivalent technique.

In this method, cash flows are corrected and reduced to conservative levels by multiplying them by certainty equivalent co-efficient (or correlation factor).

$$\text{Certainty Equivalent Co-efficient} = \frac{\text{Riskless Cash Flows}}{\text{Risky Cash Flows}}$$

This is another simple method of accounting for risk in capital budgeting. This reduces expected cash flows by certain amounts. It can be employed by multiplying expected cash flows by certainty equivalent co-efficient as to convert the uncertain cash flows to certain cash flows.

Answer 6A(iv)

Risk is the probability that the future revenue streams of a firm shall vary from the expected figures. The variation is normally on the negative or the lower side because a positive variation reduces the investment risk and a reduction of risk is always welcome.

For linkage with leverage, risk is divided into two broad categories i.e business risk and financial risk. Business risk pertains to risks associated with day to day operations of the firm. For example, decisions made regarding purchase of raw materials, manufacturing expenses and administrative expenses, etc. change the business risk profile of the firm. These decisions have an impact upon the operational profitability of the firm, i.e. the profits before interest and taxes.

Financial risk, on the other hand, is associated with introduction of fixed interest bearing debt obligations in the capital structure of the firm. These obligations create a prior charge on EBIT before distribution of post-tax profits among the owners.
