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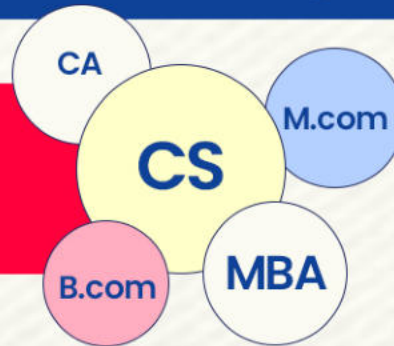
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PRESS RELEASE

Chief of Bureau

14 December 2023

ICSI signs MoU with IMA® to enhance professional skills and competencies of its members

The ICSI signed a Memorandum of Understanding (MoU) with IMA® (Institute of Management Accountants) at the 2nd Regional Conference of Corporate CS of ICSI-SIRC, hosted by Bengaluru Chapter in Bengaluru, to foster collaborative alliances for the benefit of the members of both organizations.

Aimed at advancing the highest standards of ethics and professional conduct in members of both organizations, the MoU will promote excellence in financial management, corporate reporting, and governance.

Sharing his views, CS Manish Gupta, President The ICSI, emphatically stated that "Understanding the rising needs and expectations of the stakeholders, it is utmost important to raise the bar and continuously upgrade the professional knowledge & skills. The association with IMA will provide a collaborative platform for sharing best practices, enhancing knowledge & skills, and will open the doors to addressing various challenges faced by professionals working in the area of finance, governance and strategy".

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CHAPTER : 1 LAW RELATING FOREIGN EXCHANGE MANAGEMENT

INTRODUCTION & REGULATORY FRAMEWORK

Question : 1 (Dec 2024,Old Syllabus)

Why was Foreign Exchange Management Act, 1999 enacted? What are the key aspects dealt under the Foreign Exchange Management Act?

(4 marks)

Answer :

The Foreign Exchange Management Act, 1999 (FEMA) was enacted to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India.

In fact, it is the central legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.

FEMA Provides -

- Provides Free Current Account Transactions subject to reasonable restrictions.
- Provides for Classes of Capital Account Transactions, Realization of Export Proceeds.
- Deals in Foreign Exchange through Authorized Person (e.g. Authorized Dealer/Money Changer/Off-shore Banking Unit).
- Provides for Adjudication of Offences, Appeal Provisions including Special Director (Appeals) and Appellate Tribunal & High Court.

Question : 2 (Dec 2021)

What is the object and scope of Foreign Exchange Management Act, 1999?

(4 marks)

Answer :

- The Foreign Exchange Management Act, 1999 was enacted to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. In fact it is the central legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.
- Foreign Exchange Management Act, 1999 extends to the whole of India. It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies.

Question : 3 (Dec 2022)

Discuss Overall Scheme of Foreign Exchange Management Act, 1999.

(4 marks)

Answer :

- Foreign Exchange Management Act, 1999 (FEMA) makes provisions for dealings in foreign exchange.
- Broadly, all Current Account Transactions are free. However, Central Government can impose reasonable restrictions by issuing rules (Section 3 FEMA). Capital Account Transactions are permitted to the extent specified by RBI by issuing Regulations.
- (Section 6 of FEMA) FEMA envisages that RBI shall have a controlling role in management of foreign exchange.
- Since RBI cannot directly handle foreign exchange transactions, it authorizes “Authorised Persons” to deal in foreign exchange. RBI has been empowered to issue directions to such “Authorised Persons” under Section 11.
- FEMA also makes provisions for enforcement, penalties, adjudication and appeal. The FEMA contains only basic legal framework. The practical aspects are covered in Rules made by Central Government and Regulations made by RBI.
- FDI Policy announced by Department for Promotion of Industry & Internal Trade, Ministry of Commerce and Industry is directly relevant to understanding the provisions of FEMA. Instructions/Guidelines etc. of Ministry of Finance and Securities and Exchange Board of India (SEBI) become relevant when (ECB) /ADR/GDR and capital market is involved.

Question : 4 (June 2019)

Discuss the objectives of enacting the Foreign Exchange Management Act, 1999. Explain in brief the scheme of Foreign Exchange Management Act, 1999.

(4 marks)

Answer :

- Foreign Exchange Management Act, 1999 enacted to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India. In fact it is the central legislation that deals with inbound investments into India and outbound investments from India and deal with trade and business between India and the other countries.
- Foreign Exchange Management Act, 1999 makes provisions for dealings in foreign exchange. Broadly, all Current Account Transactions are free.
- However, Central Government can impose reasonable restrictions by issuing Rules. Capital Account Transactions are permitted to the extent specified by Reserve Bank of India (RBI) by issuing Regulations.
- Foreign Exchange Management Act, 1999 envisages that RBI shall have a controlling role in management of foreign exchange. Since RBI cannot directly handle foreign exchange transactions, it authorizes "Authorised Persons" to deal in foreign exchange.
- Foreign Exchange Management Act, 1999 also makes provisions for enforcement, penalties, adjudication and appeal also contains only basic legal framework. The practical aspects are covered in Rules made by Central Government and Regulations made by RBI.

IMPORTANT DEFINITIONS

Question : 5 (June 2024, Old Syllabus)

Define the terms 'Foreign Exchange' and 'Foreign Security' under Foreign Exchange Management Act, 1999.

(5 marks)

Answer :

Foreign Exchange [Section 2(n)]

The term 'foreign exchange' has been defined under Section 2(n) of Foreign Exchange Management Act, 1999 to mean foreign currency and includes deposits, credits, balance payable in foreign currency, drafts, travelers cheques, letters of credit, bills of exchange expressed or drawn in Indian currency but payable in any foreign currency. Any draft, travelers cheque, letters of credit or bills of exchange drawn by banks, institutions or persons outside India but payable in Indian currency has also been included in the definition of foreign exchange.

Foreign Security [Section 2(o)]

The term 'foreign security' has been defined under Section 2(o) of Foreign Exchange Management Act, 1999 to mean any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividend is payable in Indian currency.

Transfer or issue of a foreign security is a capital account transaction within the meaning of Section 6(3)(a) of the Act. The Reserve Bank of India has made Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2000 for regulation, acquisition and transfer of a foreign security by a person resident in India i.e. investment by Indian entities in overseas joint ventures and wholly owned subsidiaries as also investment by a person resident in India in shares and securities issued outside India.

CURRENT ACCOUNT TRANSACTIONS

Question : 6 (June 2021) & (Dec 2019)

Enumerate the situations in which the drawal of foreign exchange is prohibited under the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

(4 marks)

Answer :

Prohibition on drawal of foreign exchange for certain transactions

- Rule 3 prohibits the drawal of foreign exchange for the purposes of transactions specified in the Schedule I or a travel to Nepal and/or Bhutan or a transaction with a person resident in Nepal or Bhutan.
- However, in the case of transaction with a person resident in Nepal and Bhutan, the prohibition may be exempted by RBI subject to such terms and conditions as it may consider necessary. Schedule I to the Rules enumerate the situations in which the drawal of foreign exchange is prohibited.

These are as follows:

1. Remittance out of lottery winnings.
2. Remittance of income from racing/riding etc. or any other hobby.
3. Remittance for purchase of lottery tickets, banned /proscribed magazines, football pools, sweepstakes, etc.

4. Payment of commission on exports made towards equity investment in Joint Ventures / Wholly Owned Subsidiaries abroad of Indian companies.
5. Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
6. Payment related to "Call Back Services" of telephones.
7. Remittance of interest income on funds held in Non-Resident Special Rupee (Account) Scheme.

Question : 7 (June 2024, Old Syllabus)

Which remittances by persons other than individuals require prior approval of the Reserve Bank of India under the Foreign Exchange Management Act, 1999?

(4 marks)

Answer :

The following remittances by persons other than individuals require prior approval of the Reserve Bank of India.

- (i) Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for
 - (a) creation of Chairs in reputed educational institutes;
 - (b) contribution to funds (not being an investment fund) promoted by educational institutes; and
 - (c) contribution to a technical institution or body or association in the field of activity of the donor Company.
- (ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.
 - (i) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.
 - (ii) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

Question : 8 (June 2021)

Describe the remittances by persons other than the individuals which require prior approval of the Reserve Bank of India.

(4 marks)

Answer :

The following remittances by persons other than individuals require prior approval of the Reserve Bank of India.

(i) Donations exceeding one per cent. of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for

(a) creation of Chairs in reputed educational institutes;

(b) contribution to funds (not being an investment fund) promoted by educational institutes; and

(c) contribution to a technical institution or body or association in the field of activity of the donor Company.

(ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more.

(iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

(iv) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

LIBERALISED REMITTANCE SCHEME (LRS)

Question : 9 (Dec 2020)

Name any five permissible current account transactions made by an individual under Liberalized Remittance Scheme (LRS).

(5 marks)

Answer :

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 only. Any additional remittance in excess thereof requires prior approval of the Reserve Bank of India.

- (i) Private visits to any country (except Nepal and Bhutan).
- (ii) Gift or donation.
- (iii) Going abroad for employment.
- (iv) Emigration.
- (v) Maintenance of close relatives abroad.
- (vi) Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
- (vii) Expenses in connection with medical treatment abroad.
- (viii) Studies abroad.
- (ix) Any other current account transaction.

Question : 10 (June 2023)

What do you mean by Liberalised Remittance Scheme?

(4 marks)

Answer :

- The Reserve Bank of India as part of its liberalization measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both issues Liberalised Remittance Scheme.
- Liberalised Remittance Scheme permits the Authorised Dealers to freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both.
- Remittances under the Liberalised Remittance Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.
- However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/ investment/property. Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

Question : 11 (Dec 2021)

What is Liberalised Remittance Scheme? What are the facilities available to students for pursuing their studies abroad under this scheme? Explain.

(4 marks)

Answer :

- a) The Reserve Bank of India as part of its liberalization measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both issues Liberalised Remittance Scheme.
- b) Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD 2,50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both.
- c) Authorised Dealer Category I banks and Authorised Dealer Category II, may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University.
- d) However, AD Category I bank and AD Category II may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 2,50,000 based on the estimate received from the institution abroad.
- e) It may be noted that remittances under the Liberalised Remittance Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions. However, clubbing is not permitted by other family members for capital account transactions such as opening a bank account/ investment, if they are not the co-owners/co-partners of the overseas bank account/ investment.
- f) Remittances for purchase of property shall be in accordance with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022. Further, a resident cannot gift to another resident, in foreign currency, for the credit of the latter's foreign currency account held abroad under LRS.

Question : 12 (June 2022)

What are limits of Current Account Transactions by an Individual under liberalized remittance scheme?

(5 marks)

Answer :

The limit of Current Account Transaction under the liberalized remittances scheme is USD 2,50,0000 per Financial Year (FY).

It may be noted that one release of foreign exchange in excess of USD 2, 50,000 requires prior permission from the Reserve Bank of India.

The permitted areas are;

(a) Private Visits

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

(b) Gift/Donation

Any individual may remit up-to USD 2, 50,000 in one Financial Year as gift to a person residing outside India or as donation to an organization outside India.

(c) Going Abroad on Employment

A person going abroad for employment can draw foreign exchange up to USD 2,50,000 in one Financial Year from an authorized dealer in India.

(d) Emigration

A person wanting to emigrate can draw foreign exchange from AD Category I bank AD category II up to the amount prescribed by the country of emigration or USD 2,50,000.

(e) Maintenance of Close Relatives Abroad

A resident individual can remit up-to USD 2, 50,000 in one Financial Year towards maintenance of close relatives.

(g) Business Trip

Visits by individuals in connection with attending of an international conference, seminar, specialized apprentice training, etc., are treated as business visits. For business trips to foreign Countries individuals can avail of foreign exchange up to USD 2,50,000 in one Financial Year irrespective of the visits undertaken during the year.

(h) Medical Treatment Abroad

Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 in one Financial Year or its equivalent per financial year without insisting on any estimate from a hospital/doctor.

(i) Foreign Studies

AD Category I banks and AD Category II, may release foreign exchange up to USD 2, 50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University.

Question : 13 (Dec 2019)

Dr. Gupta, an Indian national, residing in Thailand and wanted to avail foreign exchange facility upto USD 2,00,000 only. Whether he can do so ? Explain the relevant provisions of the Foreign Exchange Management Act, 1999 in this respect.

(5 marks)

Answer :

- Liberalised Remittance Scheme (LRS) of USD 2, 50,000 for resident individuals. Under the Liberalised Remittance Scheme, Authorised Dealers may freely allow remittances by resident individuals up to USD 2, 50,000 per Financial Year (April-March) for any permitted current or capital account transaction or a combination of both. The Scheme is not available to corporates, partnership firms, HUF, Trusts, etc.
- The limit of USD 2,50,000 per Financial Year (FY) under the Scheme also includes/subsumes remittances for current account transactions (viz. private visit; gift/donation; going abroad on employment; emigration; maintenance of relatives abroad; business trip; medical treatment abroad; studies abroad) available to resident individuals under Para 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Amendment Rules, 2015 dated May 26, 2015. Release of foreign exchange exceeding USD 2,50,000, requires prior permission from the Reserve Bank of India.
- In view of the above, Dr. Gupta can freely avail foreign exchange facilities upto USD 2,00,000.

Question : 14 (June 2021)

Upto what limit an authorised dealer may release foreign exchange for business trip and medical treatment abroad, under Liberalised Remittance Scheme.

(5 marks)

Answer :

Followings are the limits up to which the authorised dealer may release foreign exchange for business trip and medical treatment under Liberalised Remittance Scheme (LRS):

Business trip

- Visits by individuals in connection with attending of an international conference, seminar, specialised training, apprentice training, etc., are treated as business visits. For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2,50,000 in a FY irrespective of the number of visits undertaken during the year.
- However, if an employee is being deputed by an entity for any of the above and the expenses are borne by the latter, such expenses shall be treated as residual current account transactions outside LRS and may be permitted by the AD without any limit, subject to verifying the bonafides of the transaction.

Medical treatment abroad

- Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 or its equivalent per FY without insisting on any estimate from a hospital/doctor.
- For amount exceeding the above limit, Authorised Dealers may release foreign exchange under general permission based on the estimate from the doctor in India or hospital/ doctor abroad.
- A person who has fallen sick after proceeding abroad may also be released foreign exchange by an Authorised Dealer (without seeking prior approval of the Reserve Bank of India) for medical treatment outside India.
- In addition to the above, an amount up to USD 250,000 per financial year is allowed to a person for accompanying as attendant to a patient going abroad for medical treatment/check-up.

Question : 15 (June 2025)

Whether following remittances by persons other than individuals require prior approval of the Reserve Bank of India under Liberalized Remittance Scheme :

(i) Vikram Associates, a partnership firm in India wants to remit USD 2,000,000 for consultancy services procured from outside India for a project other than infrastructure Project.

(ii) Lakshay & Co., a partnership firm wants to remit USD 9,000,000 for consultancy services procured from outside India for an infrastructure project.

(iii) Mayank Pvt. Ltd., a Real Estate Company in India want to remit commission of USD 25,000 to an agent outside India for selling a residential flat in India for which he has remitted USD 400,000 in India

(iv) PQR Pvt. Ltd., a Real Estate Company in India want to remit commission of USD 25,000 to an agent outside India for selling a Commercial plot in India for which he has remitted USD 2,000,000 in India

(v) Navya Ltd., an Indian company wants to remit USD 100,000 to a company outside India towards reimbursement of pre-incorporation expenses for investment of USD 2,000,000 in its company which is fully brought into India.

(5 marks)

Answer :

- (i) Remittances exceeding USD 1,000,000 per project for any consultancy services in respect of a project other than infrastructure project require prior approval of RBI.
- In this case, **prior approval of Reserve Bank of India is required** as remittance is USD 2,000,000 which exceeds the prescribed limit.
- (ii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of an infrastructure project require Prior approval of Reserve Bank of India.
- So, in this case **no prior approval of Reserve Bank of India is required** as it is within the limit.
- (iii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more require prior approval of Reserve Bank of India. In this case, 5% of inward remittance is USD 20000 which is within the limit.
- So, **no prior approval of Reserve Bank of India is required.**
- (iv) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five percent of the inward remittance whichever is more require prior approval of RBI. In this case, 5% of inward remittance is USD 100000 which exceeds the prescribed limit.
- So, **prior approval of Reserve Bank of India is required.**
- (v) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses requires prior permission of Reserve Bank of India. In this case, 5% of investment brought into India is USD 100,000 which is within the limit.
- So, **no prior approval of Reserve Bank of India is required.**

Question : 16 (Dec 2023, Old Syllabus)

Whether following remittances by Resident Individuals need prior approval of Reserve Bank of India:

- (i) Geeta gifts to her sister in New York USD 2,45,000.
- (ii) Manav spends USD 3,50,000 as fees for an Academic Course in New Zealand.
- (iii) Ishan spends USD 1,75,000 on European Tour.
- (iv) Ashima is going to Australia for Emigration and she wants to draw USD 2,75,000.

(4 marks)

Answer :

(i) Within the limits of Liberalised Remittance Scheme (LRS) of USD 2,50,000 USD, any resident individual may remit up-to USD 2,50,000 in one Financial Year as gift to a person residing outside India.

➤ Hence, the **RBI approval is not needed** by Geeta.

(ii) AD Category I banks and AD Category II, may release foreign exchange up to USD 2,50,000 or its equivalent to resident individuals for studies abroad without insisting on any estimate from the foreign University.

However, AD Category I bank and AD Category II may allow remittances (without seeking prior approval of the Reserve Bank of India) exceeding USD 2,50,000 based on the estimate received from the institution abroad.

➤ Hence **RBI approval is not needed** by Manav.

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

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

➤ Hence, **RBI approval is not needed** by Ishan.

(iv) A person wanting to emigrate can draw foreign exchange from AD Category I bank and AD Category II up to the amount prescribed by the country of emigration or USD 250,000.

Remittance of any amount of foreign exchange outside India in excess of this limit may be allowed only towards meeting incidental expenses in the country of immigration and not for earning points or credits to become eligible for immigration by way of overseas investments in government bonds; land; commercial enterprise; etc.

Hence, the **RBI approval is needed** by Ashima as the amount exceeds USD 2,50,000.

Question : 17 (Dec 2024)

Explain and justify the following cases of 'Resident Individuals' under Foreign Exchange and Management Act, 1999:

(i) Tushar Mehta wishes to remit a sum of USD 50,000 as gift to his daughter in France. Whether he can do so?

(ii) Deepa, a young girl aged 22 years, wishes to go to Poland for a private visit and she wishes to obtain USD 2,75,000/- for her private visit. Can she obtain?

(iii) Akanksha, a software engineer is going for an employment in Budapest, requires a sum of USD 99,000 for her settlement abroad. Does she require prior approval of Reserve Bank of India?

(iv) Sandeep Sharma VP in a Domestic Indian company is going to visit the company plant location in New York for 30 days. He estimated a sum of USD 3,00,000 as expenditure. This is his first visit during the FY 2024-2025. Can he do so?

(v) Parents of General Manager Sushant Agarwal from Delhi, is residing in Germany. He seeks your consultancy in sending a sum of USD 2,02,500 to his parents for their maintenance?

(5 marks)

Answer :

(i) Under Liberalised Remittance Scheme, any resident individual may remit up-to USD 2, 50,000 in one financial year as gift to a person residing outside India or as donation to an organization outside India.

➤ In light of the above, **Tushar Mehta can remit** a sum of USD 50,000 as gift to his daughter in France.

(ii) Under Liberalised Remittance Scheme, for private visits abroad, other than to Nepal and Bhutan, any resident Individual can obtain foreign exchange up to aggregate amount of USD 2, 50,000 from an Authorized Dealer (AD) or FFMC, in any one financial year, irrespective of the number of visits undertaken during the year.

Further, all tour related expenses including cost of rail/ road/ water transportation: cost of Euro rail: passes / tickets, etc. outside India and overseas hotel/ lodging expenses shall be subsumed under the LRS limit. The tour operator can collect this amount either in Indian Rupees or in Foreign Currency for the resident traveller.

➤ Hence, **Deepa cannot obtain a sum of USD 275,000** from any Authorized Dealer (AD) or FFMC in any one FY (April- March). She can obtain only a sum of USD 2,50,000.

(iii) Under Liberalised Remittance Scheme, Person going abroad for employment can draw foreign exchange up to USD 2, 50,000 per financial year from any Authorized Dealer in India.

➤ Akanksha, who is a software Engineer, going for an employment in Budapest **can acquire USD 99,000** from any authorized dealer in India **without the prior approval of Reserve Bank of India.**

(iv) Under Liberalised Remittance Scheme, Visits by Individuals in connection with attending of International Conference, seminar, specialized apprentice training etc. are treated as

business visits. For business trip to foreign countries, Individuals can avail of foreign exchange up to USD 2,50,000 in one financial year irrespective of the visits undertaken during the year.

- In view of the above, **Sandeep can acquire USD 250000 only.**
 - (v) Under Liberalised Remittance Scheme, resident Individual can remit up-to USD 2, 50,000 per financial year towards maintenance of relatives. 'Relative' as defined U/s 2 (77) of the Companies Act, 2013 abroad.
- In view of the above, **Sushant Agarwal can easily send a sum of USD 2,02,500** to his parents for their maintenance in Germany in one FY (April-March).

Question : 18 (Dec 2023)

What facilities are available in case of private visits and for emigration under the Liberalized Remittance Scheme (LRS)?

(4 marks)

Answer :

Private visits:

- For private visits abroad, other than visit to Nepal and Bhutan, resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000, from an Authorised Dealer, in any one financial year, irrespective of the number of visits undertaken during the year.
- Further, all tour related expenses including cost of rail/road/water transportation; cost of Euro Rail; passes/tickets, etc. outside India; and overseas hotel/lodging expenses are to be subsumed under the Liberalised Remittance Scheme (USD 2,50,000 per Financial Year). The tour operator can collect this amount either in Indian rupees or in foreign currency from the resident traveller.

Emigration:

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

Question : 19 (June 2024, Old Syllabus) & (June 2019)

State the permissible capital account transactions by an individual under Liberalized Remittance Scheme (LRS).

(4 marks)

Answer :

The permissible capital account transactions by an individual under LRS are:

- i. opening of foreign currency account abroad with a bank;
- ii. acquisition of immovable property abroad, Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI), in accordance with the provisions contained in Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022;
- iii. extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 2013.

DIFFERENCE BETWEEN CURRENT A/C & CAPITAL A/C TRANSACTIONS

Question : 20

Distinguish between Current Account Transactions and Capital Account Transactions under FEMA with suitable examples.

(5 marks)

Answer :

Basis	Current A/C Transactions	Capital A/C Transactions
Definition	a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments;	any transaction which alters the assets or liabilities including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of person resident outside India and includes the transactions specified in Sub-section (3) of Section 6 of the Act.

	remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.	
Examples	payment towards private visits to any country; Gift or donation; Going abroad for employment; Emigration; Maintenance of close relatives abroad; Travel for business, or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up; Expenses in connection with medical treatment abroad; Studies abroad; Any other current account transaction which is not covered under the definition of current account in FEMA 1999.	transactions such as Indian Party making investment in equity shares/capital contribution in a foreign entity, or acquiring an immovable property outside India and a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India.
Regulatory Rule	Governed by Foreign Exchange Management (Current Account Transactions) Rules, 2000.	Governed by Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000
Nature	Relates to revenue items i.e recurring in nature.	Relates to capital items – i.e affects assets or liabilities.
Restrictions	Generally free, but the Central Government may impose reasonable restrictions in public interest (e.g., prohibition on foreign lottery, banned magazines, etc.).	Permissible only as specifically allowed under FEMA regulations; otherwise prohibited.

REALISATION, REPATRIATION AND SURRENDER OF FOREIGN CURRENCY

Question : 21

What is meant by “Realisation and Repatriation of Foreign Exchange”? Briefly explain the time limits prescribed.

(5 marks)

Answer :

- Section 8 of the Foreign Exchange Management Act, 1999 requires the person resident in India to make all reasonable efforts to realise and repatriate the foreign exchange due or accrued as per the directions of the Reserve Bank.
- In exercise of the powers conferred by Section 8, Section 10(6), Section 47(2)(c) of the Foreign Exchange Management Act, 1999, the Reserve Bank issued Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015 relating to the manner of, and the period for, realisation of foreign exchange, repatriation of realised foreign exchange to India and its surrender.

Period for surrender of realised foreign exchange

A person not being an individual resident in India shall sell the realised foreign exchange to an authorised person, within the period specified below:

(i) foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, within seven days from the date of its receipt;

(ii) in all other cases within a period of ninety days from the date of its receipt.

- Any person not being an individual resident in India who has acquired or purchased foreign exchange for any purpose mentioned in the declaration made by him to an authorised person under sub-section (5) of Section 10 of the FEMA does not use it for such purpose or for any other purpose for which purchase or acquisition of foreign exchange is permissible under the provisions of the Act or the rules or regulations or direction or order made thereunder, shall surrender such foreign exchange or the unused portion thereof to an authorised person within a period of sixty days from the date of its acquisition or purchase by him.
- Where the foreign exchange acquired or purchased by any person not being an individual resident in India from an authorised person is for the purpose of foreign travel, then, the unspent balance of such foreign exchange shall, save as otherwise provided in the regulations made under the Act, be surrendered to an authorised person
 - (i) within ninety days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of currency notes and coins; and
 - (ii) within one hundred eighty days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of travellers cheques.

- A person being an individual resident in India shall surrender the received/ realised/ unspent/ unused foreign exchange whether in the form of currency notes, coins and travelers cheques, etc. to an authorised person within a period of 180 days from the date of such receipt/ realisation/ purchase/ acquisition or date of his return to India, as the case may be.

Question : 22 (Dec 2024, Old Syllabus)

Explain the “Manner of Repatriation” of Foreign Exchange as per the Foreign Exchange Management Act, 1999.

(4 marks)

Answer :

According to the Foreign Exchange Management (Realisation, Repatriation and Surrender of Foreign Exchange) Regulations, 2015, On realisation of foreign exchange due, a person shall repatriate the same to India, namely bring into, or receive in, India and

- (a) sell it to an authorised person in India in exchange for rupees; or
- (b) retain or hold it in account with an authorised dealer in India to the extent specified by the Reserve Bank; or
- (c) use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by the Reserve Bank.

A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house situated in any country outside India, maintained with an authorised dealer.

POSSESSION AND RETENTION OF FOREIGN CURRENCY OR FOREIGN COINS

Question : 23 (June 2022) & (Dec 2018)

What is the limit on possession and retention of foreign currency or foreign coins under the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015?

(4 marks)

Answer :

As per Regulation 3 of the Foreign Exchange Management (Possession and Retention of Foreign Currency) Regulations, 2015, the Reserve Bank has specified following limits for possession or retention of foreign currency or foreign coins, namely:

(i) possession without limit of foreign currency and coins by an authorised person within the scope of his authority;

(ii) possession without limit of foreign coins by any person;

(iii) retention by a person resident in India of foreign currency notes, bank notes and foreign currency travelers cheques not exceeding US \$ 2000 or its equivalent in aggregate, provided that such foreign exchange in the form of currency notes, bank notes and travelers cheques acquired during a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or from any person not resident in India and also who is on a visit to India, or as honorarium or gift or for services rendered or in settlement of any lawful obligation; or as a honorarium or gift while on a visit to any place outside India; or represents unspent amount of foreign exchange acquired from an authorised person for travel abroad.

Regulation 4 deals with possession of foreign exchange by a person resident in India but not permanently resident therein and provides that a person resident in India but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travelers cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the law for the time being in force.

ACQUISITION OR TRANSFER OF IMMOVABLE PROPERTY IN INDIA

Question : 24 (June 2024)

Vinesh is a person resident outside India. He wishes to acquire the Immovable property in India for carrying on a permitted activity. Explain whether Vinesh can do so under Section 6(5) of the Foreign Exchange and Management Act, 1999?

(5 marks)

Answer :

Provision Of Law:

- i. According to Section 6(5) of the Foreign Exchange and Management Act, 1999, a person resident outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/ her when he/ she was resident in India or inherited from a person resident in India.
- ii. A branch or office or any other place of business in India, other than a liaison office, established by a person resident outside India, may acquire immovable property in India which is necessary

for or incidental to the activity carried on in India by such branch or office. Such a person is required to file with the Reserve Bank a declaration in the form IPI (as given in the Master Direction on Reporting), not later than ninety days from the date of such acquisition.

- iii. The immovable property so acquired can be mortgaged to an Authorised Dealer as a security for any borrowing.
- iv. However, acquisition of immovable property in India by a branch, office or other place of business of persons of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Democratic People's Republic of Korea origin/ nationality/ ownership requires the prior approval of the Reserve Bank.

Conclusion/Analysis:

In the given case, Mr. Vinesh can do so and he has to file above compliance.

Question : 25

State the provisions relating to acquisition or transfer of immovable property in India by:

- (i) NRI/OCI, and
- (ii) Long Term Visa holders.

(8 marks)

Answer :

(i) Acquisition/ Transfer of immovable property by NRI or an OCI

A 'Non-Resident Indian' (NRI) is a person resident outside India who is a citizen of India.

An 'Overseas Citizen of India (OCI)' is a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

- a) An NRI or an OCI can acquire by way of purchase any immovable property (other than agricultural land/ plantation property/ farm house) in India.
- b) An NRI or an OCI can acquire by way of gift any immovable property (other than agricultural land/ plantation property/ farm house) in India from person resident in India or from an NRI or an OCI who is a relative as defined in section 2(77) of the Companies Act, 2013.
- c) An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired the property in accordance with the provisions of the foreign exchange law in force at the time of acquisition.
- d) An NRI or an OCI can acquire any immovable property in India by way of inheritance from a person resident in India.
- e)
- f) An NRI or an OCI may transfer any immovable property in India to a person resident in India.

g) An NRI or an OCI may transfer any immovable property (other than agricultural land or plantation property or farmhouse) to an NRI or an OCI. In case the transfer is by way of gift, the transferee should be a relative as defined in section 2(77) of the Companies Act, 2013.

(ii) Acquisition by a Long-Term Visa holder

- A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries viz., Hindus, Sikhs, Jains, Buddhists, Parsis and Christians, who is residing in India and has been granted a Long-Term Visa (LTV) by the Central Government may purchase only one residential immovable property in India as dwelling unit for self-occupation and only one immovable property for self-employment.
- The property should not be located in and around restricted/ protected areas so notified by the Central Government and cantonment areas.
- The person should submit a declaration to the Revenue Authority of the district where the property is located specifying the source of funds and that he/ she is residing in India on a LTV.
- The registration documents of the property should mention the nationality and the fact that such person is on a LTV.
- The property of such person may be attached/ confiscated in the event of his/ her indulgence in anti-India activities.
- A copy of the documents of the purchased property shall be submitted to the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned and to the Ministry of Home Affairs (Foreigners Division).
- Sale of the immovable property so acquired is permissible only after such person has acquired Indian citizenship. However, transfer of such immovable property before acquiring Indian citizenship requires the prior approval of the Deputy Commissioner of Police (DCP)/ Foreigners Registration Office (FRO)/ Foreigners Regional Registration Office (FRRO) concerned.

AUTHORISED PERSON

Question : 26 (Dec 2018)

Who is an authorized person under Foreign Exchange Management Act, 1999 and what are his obligations?

(4 marks)

Answer :

- The term authorised person is defined under Section 2(c) of the Foreign Exchange Management Act, 1999, include:
 - a) an authorised dealer,

- b) money charger,
 - c) offshore banking unit or
 - d) any other person for the time being authorised to deal in foreign exchange or foreign securities.
- Authorised persons are required to comply with the directions of the Reserve Bank with regard to his dealing in foreign exchange or foreign security receipt with the previous permission of the Reserve Bank.
 - However authorised person are required not to engage in any transaction involving any foreign exchange or foreign security which is not in conformity with the terms of his authorisation.
 - An authorised person, before undertaking any transaction on behalf of any person shall, require that person to make such declaration and give such information as will reasonably satisfy the authorised person that the transaction will not involve or is not intended to violate or contravene any provisions of the Act, rules, notification or directions.
 - In case, the person refuses to comply with such requirements or makes only unsatisfactory compliances, the authorised person is duty bound to refuse in writing to act on behalf of such person in such transaction and report the matter to Reserve Bank.

Question : 27 (Dec 2019)

Explain the powers of the Reserve Bank of India to issue directions to an authorised person under the Foreign Exchange Management Act, 1999.

(5 marks)

Answer :

- a) Section 11 of the Act empowers the RBI to issue directions to the authorised person in regard to making of payment or doing or desist from doing any act relating to foreign exchange or foreign security.
- b) Reserve Bank has also been empowered to issue directions to the authorised persons to furnish such information in such manner as it deems fit.
- c) If any authorised person contravenes any direction given by the RBI or fails to file the return as directed by RBI, he may be liable to a fine not exceeding Rs. 10,000/- and in the case of continuing contravention, with an additional penalty which may extend to Rs. 2,000 for every day during which such contravention continues. Power of Reserve Bank to inspect authorised person.
- d) Section 12 of the Act empowers RBI to inspect the business of any authorised person for the purpose of verifying the correctness of any statement/information or particulars furnished.
- e) In case authorised person fails to furnish the information sought, the RBI can initiate inspection of the authorised person for obtaining such information.
- f) RBI may also inspect the business of an authorised person for securing compliance with the provisions of the Foreign Exchange Management Act or any of the Rules, Regulations or directions.
- g) The Reserve Bank may make an order in writing authorising any of its officer for this purpose.

- h) When an inspection is initiated by the Reserve Bank, it shall be the duty of every authorised person (where the authorised person is a company or firm, every director partner or officer of such a company or firm), to produce before the inspecting officer, such books, accounts and other documents in his custody and to furnish any statement or information relating to the affairs of such authorised person within the time limit and the manner in which such inspecting officer may direct.

ADJUDICATION AND APPEAL

Question : 28 (Dec 2019)

Discuss the establishment and jurisdiction of Appellate Tribunal constituted under the Foreign Exchange Management Act, 1999.

(4 marks)

Answer :

- Section 18 of the Act provides that the Appellate Tribunal constituted under sub-section (1) of section 12(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act.
- The procedure, powers, time period for disposal of the Appeals by the Appellate Tribunal etc. are specified under Section 19 and Section 28 of the Act.
- Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within the stipulated time on any question of law arising out of such order.

COMPOUNDING

Question : 29 (June 2022)

What do you mean by Compounding of Contraventions?

(4 marks)

Answer :

- Contravention is a breach of the provisions of the Foreign Exchange Management Act (FEMA), 1999 and rules/ regulations/notification/orders/directions/circulars issued there under.
- Compounding refers to the process of voluntarily admitting the contravention, pleading guilty and seeking redressal.
- The provisions of section 15 of Foreign Exchange Management Act, 1999 (42 of 1999) hereinafter referred to as FEMA, 1999, permit compounding of contraventions and, as such it empowers the Reserve Bank to compound any contravention as defined under section 13 of the FEMA, 1999, except the contraventions under section 3 (a) of FEMA, 1999, on an application made by the person committing such contravention.

RESERVE BANK OF INDIA

Question : 30

Explain the role of the Reserve Bank of India (RBI) under the Foreign Exchange Management Act, 1999.

(5 marks)

Answer :

The main Functions of Reserve Bank of India are as follows:

Monetary Authority:

- Formulates, implements and monitors the monetary policy.
- Objective: maintaining price stability while keeping in mind the objective of growth.

Regulator and Supervisor of the Financial System:

- Prescribes broad parameters of banking operations within which the country's banking and financial system functions.
- Objective: maintain public confidence in the system, protect depositors' interest and provide cost effective banking services to the public.

Manager of Foreign Exchange:

- Manages the Foreign Exchange Management Act, 1999.
- Objective: to facilitate external trade and payment and promote orderly development and maintenance of foreign exchange market in India.

Issuer of Currency:

- Issues, exchanges and destroys currency notes as well as puts into circulation coins minted by Government of India.

- Objective: to give the public adequate quantity of supplies of currency notes and coins and in good quality.

Developmental Role:

Performs a wide range of promotional functions to support national objectives.

Regulator and Supervisor of Payment and Settlement Systems:

- Introduces and upgrades safe and efficient modes of payment systems in the country to meet the requirements of the public at large.
- Objective: maintain public confidence in payment and settlement system.

Related Functions:

- Banker to the Government: performs merchant banking function for the central and the state governments; also acts as their banker.
- Banker to banks: maintains banking accounts of all scheduled banks.

UNIQUE ACADEMY FOR COMMERCE

CHAPTER : 2 FOREIGN DIRECT INVESTMENTS – REGULATIONS AND POLICY

ELIGIBLE INVESTEE ENTITIES-LIMITED LIABILITY PARTNERSHIP

Question : 1 (June 2019)

Under what conditions 'Foreign Direct Investment' in limited liability partnership is permitted.

(4 marks)

Answer :

Foreign Investment in LLPs is permitted subject to the following conditions:

- (i) Foreign Investment is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.
- (ii) An Indian company or an LLP, having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI- linked performance conditions. Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI linked performance conditions, into an LLP is permitted under automatic route.
- (iii) Foreign Investment in LLP is subject to the compliance of the conditions of LLP Act, 2008.

Question : 2 (June 2024)

What are the conditions for foreign investment in Limited Liability Partnerships (LLPs)?

(5 marks)

Answer :

Foreign Investment in LLPs is permitted subject to the following conditions:

(i) Foreign Investment is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.

(ii) An Indian company or an LLP, having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI- linked performance conditions. Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into an LLP is permitted under automatic route.

(iii) Foreign Investment in LLP is subject to the compliance of the conditions of LLP Act, 2008.

ENTRY ROUTES FOR INVESTMENT

Question : 3 (Dec 2023, Old Syllabus)

What are entry routes of Foreign Direct Investment in India under Foreign Direct Investment-Regulation and Policy?

(4 marks)

Answer :

- Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Permissible FDI can be made under “Automatic route” or “Government route”.
- Under the Automatic Route, the non-resident investor or the Indian company does not require any approval from Government of India for the investment.
- Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/local laws/regulations. Proposals for foreign investment under Government Route are considered by respective Administrative Ministry/Department.

Foreign investment in sectors/activities under government approval route will be subject to government approval where:

- i. An Indian company is being established with foreign investment and is not owned by a resident entity; or

- ii. An Indian company is being established with foreign investment and is not controlled by a resident entity; or
- iii. The control of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/ passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non- resident entities through amalgamation, merger/demerger, acquisition etc.; or
- iv. The ownership of an existing Indian company, currently owned or controlled by resident Indian citizens and Indian companies, which are owned or controlled by resident Indian citizens, will be/is being transferred/ passed on to a non-resident entity as a consequence of transfer of shares and/or fresh issue of shares to non- resident entities through amalgamation, merger/demerger, acquisition etc.;
- v. It is clarified that foreign investment shall include all types of foreign investments, direct and indirect, regardless of whether the said investments have been made under Schedule I (FDI), II (FPI), III (NRI), VI (LLPs), VII (FVCI), VIII (Investment Vehicles) and IX (DRs) of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019. FCCBs and DRs having underlying of instruments which can be issued under Schedule IX, being in the nature of debt, shall not be treated as foreign investment. However, any equity holding by a person resident outside India resulting from conversion of any debt instrument under any arrangement shall be reckoned as foreign investment;
- vi. Investment by NRIs under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 will be deemed to be domestic investment at par with the investment made by residents;
- vii. A company, trust and partnership firm incorporated outside India and owned and controlled by non-resident Indians will be eligible for investments under Schedule IV of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and such investment will also be deemed domestic investment at par with the investment made by residents.

CASES WHICH DO NOT REQUIRE FRESH APPROVAL

Question : 4 (Dec 2022)

Describe the conditions which do not require fresh approval of the Government for bringing in further foreign investment in a business entity, under Foreign Direct Investment (FDI) in India.

(4 marks)

Answer :

Companies may not require fresh approval of the Government for bringing in additional foreign investment into the same entity, in the following cases:

- (i) Entities, the activities of which had earlier required the prior approval of the Government and which had, accordingly, earlier obtained the prior approval of the Government for their initial foreign investment but subsequently such activities/sectors have been placed under automatic route;
- (ii) Entities, the activities of which had sectoral caps earlier and which had, accordingly, earlier obtained the prior approval of the Government for their initial foreign investment but subsequently such caps were removed/ increased and the activities placed under the automatic route; provided that such additional investment along with the initial/original investment does not exceed the sectoral caps;
- (iii) Additional foreign investment into the same entity where the prior approval of the Government had been obtained earlier for the initial/original foreign investment due to requirements of Press Note 18 of 1998 or Press Note 1 of 2005 and the prior approval of the Government under the FDI policy is not required for any other reason/purpose; and
- (iv) Additional foreign investment up to cumulative amount of Rs 5000 crore into the same entity within an approved foreign equity percentage/or into a wholly owned subsidiary.

PROHIBITED SECTORS

Question : 5 (Dec 2019) & (June 2024, Old Syllabus)

Enumerate the sectors/activities where foreign direct investment is prohibited under the Foreign Direct Investment Policy in India.

(4 marks)

Answer :

Foreign Direct Investment is prohibited in following sector:

- a) Lottery Business including Government/private lottery, online lotteries, etc.
- b) Gambling and Betting including casinos etc.
- c) Chit funds
- d) Nidhi company
- e) Trading in Transferable Development Rights (TDRs)
- f) Real Estate Business or Construction of Farm Houses

'Real estate business' shall not include development of townships, construction of residential / commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations, 2014.

- g) Manufacturing of cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes

h) Activities/ sectors not open to private sector investment e.g. (I) Atomic Energy and (II) Railway operations (other than permitted activities).

Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business, Gambling and Betting activities.

SPACE SECTOR

Question : 6 (Dec 2024)

Indian Satellite & Technology Pvt. Ltd. is an Indian start-up that has recently developed advanced Satellite technology. A major Aerospace company from Russia is interested in investing in it. Explain the Entry Routes for investment and compliance to receive the investment under the Foreign Direct Investment-Regulation and Policy.

(5 marks)

Answer :

- Investments can be made by non-residents in the equity shares/fully, compulsorily and mandatorily convertible debentures/fully, compulsorily and mandatorily convertible preference shares of an Indian company, through the Automatic Route or the Government Route. Permissible FDI can be made under “Automatic route” or “Government route”.
- Automatic Route: It means the entry route through which investment by a person resident outside India does not require the prior approval of the Reserve Bank of India or the Central Government.
- Government Route: It means the entry route through which investment by person resident outside India requires prior Government approval and foreign investment received under this route shall be in accordance with the conditions stipulated by the Government in its approval.
- Besides the entry conditions on foreign investment, the investment/investors are required to comply with all relevant sectoral laws, regulations, rules, security conditions, and state/local laws/regulations.
- Proposals for foreign investment under Government Route are considered by respective Administrative Ministry/Department.

SPACE SECTOR

(a) Satellites-Manufacturing and Operation (b) Satellite Data Products (c) Ground Segment and User Segment	100%	Automatic up to 74%. Government route beyond 74%
(a) Launch Vehicles and associated systems or sub systems (b) Creation of Spaceports for launching and receiving Spacecraft	100%	Automatic up to 49%. Government route beyond 49%

Manufacturing of components and systems or sub-systems for satellites, Ground Segment and User Segment	100%	Automatic
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DEFENCE

Question : 7

A Singapore-based investor wants to invest in an Indian company engaged in the manufacture of defence equipment. Advise on the FDI policy norms applicable.

(5 marks)

Answer :

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951 and Manufacturing of small arms and ammunition under the Arms Act, 1959.	100%	Automatic up to 74% Government route beyond 74% wherever it is likely to result in access to modern technology or for other reasons to be recorded.

Other conditions:

- (i) FDI up to 74% under automatic route shall be permitted for companies seeking new industrial licenses.
- (ii) Infusion of fresh foreign investment up to 49%, in a company not seeking industrial license or which already has Government approval for FDI in Defence, shall require mandatory submission of a declaration with the Ministry of Defence in case change in equity /shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change. Proposal for raising FDI beyond 49% from such companies will require Government approval.
- (iii) Licence applications will be considered by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.
- (iv) Foreign investment in the sector is subject to security clearance by the Ministry of Home Affairs and as per guidelines of the Ministry of Defence.
- (v) Investee company should be structured to be self-sufficient in the areas of product design and development. The investee/joint venture company along with the

manufacturing facility, should also have maintenance and life cycle support facility of the product being manufactured in India.

- (vi) Foreign Investments in the Defence Sector shall be subject to scrutiny on grounds of National Security and Government reserves the right to review any foreign investment in the Defence Sector that affects or may affect national security.

PRINT MEDIA

Question : 8

ABC Pvt. Ltd. is engaged in the print media sector. A foreign investor wants to invest in it. State the applicable limits.

(3 marks)

Answer :

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Publishing of newspaper and periodicals dealing with news and current affairs	26%	Government
Publication of Indian editions of foreign magazines dealing with news and current affairs	26%	Government

Other Conditions:

- (i) 'Magazine', for the purpose of these guidelines, will be defined as a periodical publication, brought out on non- daily basis, containing public news or comments on public news.

Foreign investment would also be subject to the Guidelines for Publication of Indian editions of foreign magazines dealing with news and current affairs issued by the Ministry of Information & Broadcasting on 4.12.2008, as amended from time to time.

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Publishing/printing of scientific and technical magazines/specialty journals/ periodicals, subject to compliance with the legal framework as applicable and guidelines issued in this regard from time to time by Ministry of Information and Broadcasting	100%	Government
Publication of facsimile edition of foreign newspapers	100%	Government

Other Conditions:

- i. FDI should be made by the owner of the original foreign newspapers whose facsimile edition is proposed to be brought out in India.
- ii. Publication of facsimile edition of foreign newspapers can be undertaken only by an entity incorporated or registered in India under the provisions of the Companies Act, as applicable.
- iii. Publication of facsimile edition of foreign newspaper would also be subject to the Guidelines for publication of newspapers and periodicals dealing with news and current affairs and publication of facsimile edition of foreign newspapers issued by Ministry of Information & Broadcasting on 31.3.2006, as amended from time to time.

CIVIL AVIATION SECTOR

Question : 9 (June 2025)

Sky Heights Aviation Limited wants to enter the Civil Aviation Sector by constructing airports and developing air transport services in India and abroad. Some International Aviation Companies are interested in investing in it. Explain the Entry Routs for investment and the permissible percentage to receive such investment under the Foreign Direct Investment Regulation & Policy.

(5 marks)

Answer :

Sky Heights Aviation Limited which wants to enter in Civil Aviation Sector by constructing airports and developing air transport services in India and abroad may avail the foreign direct investment as per the following Routs for investment and the percentage to receive such foreign investment:

Sector/Activity	% of Equity/ FDI Cap	Entry Route
(a) Greenfield projects	100%	Automatic
(b) Existing projects	100%	Automatic

Sector/Activity	% of Equity/ FDI Cap	Entry Route
(1) (a) Scheduled Air Transport Service* / Domestic Scheduled Passenger Airline (b) Regional Air Transport Service	100%	Automatic up to 49% (Automatic up to 100% for NRIs)

		Government route beyond 49%
(2) Non-Scheduled Air Transport Service	100%	Automatic
(3) Helicopter services/Seaplane service requiring DGCA approval	100%	Automatic

AIR TRANSPORT SERVICES

As per Schedule XI of Aircraft Rules, 1937, Air Operator Certificate to operate Scheduled air transport services (including Domestic Scheduled Passenger Airline or Regional Air Transport Service) may be granted to a company or a body corporate provided that:

- It is registered and has its principal place of business within India;
- The Chairman and at least two-thirds of its Directors are citizens of India; and
- Its substantial ownership and effective control is vested in Indian nationals.

BANKING- PRIVATE SECTOR

Question : 10

A U.S.-based company wants to acquire 74% in an Indian private bank through the automatic route. Is it allowed under FDI norms? State the applicable limits.

(5 marks)

Answer :

Provision of Law:

Sector/Activity	% of Equity/ FDI Cap	Entry Route
Banking- Private Sector	74%	Automatic up to 49% Government route beyond 49% and up to 74%.

Other Conditions

- This 74% limit will include investment under the Portfolio Investment Scheme (PIS) by /FPIs, NRIs and shares acquired prior to September 16, 2003 by erstwhile OCBs, and continue to include IPOs, Private placements, GDR/ ADRs and acquisition of shares from existing shareholders.

- ii. The aggregate foreign investment in a private bank from all sources will be allowed up to a maximum of 74 per cent of the paid-up capital of the Bank. At all times, at least 26 per cent of the paid-up capital will have to be held by residents, except in regard to a wholly-owned subsidiary of a foreign bank.
- iii. The stipulations as above will be applicable to all investments in existing private sector banks also.
- iv. Other conditions in respect of permissible limits under portfolio investment schemes through stock exchanges for/ FPIs and NRIs, setting-up of a subsidiary by foreign banks and limits in respect of voting rights.

Conclusion/Analysis:

As per the provisions stated above, no the company cannot acquire 74% in an Indian private bank through the automatic route as it violates the FDI norms.

FDI IN PENSION SECTOR

Question : 11 (Dec 2023, Old Syllabus)

State the guidelines for FDI in Pension Sector along with Entry Route and percentage of Equity/FDI under Foreign Direct Investment-Regulation and Policy.

(4 marks)

Answer :

- (i) Foreign investment in the Pension Funds is allowed as per the Pension Fund Regulatory and Development Authority (PFRDA) Act, 2013.
- (ii) Foreign Investment in Pension Funds will be subject to the condition that entities bringing in foreign equity investment as per Section 24 of the PFRDA Act shall obtain necessary registration from the Pension Fund Regulatory and Development Authority and comply with other requirements as per the PFRDA Act, 2013 and Rules and Regulations framed under it for so participating in Pension Fund Management activities in India.
- (iii) An Indian pension fund shall ensure that its ownership and control remains at all times in the hands of resident Indian entities as determined by the Government of India/PFRDA as per the rules/regulation issued by them from time to time.

Sector/Activities	% of Equity/FDI	Entry Route
Pension Sector	49%	Automatic

TERMS AND CONDITIONS FOR TRANSFER OF SHARES/CONVERTIBLE DEBENTURES, BY WAY OF SALE, FROM A PERSON RESIDENT IN INDIA TO A PERSON RESIDENT OUTSIDE INDIA AND FROM A PERSON RESIDENT OUTSIDE INDIA TO A PERSON RESIDENT IN INDIA

Question : 12 (Dec 2024, Old Syllabus)

What are the documents required for sale of shares by a 'Person Resident outside India' to a 'Person Resident in India' as per the Foreign Direct Investment—Regulation and Policy?

(4 marks)

Answer :

Following are the documents required for sale of shares by a "Person Resident Outside India (PROI) to a "Person Resident in India (PRII)" as per the Foreign Direct Investment (FDI)- Regulation & Policy:

For sale of shares by a person resident outside India:

- (i) Consent Letter duly signed by the seller and buyer or their duly appointed agent indicating the details of transfer i.e. number of shares to be transferred, the name of the investee company whose shares are being transferred and the price at which shares are being transferred.
- (ii) Where the Consent Letter has been signed by their duly appointed agent, the Power of Attorney Document authorizing the agent to purchase/sell shares by the seller/buyer. In case there is no formal Sale Agreement, letters exchanged to this effect may be kept on record.
- (iii) If the sellers are NRIs/OCBs, the copies of RBI approvals evidencing the shares held by them on repatriation/ non-repatriation basis. The sale proceeds shall be credited NRE/NRO account, as applicable.
- (iv) Certificate indicating fair value of shares from a Chartered Accountant.
- (v) No Objection / Tax Clearance Certificate from Income Tax authority/Chartered Account.
- (vi) Undertaking from the buyer to the effect that the Pricing Guidelines have been adhered to.

ISSUE OF EMPLOYEES STOCK OPTION SCHEME (ESOPs) / SWEAT EQUITY

Question : 13 (June 2019)

What are the conditions for the Indian Company to allot sweat equity shares of its holding company to its employees, who are resident outside India.

(5 marks)

Answer :

An Indian company may issue “employees’ stock option” and/or “sweat equity shares” to its employees/ directors or employees/directors of its holding company or joint venture or wholly owned overseas subsidiary/ subsidiaries who are resident outside India, provided that:

- a. The scheme has been drawn either in terms of regulations issued under the Securities Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 notified by the Central Government under the Companies Act 2013, as the case may be.
- b. The “employee’s stock option”/ “sweat equity shares” issued to non-resident employees/directors under the applicable rules/regulations are in compliance with the sectoral cap applicable to the said company.
- c. Issue of “employee’s stock option”/ “sweat equity shares” by a company where foreign investment is under the approval route shall require prior approval of Government of India.
- d. Issue of “employee’s stock option”/ “sweat equity shares” under the applicable rules/regulations to an employee/director who is a citizen of Bangladesh/Pakistan shall require prior approval of the Government of India.
- e. The issuing company shall furnish to the Regional Office concerned of the Reserve Bank of India under whose jurisdiction the registered office of the company operates, within 30 days from the date of issue of employees’ stock option or sweat equity shares, a return as per the Form-ESOP.

PENALTIES

Question : 14 (June 2021) & (June 2022)

State the penalties, which may be imposed on a person, who contravenes the foreign direct investment regulations.

(4 marks)

Answer :

- If a person violates/contravenes any FDI Regulations, by way of breach/non-adherence/non-compliance/ contravention of any rule, regulation, notification, press note, press release, circular, direction or order issued in exercise of the powers under FEMA or contravenes any conditions subject to which an authorization is issued by the Government of India/ Reserve Bank of India, he shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such

contraventions where such amount is quantifiable, or up to two lakh Rupees where the amount is not quantifiable, and where such contraventions is a continuing one, further penalty which may extend to five thousand Rupees for every day after the first day during which the contraventions continues.

- Where a person committing a contravention of any provisions of this Act or of any rule, direction or order made there under is a company (company means anybody corporate and includes a firm or other association of individuals as defined in the Companies Act), every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly.
- Any Adjudicating Authority adjudging any contraventions above, may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government.

UNIQUE ACADEMY FOR COMMERCE

CHAPTER : 3 OVERSEAS DIRECT INVESTMENT

IMPORTANT DEFINITIONS

Question : 1 (June 2023)

What do you mean by “Financial Commitment” and “Indian Entity” under Overseas Direct Investment?

(4 marks)

Answer :

Financial commitment

“Financial Commitment” by a person resident in India means the aggregate amount of investment by way of ODI, debt other than Overseas Portfolio Investment (OPI) and non-fund-based facility or facilities extended by it to all foreign entities.

Indian Entity

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

Question : 2 (June 2024)

What is meant by Overseas Direct Investment (ODI) and Overseas Portfolio Investment (OPI) under Overseas Direct Investment?

(5 marks)

Answer :

Overseas Direct Investment (ODI)

According to Foreign Exchange Management (Overseas Investment) Rules, 2022, Overseas Direct Investment (ODI) means:

- (i) Acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or
- (ii) Investment in 10% or more of the paid-up equity capital of a listed foreign entity, or
- (iii) Investment with control where investment is less than 10% of the paid-up equity capital of a listed foreign entity.

Overseas Portfolio Investment (OPI)

Overseas Portfolio Investment (OPI) means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an IFSC:

Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity.

Debt instruments are:

- (i) Government bonds;
- (ii) corporate bonds;
- (iii) all tranches of securitisation structure which are not equity tranche;
- (iv) borrowings by firms through loans; and
- (v) depository receipts whose underlying securities are debt securities.

PROCEDURE FOR MAKING OVERSEAS INVESTMENT

Question : 3

What is the procedure to be followed for overseas investment proposed to be made under Normal Route in context of ODI.

(5 marks)

Answer :

Procedure for Making Overseas Investment

1 The person intending to make any financial commitment shall fill up the Form FC duly supported by the requisite documents and approach the designated Authorised Dealer (AD) bank for making the investment/remittance.

2 In respect of any case under the approval route, the applicant shall approach their designated AD bank who shall forward the proposal to the Reserve Bank after due scrutiny and with its specific recommendations.

The application for overseas investment under the approval route would continue to be submitted to the Reserve Bank in physical/electronic form through email as hitherto, in addition to the online reporting.

3 The designated AD bank before forwarding the proposal shall submit the relevant sections of the Form FC in the online OID application and the transaction number generated by the application shall be mentioned in their reference.

4 The following documents shall be submitted along with the proposal:

- i. Background and brief details of the transaction.
- ii. Reason(s) for seeking approval mentioning the extant FEMA provisions.
- iii. Observations of the designated AD bank with respect to the following:
 - Prima facie viability of the foreign entity;
 - Benefits which may accrue to India through such investment;
 - Financial position and business track record of the Indian entity and the foreign entity;
 - Any other material observation.

5 Recommendations of the designated AD bank with confirmation that the applicant's board resolution or resolution from an equivalent body, as applicable, for the proposed transaction(s) is in place.

6 Diagrammatic representation of the organisational structure indicating all the subsidiaries of the Indian entity horizontally and vertically with their stake (direct and indirect) and status (whether operating company or SPV).

7 Valuation certificate for the foreign entity (if applicable).

8 Other relevant documents properly numbered, indexed and flagged.

9 The proposal shall be submitted to the Reserve Bank of India.

MODE OF PAYMENT

Question : 4 (Dec 2024, Old Syllabus)

What is the 'Mode of Payment' by a person resident in India for making Overseas Direct Investment as per Foreign Exchange Management (Overseas Investment) Rules, 2022?

(4 marks)

Answer :

A person resident in India making Overseas Investment may make payment

(i) by remittance made through banking channels;

(ii) from funds held in an account maintained in accordance with the provisions of the Foreign Exchange Management Act;

(iii) by swap of securities;

(iv) by using the proceeds of American Depository Receipts or Global Depository Receipts or stock swap of such receipts or external commercial borrowings raised in accordance with the provisions of the Act and the rules and regulations made thereunder for making ODI or financial commitment by way of debt by an Indian entity.

ODI BY REGISTERED TRUST OR SOCIETY

Question : 5 (Dec 2023, Old Syllabus)

Can an Indian Trust or Society make overseas direct investment? What are the eligibility criteria for an Indian Trust or Society for making Overseas Direct Investment under the Foreign Exchange Management (Overseas Investment) Regulations, 2022?

(4 marks)

Answer :

Yes, an Indian Registered Trust or Society can make Overseas Direct Investment by following certain conditions.

ODI by Registered Trust or Society:

Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make ODI in a foreign entity with the prior approval of the Reserve Bank, subject to the following conditions, namely:

- i. the foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in;
- ii. the Trust or the Society, as the case may be, should have been in existence for at least three financial years before the year in which such investment is being made;
- iii. the trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed ODI;

- iv. such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;
- v. in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

Question : 6 (June 2025)

Swarna Charitable Trust registered on 21.12.2023 engaged in the Educational Sector filed an Application with the RBI seeking approval to invest US\$ in a foreign entity in Australia on 10.2.2025. Examine whether the Trust is likely to receive approval from the RBI for making such an investment. Support your answer with reasons. Also explain the conditions for making Overseas Direct Investment for such a Trust in a Foreign Entity.

(5 marks)

Answer :

Provision Of Law:

Any person being a registered Trust or a registered Society engaged in the educational sector or which has set up hospitals in India may make Overseas Direct Investment in a foreign entity with the prior approval of the Reserve Bank, subject to the following conditions, namely: —

- (i) the foreign entity is engaged in the same sector that the Indian Trust or Society is engaged in;
- (ii) the Trust or the Society, as the case may be, should have been in existence for at least three financial years before the year in which such investment is being made;
- (iii) the trust deed in case of a Trust, and the memorandum of association or rules or bye-laws in case of a Society shall permit the proposed Overseas Direct Investment;
- (iv) such investment have the approval of the trustees in case of a Trust and the governing body or council or managing or executive committee in case of a Society;
- (v) in case the Trust or the Society require special licence or permission either from the Ministry of Home Affairs, Central Government or from the relevant local authority, as the case may be, the special licence or permission has been obtained and submitted to the designated AD bank.

Conclusion/Analysis:

Thus, Swarna Trust will not get approval from RBI to invest in a foreign entity because trust is in existence for less than 3 years.

REPORTING

Question : 7

State the reporting requirements for ODI.

(3 marks)

Answer :

- All reporting with respect to overseas investment by a person resident in India shall be made through the designated AD bank in the prescribed manner and in the format provided by the Reserve Bank. A person resident in India who has made ODI or making financial commitment or undertaking disinvestment in a foreign entity shall report the following, namely:
 - (a) financial commitment, whether it is reckoned towards the financial commitment limit or not, at the time of sending outward remittance or making a financial commitment, whichever is earlier;
 - (b) disinvestment within thirty days of receipt of disinvestment proceeds;
 - (c) restructuring within thirty days from the date of such restructuring.
- A person resident in India other than a resident individual making any Overseas Portfolio Investment (OPI) or transferring such OPI by way of sale shall report such investment or transfer of investment within sixty days from the end of the half-year in which such investment or transfer is made as of September or March-end.
- Provided that in case of OPI by way of acquisition of shares or interest under Employee Stock Ownership Plan or Employee Benefits Scheme, the reporting shall be done by the office in India or branch of an overseas entity or a subsidiary in India of an overseas entity or the Indian entity in which the overseas entity has direct or indirect equity holding where the resident individual is an employee or director.
- Any acquisition of foreign securities through conversion of Indian Depository Receipts (IDRs) shall be duly reported as ODI or OPI, as applicable.
- The Annual Performance Report (APR) shall be certified by a chartered accountant where the statutory audit is not applicable, including in case of resident individuals. It is also clarified that where APR is required to be filed jointly, either one investor may be authorised by other investors for filing APR, or such persons may jointly file the APR.

RESTRICTIONS & PROHIBITIONS

Question : 8 (Dec 2023)

Chandu intends to make overseas direct investment with a view to earning a return. Since Chandu is looking at either real estate or lottery, you are required to state the restriction or prohibitions in context of ODI.

(5 marks)

Answer :

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

- (a) real estate activity;
 - (b) gambling in any form; and
 - (c) dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.
- Explanation-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.
 - Any ODI in start-ups recognised under the laws of the host country or host jurisdiction as the case may be, shall be made by an Indian entity only from the internal accruals whether from the Indian entity or group or associate companies in India and in case of resident individuals, from own funds of such an individual.

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

CHAPTER : 4 EXTERNAL COMMERCIAL BORROWINGS (ECB)

ELIGIBLE BORROWERS

Question : 1

State the categories of borrowers eligible to raise External Commercial Borrowing Framework.

(3 marks)

Answer :

Parameters	Foreign Currency denominated ECB	Indian Rupee denominated ECB
Eligible Borrowers	All entities eligible to receive Foreign Direct Investment (FDI). Further, the following entities are also eligible to raise ECB: i. Port Trusts; ii. Units in SEZ; iii. SIDBI; and iv. EXIM Bank of India.	(a) All entities eligible to raise Foreign Currency ECB; and (b) Registered entities engaged in micro-finance activities, viz., registered Not for Profit companies, registered societies/trusts/ cooperatives and Non- Government Organisations.

RECOGNIZED LENDERS

Question : 2 (June 2022)

Who are recognized lenders in External Commercial Borrowing Framework?

(4 marks)

Answer :

The lender should be resident of Financial Action Task Force (FATF) or International Organisation of Securities Commission's IOSCO compliant country, including on transfer of ECB.

However,

(a) Multilateral and Regional Financial Institutions where India is a member country will also be considered as recognised lenders;

(b) Individuals as lenders can only be permitted if they are foreign equity holders or for subscription to bonds/ debentures listed abroad; and

(c) Foreign branches / subsidiaries of Indian banks are permitted as recognised lenders only for Foreign Currency ECB (except FCCBs and FCEBs). Foreign branches / subsidiaries of Indian banks, subject to applicable prudential norms, can participate as arrangers/underwriters/market-makers/traders for Rupee denominated Bonds issued overseas. However, underwriting by foreign branches/subsidiaries of Indian banks for issuances by Indian banks will not be allowed.

MINIMUM AVERAGE MATURITY PERIOD (MAMP)

Question : 3

LMN Ltd., an Indian company, is considering raising External Commercial Borrowings (ECB). The Board of Directors has requested the Company Secretary to provide a detailed note on the Minimum Average Maturity Period (MAMP) applicable to ECBs, since the company is not clear about the general rule, exceptions, and special cases. You are appointed to brief the Board on the provisions relating to MAMP.

State the provisions of law relating to the Minimum Average Maturity Period (MAMP) under the ECB framework.

(5 marks)

Answer :

- Minimum Average Maturity Period (MAMP) for ECB will be 3 years. Call and put options, if any, shall not be exercisable prior to completion of minimum average maturity.
- However, for the specific categories mentioned below, the Minimum Average Maturity Period (MAMP) are:

Category	Minimum Average Maturity Period (MAMP)
(A) ECB raised by manufacturing companies up to USD 50 million or its equivalent per financial year.	1 year
(B) ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans. It may be noted that: (i) ECB cannot be raised from foreign branches/ subsidiaries of Indian banks. (ii) the prescribed MAMP will have to be strictly complied with under all circumstances.	5 years

(C) ECB raised for (i) Working capital purposes or general corporate purposes. (ii) on-lending by NBFCs for working capital purposes or general corporate purposes. It may be noted that: (a) ECB cannot be raised from foreign branches / subsidiaries of Indian banks. (b) the prescribed MAMP will have to be strictly complied with under all circumstances.	10 years
(D) ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure. (ii) on-lending by NBFCs for the same purpose. It may be noted that: a) ECB cannot be raised from foreign branches / subsidiaries of Indian banks. b) (b) the prescribed MAMP will have to be strictly complied with under all circumstances.	7 years
(E) ECB raised for i. repayment of Rupee loans availed domestically for purposes other than capital expenditure. ii. (on-lending by NBFCs for the same purpose	10 years
It may be noted that for the categories mentioned at (B) to (E) i. ECB cannot be raised from foreign branches / subsidiaries of Indian banks. ii. the prescribed MAMP will have to be strictly complied with under all circumstances.	

END-USES (NEGATIVE LIST)

Question : 4 (Dec 2024)

VVR. Murthy, an Industrialist, wishes to take External Commercial Borrowings from Norway for the purpose of Repayment of Rupee Loan in India. Can he do so? Give the end-uses (Negative List) under the External Commercial Borrowings (ECB).

(5 marks)

Answer :

The negative list, for which the ECB proceeds cannot be utilised, would include the following:

- i. Real estate activities.
- ii. Investment in capital market.

iii. Equity investment.

- Working capital purposes, **except** ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and

except ECB raised for :

- (i) working capital purposes or general corporate purposes
- (ii) on-lending by Non-Banking Financial Companies (NBFCs) for working capital purposes or general corporate purposes.
- General corporate purposes, except in case of ECB raised from foreign equity holder for working capital purposes, general corporate purposes or for repayment of Rupee loans and except ECB raised for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes.
- Repayment of Rupee loans, except in case of ECB raised for (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose and except ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose.
- On-lending to entities for the above activities, except in case of ECB raised by NBFCs for (i) working capital purposes or general corporate purposes (ii) on-lending by NBFCs for working capital purposes or general corporate purposes and (i) repayment of Rupee loans availed domestically for capital expenditure (ii) on-lending by NBFCs for the same purpose and except ECB raised for (i) repayment of Rupee loans availed domestically for purposes other than capital expenditure (ii) on-lending by NBFCs for the same purpose.

LIMIT & LEVERAGE

Question : 5 (Dec 2024, Old Syllabus)

Explain the following with reference to External Commercial Borrowing (ECB): Limit and Leverage.

(3 marks)

Answer :

Limit and Leverage

All eligible borrowers can raise ECB up to USD 750 million or equivalent per financial year under the automatic route. Further, in case of Foreign Currency denominated ECB raised from direct foreign equity holder, ECB liability- equity ratio for ECB raised under the automatic route cannot exceed 7:1.

However, this ratio will not be applicable if the outstanding amount of all ECB, including the proposed one, is up to USD 5 million or its equivalent.

Further, the borrowing entities will also be governed by the guidelines on debt equity ratio, issued, if any, by the sectoral or prudential regulator concerned.

PROCEDURE OF RAISING ECB

Question : 6 (Dec 2021), (June 2024, Old Syllabus) & (June 2025)

Export & Import Bank of India wants to receive Foreign Direct Investment (FDI) and further raise funds for its trade activities from Japan. State the procedure for raising External Commercial Borrowings (ECB).

(5 marks)

Answer :

- 1 All ECB can be raised under the automatic route if they conform to the parameters prescribed under this framework.
- 2 For approval route cases, the borrowers may approach the RBI with an application in prescribed format (Form ECB) for examination through their AD Category I bank. Such cases shall be considered keeping in view the overall guidelines, macroeconomic situation and merits of the specific proposals.
- 3 ECB proposals received in the Reserve Bank above certain threshold limit (refixed from time to time) would be placed before the Empowered Committee set up by the Reserve Bank.
- 4 The Empowered Committee will have external as well as internal members and the Reserve Bank will take a final decision in the cases taking into account recommendation of the Empowered Committee.
- 5 Entities desirous to raise ECB under the automatic route may approach an AD Category I bank with their proposal along with duly filled in Form ECB.

REPORTING REQUIREMENTS

Question : 7

Enumerate the reporting requirements in respect of ECB.

(3 marks)

Answer :

Borrowings under ECB Framework are subject to following reporting requirements apart from any other specific reporting required under the framework:

Loan Registration Number (LRN):

Any draw-down in respect of an ECB should happen only after obtaining the LRN from the Reserve Bank. To obtain the LRN, borrowers are required to submit duly certified Form ECB, which also contains terms and conditions of the ECB, in duplicate to the designated AD Category I bank. In turn, the AD Category I bank will forward one copy to the Director, Reserve Bank of India, Department of Statistics and Information Management, External Commercial Borrowings Division, Bandra-Kurla Complex, Mumbai – 400 051. Copies of loan agreement for raising ECB are not required to be submitted to the Reserve Bank.

Changes in terms and conditions of ECB:

Changes in ECB parameters in consonance with the ECB norms, including reduced repayment by mutual agreement between the lender and borrower, should be reported to the Department of Statistics and Information Management through revised Form ECB at the earliest, in any case not later than 7 days from the changes effect

Monthly Reporting of actual transactions:

The borrowers are required to report actual ECB transactions through Form ECB 2 Return through the AD Category I bank on monthly basis so as to reach Department of Statistics and Information Management within seven working days from the close of month to which it relates. Changes, if any, in ECB parameters should also be incorporated in Form ECB 2 Return.

Late Submission Fee (LSF) for delay in reporting:

Any borrower, who is otherwise in compliance of ECB guidelines, can regularise the delay in reporting of drawdown of ECB proceeds before obtaining LRN or delay in submission of Form ECB 2 returns, by payment of prescribed late submission fees

Standard Operating Procedure (SOP) for Untraceable Entities:

The following SOP has to be followed by designated AD Category-I banks in case of untraceable entities who are found to be in contravention of reporting provisions for ECB by failing to submit prescribed return(s) under the ECB framework, either physically or electronically, for past eight quarters or more.

CONVERSION OF ECB INTO EQUITY

Question : 8 (June 2019)

Whether conversion of 'External Commercial Borrowing' into equity is permissible? Comment.

(4 marks)

Answer :

Conversion of ECB, including those which are matured but unpaid, into equity is permitted subject to the following conditions:

- i. The activity of the borrowing company is covered under the automatic route for Foreign Direct Investment or Government approval is received, wherever applicable, for foreign equity participation as per extant Foreign Direct Investment policy.
- ii. The conversion, which should be with the lender's consent and without any additional cost, should not result in contravention of eligibility and breach of applicable sector cap on the foreign equity holding under Foreign Direct Investment policy;
- iii. Applicable pricing guidelines for shares are complied with;
- iv. In case of partial or full conversion of ECB into equity, the reporting to the Reserve Bank will be as under:
 - For partial conversion, the converted portion is to be reported in Form FC-GPR prescribed for reporting of FDI flows, while monthly reporting to DSIM in Form ECB 2 Return will be with suitable remarks, viz., "ECB partially converted to equity".
 - For full conversion, the entire portion is to be reported in Form FC-GPR, while reporting to DSIM in Form ECB 2 Return should be done with remarks "ECB fully converted to equity". Subsequent filing of Form ECB 2 Return is not required.
 - For conversion of ECB into equity in phases, reporting through Form FC-GPR and Form ECB 2 Return will also be in phases.
- v. If the borrower concerned has availed of other credit facilities from the Indian banking system, including foreign branches/subsidiaries of Indian banks, the applicable prudential guidelines issued by the Department of Banking Regulation of Reserve Bank, including guidelines on restructuring are complied with;
- vi. Consent of other lenders, if any, to the same borrower is available or at least information regarding conversions is exchanged with other lenders of the borrower;
- vii. For conversion of ECB dues into equity, the exchange rate prevailing on the date of the agreement between the parties concerned for such conversion or any lesser rate can be applied with a mutual agreement with the ECB lender. It may be noted that the fair value of the equity shares to be issued shall be worked out with reference to the date of conversion only.

HEDGING

Question : 9 (June 2022)

How hedging is regulated under External Commercial Borrowing framework?

(4 marks)

Answer :

- The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category - I banks in India.
- The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.
- Startups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.

Question : 10 (Dec 2023, Old Syllabus)

“The entities raising External Commercial Borrowings (ECB) are required to follow the guidelines for hedging issued, if any, by the concerned sectoral or prudential regulator in respect of foreign currency exposure.” Discuss these guidelines.

(4 marks)

Answer :

- The overseas lender, in case of INR denominated ECB, will be eligible to hedge its INR exposure through permitted derivative products with AD Category - I banks in India.
- The lender can also access the domestic market through branches/ subsidiaries of Indian banks abroad or branches of foreign bank with Indian presence on a back to back basis.
- Start-ups raising ECB in foreign currency, whether having natural hedge or not, are exposed to currency risk due to exchange rate movements and hence are advised to ensure that they have an appropriate risk management policy to manage potential risk arising out of ECB.

CHAPTER : 5 FOREIGN TRADE POLICY AND PROCEDURE

OBJECTIVES OF FTP 2023

Question : 1 (Dec 2022), (Dec 2021) & (June 2019)

Elaborate the objectives of Foreign Trade Policy (FTP) (2015-2020) of India.

(4 marks)

Answer :

India's Foreign Trade Policy (FTP) has, conventionally, been formulated for five years at a time and reviewed annually. The focus of the FTP has been to provide a framework of rules and procedures for exports and imports and a set of incentives for promoting exports. The FTP for 2015-20 seeks to achieve the following:-

- (i) To provide a stable and sustainable policy environment for foreign trade in merchandise and services;
- (ii) To link rules, procedures and incentives for exports and imports with other initiatives such as "Make in India", Digital India and Skill India to create an 'Export Promotion Mission' for India;
- (iii) To promote the diversification of India's export by helping various sectors of the Indian economy to gain global competitiveness with a view to promote exports;
- (iv) To create an architecture for India's global trade engagement with a view to expanding its markets and better integrating with major regions, thereby increasing the demand for India's product and contributing to the government's flagship "Make in India" initiative;
- (v) To provide a mechanism for regular appraisal in order to rationalise imports and reduce the trade imbalance.

KEY HIGHLIGHTS OF FTP 2023

Question : 2 (Dec 2024)

What are the Key highlights of Foreign Trade Policy, 2023?

(5 marks)

Answer :

Key Highlights of Foreign Trade Policy, 2023 are:

- Process Re-Engineering and Automation
- Towns of Export Excellence
- Recognition of Exporters
- Promoting export from the districts
- Streamlining SCOMET Policy
- Facilitating E-Commerce Exports
- Facilitating under Export Promotion of Capital Goods (EPCG) Scheme
- Facilitating under Advance authorization Scheme
- Merchanting trade
- Amnesty Scheme

NATIONAL COMMITTEE ON TRADE FACILITATION (NCTF)

Question : 3 (June 2025)

State the objectives of the National Committee on Trade Facilitation (NCTF). How does the National Trade Facilitation Action Plan aim to achieve these objectives under the Foreign Trade Policy, 2023?

(5 marks)

Answer :

India has ratified the World Trade Organization's Trade Facilitation Agreement (TFA) in April 2016. To facilitate coordination and implementation of the TFA provisions, an inter-ministerial body i.e., National Committee on Trade Facilitation (NCTF) has been constituted.

The aims to achieve the objects, NCTF has followed the four pillars of TFA as follows:

- Transparency: focus on improved access to accurate and complete information.
- Technology: development and use of digital and detection technologies to ease out trade bottlenecks and improve efficiency.
- Simplification: of procedures and Risk based Assessments. Simplified, uniform and harmonised procedures with increased adoption of a risk based management approach.
- Infrastructure Augmentation: enhancement of infrastructure, particularly the road and rail infrastructure leading to ports, and the infrastructure within ports, airports, ICDs, Land Customs Stations is a major enabler for growth in trade that cuts across all stakeholders.

National Trade Facilitation Action Plan aims to achieve:

- Improvement in Ease of Doing Business through reduction in transaction cost and time
- Reduction in cargo release time
- A paperless regulatory environment
- A transparent and predictable legal regime
- Improved investment climate through better infrastructure.

STATUS HOLDER

Question : 4 (Dec 2023)

Who is status holder under the Foreign Trade Policy and Procedure of India enumerated as per Foreign Trade Policy.

(4 marks)

Answer :

Status Holder Certification

a. The objective behind certifying certain exporter firms as “Status Holder” is to recognize such exporter firms as business leaders who have excelled in international trade and have successfully contributed to country’s foreign trade. Status Holders are expected to not only contribute towards India’s exports but also provide guidance and handholding to new entrepreneurs.

b. All exporters of goods, services and technology having an import-export code (IEC) number, on the date of application, shall be eligible for recognition as a status holder based on export performance. An applicant may be categorized as status holder on achieving the threshold export performance in the current and preceding three financial years as indicated in para 1.26 of Foreign Trade Policy. However, for Gems & Jewellery Sector above export performance threshold during the current and preceding two financial years shall be required. The export performance shall be counted on the basis of FOB of export earnings in freely convertible foreign currencies or in Indian Rupees as per para 2.53 of the FTP.

c. For deemed export, FOR value of exports in Indian Rupees shall be converted in USD at the exchange rate notified by CBIC, as applicable on 1st April of each Financial Year.

d. For granting status, an export performance would be necessary in all the three preceding financial years (and in all the two preceding financial years for Gems & Jewellery Sector).

Status Holder Categories

Status Category	Export Performance Threshold In USD Million
One Star Export House	3
Two Star Export House	15
Three Star Export House	50
Four Star Export House	200
Five Star Export House	800

Question : 5 (Dec 2024, Old Syllabus) & (Dec 2019)

What are the privileges of status holder under the Foreign Trade Policy and Procedure?

(4 marks)

Answer :

Privileges of Status Holders

A Status Holder shall be eligible for privileges as under:

- a. Authorisation and Customs Clearances for both imports and exports may be granted on self-declaration basis;
- b. Input-Output norms may be fixed on priority within 60 days by the Norms Committee; Special scheme in respect of Input Output Norms to be notified by DGFT from time to time, for specified status holder
- c. Exemption from furnishing of Bank Guarantee for Schemes under FTP, unless specified otherwise anywhere in FTP or HBP;
- d. Exemption from compulsory negotiation of documents through banks. Remittance / receipts, however, would be received through banking channels;
- e. Two star and above Export houses shall be permitted to establish Export Warehouses as per Department of Revenue guidelines.
- f. The status holders would be entitled to preferential treatment and priority in handling of their consignments by the concerned agencies.
- g. Manufacturers who are also status holders (Three Star/Four Star/Five Star) will be enabled to self-certify their manufactured goods (as per their IEM/IL/LOI) as originating from India with a view to qualify for preferential treatment under different preferential trading agreements (PTA), Free Trade Agreements (FTAs), Comprehensive Economic Cooperation Agreements (CECA) and Comprehensive Economic Partnership Agreements (CEPA). Subsequently, the scheme may be extended to remaining Status Holders. Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India as per Para 2.93 (e) of Hand Book of Procedures.

h. Status holders shall be entitled to export freely exportable items (excluding Gems and Jewellery, Articles of Gold and precious metals) on free of cost basis for export promotion subject to an annual limit of Rupees One Crore or 2% of average annual export realization during preceding three licensing years, whichever is lower. For export of pharma products by pharmaceutical companies, the annual limit would be 2% of the average annual export realisation during preceding three licensing years. In case of supplies of pharmaceutical products, vaccines and lifesaving drugs to health programmes of international agencies such as UN, WHO-PAHO and Government health programmes, the annual limit shall be up-to 8% of the average annual export realisation during preceding three licensing years. Such free of cost supplies shall not be entitled to Duty Drawback or any other export incentive under any export promotion scheme.

IMPORTER - EXPORTER CODE (IEC)

Question : 6 (June 2023)

What mandatory documents are required to be submitted for export and import of goods from/into India?

(4 marks)

Answer :

Mandatory documents for export/ import of goods from/into India

a. Mandatory documents required for export of goods from India:

- i. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
- ii. Commercial Invoice cum Packing List
- iii. Shipping Bill/Bill of Export/ Postal Bill of Export

b. Mandatory documents required for import of goods into India

- i. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt in form CN-22 or CN 23 as the case may be.
- ii. Commercial Invoice cum Packing List
- iii. Bill of Entry

c. For export or import of specific goods or category of goods, which are subject to any restrictions/ policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.

d. In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

Question : 7 (June 2022)

What is Importer-Exporter Code? How is it obtained?

(4 marks)

Answer :

An IEC is a 10-character alpha-numeric number allotted to an entity (firm/company/LLP etc.) and is mandatory for undertaking any export/import activities.

With a view to maintain the unique identity of an entity, consequent upon introduction / implementation of GST, IEC shall be same as Permanent Account Number(PAN) and shall be separately issued by DGFT based on an online application.

The procedure to obtain IEC is following:

- (1) Application for obtaining IEC can be filed manually and submitting the form in the office of Regional Authority (RA) of DGFT. Alternatively, Exporters/Importers shall file an application in ANF 2A Format for grant of e-IEC.

Those who have digital signatures can sign and submit the application online along with the requisite documents. Others may take a printout of the application, sign the undertaking declaration, upload the same with other requisite documents and thereafter submit the signed copy of the online application form to concerned jurisdictional Regional Authorities (RA) either through post or by hand.

- (2) Deficiency in the application form has to be removed by re-logging onto 'Online IEC application on DGFT website and filling the form again by paying the requisite application processing charge.

- (3) When an e-IEC is approved by the competent authority, applicant is informed through e-mail that a computer-generated e-IEC is available on the DGFT website.

By clicking on 'Application Status' having filled and submitted the requisite details in 'Online IEC Application webpage, applicant can view and print his e- IEC.

Mandatory documents for export/ import of goods from/into India

a. Mandatory documents required for export of goods from India:

- i. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt
- ii. Commercial Invoice cum Packing List
- iii. Shipping Bill/Bill of Export/ Postal Bill of Export

b. Mandatory documents required for import of goods into India

- i. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt in form CN-22 or CN 23 as the case may be.
- ii. Commercial Invoice cum Packing List
- iii. Bill of Entry

c. For export or import of specific goods or category of goods, which are subject to any restrictions/ policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.

d. In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.

PRINCIPLES OF RESTRICTIONS

Question : 8 (June 2024, Old Syllabus)

Explain the 'Principles of Restrictions' under Foreign Trade Policy and Procedure.

(4 marks)

Answer :

Principles of Restrictions DGFT may, through a Notification, impose 'Prohibition' or 'Restriction':

- a) on export of foodstuffs or other essential products for preventing or relieving critical shortages;
- b) on imports and exports necessary for the application of standards or regulations for the classification, grading or marketing of commodities in international trade;

- c) on imports of fisheries product, imported in any form, for enforcement of governmental measures to restrict production of the domestic product or for certain other purposes;
- d) on import to safeguard country's external financial position and to ensure a level of reserves;
- e) on imports to promote establishment of a particular industry;
- f) for preventing sudden increases in imports from causing serious injury to domestic producers or to relieve producers who have suffered such injury;
- g) for protection of public morals or to maintain public order;
- h) for protection of human, animal or plant life or health;
- i) relating to the importations or exportations of gold or silver;
- j) necessary to secure compliance with laws and regulations including those relating to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- k) relating to the products of prison labour;
- l) for the protection of national treasures of artistic, historic or archaeological value;
- m) for the conservation of exhaustible natural resources;
- n) for ensuring essential quantities for the domestic processing industry;
- o) essential to the acquisition or distribution of products in general or local short supply;
- p) for the protection of country's essential security interests
 - i. relating to fissionable materials or the materials from which they are derived;
 - ii. relating to the traffic in arms, ammunition and implements of war;
 - iii. taken in time of war or other emergency in international relations; or
- q) in pursuance of country's obligations under the United Nations Charter for the maintenance of international peace and security.

PAYMENTS AND RECEIPTS ON IMPORTS / EXPORTS

Question : 9

Explain Denomination of Export Contracts under the India's Foreign Trade Policy and Procedure.

(5 marks)

Answer :

- a. All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.
- b. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non-resident bank account. Free foreign exchange remitted by buyer to his non-resident bank (after deducting bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.
- c. Contracts (for which payments are received through Asian Clearing Union (ACU)) shall be denominated in ACU Dollar.
 - However, participants in the ACU may settle their transactions in ACU Dollar or in ACU Euro as per RBI Notifications. Central Government may relax provisions of this paragraph in appropriate cases.
 - Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/ Government of India line of credit.
- d. Invoicing, payment and settlement of exports and imports is also permissible in INR subject to compliances as under RBI's A.P. (DIR Series) Circular No.10 dated 11th July, 2022.

Accordingly, settlement of trade transactions in INR shall take place through the Special Rupee Vostro Accounts opened by AD banks in India as permitted under Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, in accordance to the following procedures:

- i. Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.
- ii. Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

Question : 10

Write a short note on: Export Credit Agencies (ECAs)

(3 marks)

Answer :

- a. Export Credit Agencies (ECAs) are policy instruments for Government to support exports. ECAs support exports by insurance, guarantee and also direct lending. Export Credit

Agencies (ECAs) like Export Credit Guarantee Corporation of India Ltd. (ECGC) provides credit insurance support to exports and export credit lending.

- b. Covers issued by ECGC to exporters, protect against losses arising out of payment failures due to insolvency or default of the buyers or due to political risks. Exporters can diversify their markets in addition to protecting existing markets through such covers.
- c. ECGC also supports Medium and Long term (MLT) exports including project exports. Exim Bank is the other ECA in the business of lending for MLT exports and fronting the government's line of credit.
- d. ECGC indemnifies losses of exporters in export trade due to insolvency or default of the buyer.
- e. Additionally, losses due to political risk like war, sudden import restriction, promulgation of law or decree after the shipment has been affected are also covered.
- f. Some of the anti-dumping measures or non-tariff barriers introduced after a shipment has been made will come under the purview of the political risk. In such cases exporter's interest are protected by ECGC.

EXPORT PROMOTION CAPITAL GOODS (EPCG) SCHEME

Question : 11 (Dec 2023, Old Syllabus)

Explain the coverage of Export Promotion of Capital Goods (EPCG) Scheme in Foreign Trade Policy, 2023.

(5 marks)

Answer :

(a) EPCG scheme covers manufacturer exporters with or without supporting manufacturer(s), merchant exporters tied to supporting manufacturer(s) and service providers. Name of supporting manufacturer(s) shall be endorsed on the EPCG Authorisation before installation of the capital goods in the factory / premises of the supporting manufacturer(s). In case of any change in supporting manufacturer(s), the RA shall intimate such change to jurisdictional Customs Authority of existing as well as changed supporting manufacturer(s) and the Customs at port of registration of Authorisation.

(b) Export Promotion Capital Goods (EPCG) Scheme also covers a service provider who is certified as a Common Service Provider (CSP) by the DGFT - HQs, Department of Commerce in a Town of Export Excellence or Prime Minister Mega Integrated Textile Region and Apparel Parks (PM MITRA) subject to provisions of Foreign Trade Policy/Handbook of Procedures with the following conditions:

(i) Common utility services like providing Electricity, Water, Gas, Sanitation, Sewerage, Telecommunication, Transportation etc. shall not considered for benefit of CSP;

(ii) Export by users of the common service shall be counted towards fulfillment of EO of the CSP provided the EPCG Authorisation details of the CSP is mentioned in the respective Shipping bills and concerned RA must be informed about the details of the users prior to such export;

(iii) Such export will not count towards fulfillment of specific export obligation in respect of other EPCG Authorisations of the user;

(iv) Authorisation holder shall be required to submit Bank Guarantee (BG) which shall be equivalent to the duty saved. BG can be given by CSP or by any one of the users or a combination thereof, at the option of the CSP; and Capital goods shall be installed within a Town of Export Excellence or PM MITRA.

Question : 12 (June 2022)

How does Export Promotion Capital Goods Scheme facilitate the import of capital goods for producing quality goods and services to enhance Indian Export Competitiveness?

(4 marks)

Answer :

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.

EPCG Scheme provides for following:

1. EPCG Scheme allows import of capital goods (except those specified in negative list in Appendix 5 F) for pre-production, production and post-production at zero customs duty. Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess, leviable thereon under the subsection (7) and subsection (9) respectively, of section 3 of the Customs Tariff Act, 1975, as provided in the notification issued by Department of Revenue. Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources in accordance with provisions of paragraph 5.07 of FTP.

Capital goods for the purpose of the EPCG scheme shall include:

- a) Capital Goods as defined in Chapter 11 including in CKD/SKD condition thereof;
- b) Computer systems and software which are a part of the Capital Goods being imported;
- c) Spares, moulds, dies, jigs, fixtures, tools & refractories; and
- d) Catalysts for initial charge plus one subsequent charge.

2. Import under EPCG Scheme shall be subject to an Export Obligation (EO) equivalent to 6 times of duties, taxes and cess saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation.

3. Import/procurement under EPCG scheme shall also be subjected to Average Export Obligation (AEO) as given in para 5.04(c) of FTP.

4. Authorisation shall be valid for import for 24 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

5. In case Integrated Tax and Compensation Cess are paid in cash on imports under EPCG, incidence of the said Integrated Tax and Compensation Cess would not be taken for computation of net duty saved provided Input Tax Credit is not availed.

6. Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from Exim Facilitation Committee (EFC) at DGFT Headquarters.

7. If the goods proposed to be exported under EPCG Authorisation are restricted for export, the EPCG Authorisation shall be issued only after approval for issuance of Export Authorisation from Exim Facilitation Committee (EFC) at DGFT Headquarters.

8. Authorisation under EPCG Scheme shall not be issued for import of any Capital Goods (including Captive plants and Power Generator Sets of any kind) for

(i) Export of electrical energy (power),

(ii) Supply of electrical energy (power) under deemed exports,

(iii) Use of power (energy) in their own unit, and

(iv) Supply/export of electricity transmission services.

9. Import of items which are restricted for import shall be permitted under EPCG Scheme only after approval from EXIM Facilitation Committee (EFC) at DGFT Headquarters.

10. If the goods proposed to be exported under EPCG authorization are restricted for export, the EPCG authorization shall be issued only after approval for issuance of export authorization from EXIM Facilitation Committee at DGFT Headquarters.

SALE OF UNUTILIZED MATERIAL AND CAPITAL GOODS

Question : 13 (Dec 2018)

Capital goods and spares that have become obsolete/surplus, may be exported, transferred to another Special Economic Zone unit but law does not permit to dispose of in Domestic Tariff Area on payment of applicable duties. Comment.

(5 marks)

Answer :

Provision Of Law:

- According to Foreign Trade Policy 2015-20, Capital goods and spares that have become obsolete/ surplus, may be exported or transferred to SEZ unit, transferred to another EOU/EHTP/STP/BTP/on payment of applicable GST and compensation cess or disposed of in DTA on payment of applicable GST and compensation cess and duties of Customs leviable under First Schedule of the Customs Tariff Act, 1975.
- Benefit of depreciation will be available in case of disposal in DTA only when the unit has achieved positive NFE taking into consideration the depreciation allowed.
- No duty shall be payable other than the applicable taxes under GST laws incase capital goods, raw material consumables, spares, goods manufactured, processed or packaged, and scrap/ waste/remnants /rejects are destroyed within unit after intimation to Customs authorities or destroyed outside unit with permission of Customs authorities.
- Destruction as stated above shall not apply to gold, silver, platinum, diamond, precious and semi-precious stones.

Conclusion/Analysis:

- In view of the above, the statement, capital goods and spares that have become obsolete/surplus, may be exported, transferred to another Special Economic Zone (SEZ) unit but law does not permit to dispose of in Domestic Tariff Area (DTA) on payment of applicable duties is incorrect.

DEEMED EXPORTS

Question : 14 (June 2024)

What is the meaning of “Deemed Exports” for the purpose of Foreign Trade Policy (FTP) and Goods and Service Tax (GST). What are the benefits for Deemed Exports?

(5 marks)

Answer :

Deemed Exports for the purposed of foreign Trade Policy (FTP) and Good and Services Tax (GST) are given below:

- “Deemed Exports” for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Paragraph 7.02 below shall be regarded as “Deemed Exports” provided goods are manufactured in India.
- “Deemed Exports” for the purpose of GST would include only the supplies notified under Section 147 of the CGST/SGST Act, on the recommendations of the GST Council. The benefits

of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

Benefits for Deemed Exports are as follow:

Deemed exports shall be eligible for any / all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions as given in HBP and ANF-7A:

- (a) Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
- (b) Deemed Export Drawback.
- (c) Refund of terminal excise duty for excisable goods mentioned in Schedule 4 of Central Excise Act, 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.

It may be noted that "Excisable goods" means any goods produced or manufactured in India and subject to duty of excise under Central Excise and Salt Act 1944(1of 1944).

QUALITY COMPLAINTS AND TRADE DISPUTES

Question : 15 (June 2021)

Which types of complaints and trade disputes may be raised against the exporters to maintain a good image of the country in abroad to promote export?

(4 marks)

Answer :

- Exporters need to project a good image of the country abroad to promote exports. Maintaining an enduring relationship with foreign buyers is of utmost importance, and complaints or trade disputes, whenever they arise, need to be settled amicably as soon as possible. Importers too may have grievances as well.
- In an endeavour to resolve such complaints or trade disputes and to create confidence in the business environment of the country, a mechanism is being laid down to address such complaints and disputes in an amicable way.
- Complaints/Disputes between two or more Indian entities are not covered under this mechanism. Similarly, complaints/disputes between two or more foreign entities are also not covered.
- The following type of complaints may be considered:

(a) Complaints received from foreign buyers in respect of quality of goods or services or technology supplied by exporters from India;

(b) Complaints of importers against foreign suppliers in respect of quality of the goods or services or technology supplied; and

(c) Complaints of unethical commercial dealings categorized mainly as non-supply/ partial supply of goods or services or technology after confirmation of order; supplying goods or services or technology other than the ones as agreed upon; non- payment; non-adherence to delivery schedules, etc.

Question : 16 (Dec 2024, Old Syllabus)

Explain the composition of 'Committee on Quality Complaints and Trade Disputes' (CQCTD) under the India's Foreign Trade Policy and Procedure.

(4 marks)

Answer :

The 'Committee on Quality Complaints and Trade Disputes' (CQCTD) would be constituted under the Chairpersonship of the Head Office.

The CQCTD may comprise of the following members:

1. Additional DGFT/Joint DGFT/ (H.O.O): Chairperson
2. Representative of Bureau of India Standard (BIS): Member
3. Representative of Agricultural and Processed Food Products Export Development Authority: Member
4. Representative of the Branch Manager of the concerned Bank: Member
5. Representative of Federation of Indian Exporter Organisation / and OR Export Promotion Council: Member
6. Representative of Export Inspection Agency: Member
7. Nominee of Director of Industries of State Government: Member
8. Nominee of Development Commissioner of MSME: Member
9. Officer as nominated by Chairperson: Member Secretary
10. Any other agency, as co-opted by Chairperson: Member

SCOMET: SPECIAL CHEMICALS, ORGANISMS, MATERIALS, EQUIPMENT AND TECHNOLOGIES

Question : 17

Write short note on: SCOMET List

(3 marks)

Answer :

- Export of dual-use items, including software and technologies, having potential civilian / industrial applications as well as use in weapons of mass destruction is regulated.
- It is either prohibited or is permitted under an Authorization unless specifically exempted.
- SCOMET is an acronym for Special Chemicals, Organisms, Materials, Equipment and Technologies.
- Accordingly, the SCOMET list is our National Export Control List of dual use items munitions and nuclear related items, including software and technology and is aligned to the control lists of the all the multilateral export control regimes and conventions.
- The SCOMET List has been notified under Appendix 3 to Schedule 2 of ITC (HS) Classification of Export and Import Items, which is available on the website of DGFT.

UNIQUE ACADEMY FOR COMMERCE

CHAPTER : 6 LAW RELATING TO SPECIAL ECONOMIC ZONES

INTRODUCTION & SAILENT FEATURES

Question : 1 (June 2021) & (Dec 2021)

What is meant by Special Economic Zone (SEZ)? State the purpose and salient features of the Special Economic Zones Act, 2005.

(4 marks)

Answer :

Special Economic Zones (SEZ) are growth engines that can boost manufacturing, augment exports and generate employment. In order to give a long term and stable policy framework with minimum regulatory regime and to provide expeditious and single window clearance mechanism, the Government enacted Special Economic Zones Act, 2005.

The salient features of the Act are as under:

- (i) matters relating to establishment of Special Economic Zone and for setting up of units therein, including requirements, obligations and entitlements;
- (ii) matters relating to requirements for setting up of off-shore banking units and units in International Financial Service Center in Special Economic Zone, including fiscal regime governing the operation of such units;
- (iii) the fiscal regime for developers of Special Economic Zones and units set up therein;
- (iv) single window clearance mechanism at the Zone level;
- (v) establishment of an Authority for each Special Economic Zone set up by the Central Government to impart greater administrative autonomy; and
- (vi) designation of special courts and single enforcement agency to ensure speedy trial and investigation of notified offences committed in Special Economic Zones.

ESTABLISHMENT OF SPECIAL ECONOMIC ZONE

Question : 2 (Dec 2018)

Who can establish the Special Economic Zone? Discuss.

(4 marks)

Answer :

- As per Section 3 of the Special Economic Zones Act, 2005, Central Government, State Government, or any other person, jointly or severally, may establish a Special Economic Zone.
- Any person who, intends to set up a Special Economic Zone, may, after identifying the area, make a proposal to the State Government concerned for the purposes of setting up a Special Economic Zone.
- It also allows a person, at his option to make a proposal directly to the Board for the purpose of setting up Special Economic Zone.
- In case a State Government intends to set up the Special Economic Zone, it may after identifying the area, forward the proposal directly to the Board of Approval for setting up of Special Economic Zone.
- However, the Central Government has been empowered to set up and notify the Special Economic Zone without consulting the State Government concerned; without referring the proposal to the Board.

GUIDELINES FOR NOTIFYING SPECIAL ECONOMIC ZONE

Question : 3 (Dec 2024, Old Syllabus)

What is a Special Economic Zone? What are the guidelines for notifying Special Economic Zone?

(4 marks)

Answer :

Special Economic Zone (SEZ)

- Special Economic Zone (SEZ) is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs.
- Special Economic Zones (SEZ) are growth engines that can boost manufacturing, augment exports and generate employment.
- The SEZs require special fiscal and regulatory regime in order to impart a hassle-free operational regime encompassing the state-of-the-art infrastructure and support services.

Guidelines for notifying Special Economic Zone

Section 5 stipulates broader guidelines to be considered by the Central Government, while notifying any area as a Special Economic Zone or an area to be included in the SEZ and in discharging its functions under the Act.

These include:

- (a) generation of additional economic activity;
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities; and
- (f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

Question : 4 (Dec 2024) & (June 2022)

What are the guidelines for Notifying the Special Economic Zone under section 5 of Special Economic Zone Act 2005?

(5 marks)

Answer :

Guidelines for notifying Special Economic Zone

Section 5 stipulates broader guidelines to be considered by the Central Government, while notifying any area as a Special Economic Zone or an area to be included in the SEZ and in discharging its functions under the Act.

These include:

- (a) generation of additional economic activity;
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities; and

(f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

BOARD OF APPROVAL

Question : 5 (Dec 2023, Old Syllabus)

What are the duties, powers and functions of “Board of Approval” regarding orderly development of Special Economic Zones under Special Economic Zones Act, 2005?

(4 marks)

Answer :

Duties, powers and functions of Board of Approval

- Section 9 of the Special Economic Zones Act, 2005 casts upon the Board the duty to promote and ensure orderly development of the Special Economic Zones. The powers and functions of the Board, inter alia, include:
 - (a) granting of approval or rejecting proposal or modifying such proposals for establishment of the Special Economic Zones;
 - (b) granting approval of authorised operations to be carried out in the Special Economic Zones by the Developer;
 - (c) granting of approval to the Developers or Units (other than the Developers or the Units which are exempt from obtaining approval under any law or by the Central Government) for foreign collaborations and foreign direct investments (including investments by a person resident outside India) in the Special Economic Zone for its development, operation and maintenance;
 - (d) granting of approval or rejecting proposal for providing infrastructure facilities in a Special Economic Zone or modifying such proposals;
 - (e) granting, a licence to an industrial undertaking referred to in section 3(d) of IDR Act, if such undertaking is established, as a whole or part thereof, or proposed to be established, in a Special Economic Zone;
 - (f) suspension of the letter of approval granted to a Developer and appointment of an Administrator under Section 10(1) of the Act;
 - (g) disposing of appeals preferred under Section 15(4) and Section 16(4) of the Act;
 - (h) performing such other functions as may be assigned to it by the Central Government

- Section 9(3) empowers the Board of Approval to delegate such powers and functions as it may deem fit to one or more Development Commissioners for effective and proper discharge of the functions of the Board.
- Section 9(5) stipulates that the Board in exercise of its powers and performance of its functions be bound by such directions on questions of policy, as the Central Government may give in writing to it from time to time.

Question : 6 (June 2024)

XYZ Ltd. has been granted approval by the Board of Approval for foreign collaborations and foreign direct investments (including investments by a person resident outside India) in the Special Economic Zone for its development, operation and maintenance. XYZ Ltd. Has persistently defaulted in complying with the directions of the Board. What action can be taken by the Board of Approval against XYZ Ltd. under Section 10 of the Special Economic Zones Act, 2005?

(5 marks)

Answer :

- Section 10 of the Special Economic Zones Act, 2005 empowers the Board to suspend the letter of approval granted to the Developer for a whole or part of his area established as Special Economic Zone for a period not exceeding one year and appoint an Administrator to discharge the functions of the developer in accordance with the terms and conditions of the letter of approval and manage the Special Economic Zone accordingly.
- The suspension may be ordered by the Board, if in its opinion following circumstances exist:
 1. The developer is unable to discharge the functions for perform the duties imposed on him
 2. The developer has persistently defaulted in complying with the directions of the Board
 3. The financial position of the developer is such that he is unable fully and efficiently discharge the duties and obligations imposed on him by the letter of approval.
- However, no letter of approval can be suspended unless the Board has given to the Developer not less than three months' notice, in writing, stating the grounds on which it proposes to suspend the letter of approval, and has considered any cause shown by the Developer within the period of that notice, against the proposed suspension.
- It has been further provided that the Board may, instead of suspending the letter of approval permit it to remain in force subject to such further terms and conditions as it thinks fit to impose. Section 10(4) makes any further terms or conditions so imposed binding upon the Developer. These terms and conditions have the force and effect as if they were contained in the letter of approval.
- In case the Board suspends a letter of approval, it has been put under obligation to serve a notice of suspension upon the Developer and fix a date for suspension to take effect. Upon suspension of the letter of approval, the Special Economic Zone of the Developer vests in the

Administrator for a period not exceeding one year or up to the date on which the letter of approval for such Special Economic Zone is transferred, whichever is earlier.

- This section also contains provisions for transfer of the Special Economic Zone of a Developer whose licence has been suspended and take other actions consequent upon the suspension of the letter of approval. The Board of Approval has been empowered to issue such directions or formulate such scheme as it may consider necessary for operation of such Special Economic Zone.

DEVELOPMENT COMMISSIONER

Question : 7 (Dec 2019) & (June 2024, Old Syllabus)

State the prime functions of the Development Commissioner as incorporated in the Special Economic Zones Act, 2005.

(5 marks)

Answer :

Section 12 of the Special Economic Zone Act, 2005 dealing with the functions of the Development Commissioner requires every Development Commissioner to take steps in order to discharge his functions to ensure speedy development of the Special Economic Zone and promotion of exports therefrom.

The functions of the Development Commissioner include:

- (a) guide the entrepreneurs for setting up of Units in the Special Economic Zone;
- (b) ensure and take suitable steps for effective promotion of exports from the Special Economic Zone;
- (c) ensure proper coordination with the Central Government or State Government Departments concerned or agencies with respect to, or for above purposes;
- (d) monitor the performance of the Developer and the Units in SEZ;
- (e) discharge such other functions as may be assigned to him by the Central Government under this Act or any other law for the time being in force; and
- (f) any other functions as may be delegated to him by the Board of approval.

APPROVAL COMMITTEE

Question : 8 (Dec 2022)

How the approval committee is constituted under the Special Economic Zone Act, 2005 ?

(4 marks)

Answer :

- Section 13 of the Special Economic Zones Act, 2005 empowers the Central Government to constitute by notification, a Committee for every Special Economic Zone, to be called the Approval Committee to exercise the powers and perform the functions as specified.
- In the case of existing Special Economic Zones, the Approval Committee is required to be constituted within six months from the date of commencement of the Act and in case of other Special Economic Zones established after the commencement of the Act within six months from the date of establishment of such Special Economic Zone.
- This section also contains provisions relating to composition of meetings and its quorum and requires all orders and decisions and instructions of the Approval Committee to be authenticated by the signature of the Chairperson or any other Member as may be authorised by the Approval Committee.

Question : 9 (Dec 2019)

Explain the functions and powers of Approval Committee under the Special Economic Zone Act, 2005.

(4 marks)

Answer :

Section 14 of the Special Economic Zones Act, 2005 empowers every Approval Committee to discharge the functions and exercise the powers in respect of the following matters:

- (a) approve, the import or procurement of goods from the Domestic Tariff Area, for carrying on the authorised operations by a Developer in the Special Economic Zone;
- (b) approve providing of services by a service provider from outside India or from the Domestic Tariff Area for carrying on the authorised operations by the Developer, in the Special Economic Zone;
- (c) monitor the utilisation of goods or services or warehousing or trading in the Special Economic Zone;
- (d) approve, modify or reject proposals for setting up Units for manufacturing or rendering of services or warehousing or trading in SEZ in accordance with the provisions of Section 15(8) of the Act;

(e) allow on receipt of approval foreign collaborations and foreign direct investments, including investments by a person outside India for setting up a Unit;

(f) monitor and supervise compliance of conditions subject to which the letter of approval or permission, if any, is granted to the Developer or entrepreneur; and

(g) perform any other functions as may be entrusted to it by the Central Government or the State Government concerned, as the case may be.

In case the developer is Central Government, the approval committee has been empowered to exercise all powers of the approval committee, until the constitution of Approval Committee.

SETTING UP OF UNIT

Question : 10 (June 2023)

Explain the provisions with regard to setting up of unit under Section 15 of the Special Economic Zones Act, 2005.

(5 marks)

Answer :

- Section 15 of the Special Economic Zones Act, 2005 entitles any person, who intends to set up a Unit for carrying on the authorised operations in a Special Economic Zone, to submit a proposal to the Development Commissioner concerned.
- The Development Commissioner in turn place the proposal before the Approval Committee for its approval.
- The Approval Committee may, approve the proposal with or without modification, and subject to such terms and conditions as it may deem fit, or reject the same.
- In case of modification or rejection of a proposal, the Approval Committee has been put under obligation to afford a reasonable opportunity of being heard to the person concerned and after recording the reasons therefor, either modify or reject the proposal.
- Sub-section (4) entitles a person aggrieved by an order of the Approval Committee, to make an appeal to the Board of Approvals, within the prescribed time and specified manner. Sub-section (8) empowers the Central Government to prescribe the requirements (including the period for which a unit may be set up) subject to which the Approval Committee may approve, modify or reject the proposal.
- The Development Commissioner may, after the approval of the proposal, grant a letter of approval to the person concerned to set up a Unit and undertake in the Unit such operations which the Development Commissioner may authorise and every such operation so authorised is mentioned in the letter of approval.

OFFSHORE BANKING UNIT

Question : 11 (June 2021) & (June 2019)

What is an Offshore Banking Unit? Explain the procedure for setting up and operation of Offshore Banking Unit.

(4 marks)

Answer :

- According to Section 2(u) of the Special Economic Zones Act, 2005 Offshore Banking Unit means a branch of a bank located in a Special Economic Zone and which has obtained the permission under clause (a) of sub-section (1) of Section 23 of the Banking Regulation Act, 1949.
- Section 17 dealing with setting up and operation of offshore Banking Unit provides that an application for setting up and operation of an Offshore Banking Unit in a Special Economic Zone may be made to the Reserve Bank, in the prescribed form and manner.
- The Reserve Bank of India may, on being satisfied that the applicant fulfills all the specified conditions, grant permission to such applicant for setting up and operation of an Offshore Banking Unit in a Special Economic Zone.
- Sub-section (3) empowers the Reserve Bank to specify, by notification, the terms and conditions subject to which an Offshore Banking Unit may be set up and operated in the Special Economic Zone.

SPECIAL ECONOMIC ZONE AUTHORITY

Question : 12 (June 2019)

How the "Special Economic Zone Authority" is constituted under Special Economic Zone Act, 2005? Which are the defects or irregularities for which any act or proceedings of an authority cannot be invalidated?

(4 marks)

Answer :

- Section 31 of Special Economic Zone Act, 2005 empowers the Central Government to constitute by notification in the Official Gazette, an Authority for every SEZ to exercise powers conferred on and discharge the functions assigned to it.

- In the case of an existing SEZ established by the Central Government the Central Government has been empowered to establish such authority within six months from the date of commencement of the Act. It is further provided that the person or authority (including Development Commissioner) which is exercising control over an existing SEZ, shall continue to do so till the authority is constituted.
- Section 31(2) provides that every authority shall be a body corporate by name as assigned, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall sue and be sued.
- Section 31(9) stipulates that no act or proceedings of an authority shall be invalidated merely by reason of:
 - (a) any vacancy in or any defect;
 - (b) any defect in the appointment of a person as its member;
 - (c) or any irregularity in the procedure of the authority not affecting the merits of the case.

Question : 13 (June 2025)

In what manner is the Special Economic Zone Authority constituted? State the functions of the Special Economic Zone Authority under the Special Economic Zones Act, 2005.

(5 marks)

Answer :

Special Economic Zone Authority

Section 31 of the Special Economic Zones Act, 2005 dealing with the Constitution of Authority empowers the Central Government to constitute by notification in the Official Gazette, an Authority for every SEZ to exercise powers conferred on and discharge the functions assigned to it.

In the case of an existing SEZ established by the Central Government the Central Government has been empowered to establish such authority within six months from the date of commencement of the Act, it is further provided that the person or authority (including Development Commissioner) which is exercising control over on existing SEZ, shall Continue to do so till the authority is constituted.

Section 31(2) provides that every authority shall be a body corporate by name as assigned, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable and to contract and shall sue and be sued.

Section 31(9) stipulates that no act or proceedings of an authority shall be invalidated merely by reason of:

- (a) any vacancy in or any defect;
- (b) any defect in the appointment of a person as its member; or

(c) any irregularity in the procedure of the authority not affecting the merits of the case.

Functions of Authority

Section 34 of the Special Economic Zones Act, 2005 casts upon the Authority a duty to undertake such measures as it thinks fit for the development, operation and management of the respective Special Economic Zone. Section 34(2) provides for following measures:

- (a) the development of infrastructure in the Special Economic Zone;
- (b) promoting exports from the Special Economic Zone;
- (c) reviewing the functioning and performance of the Special Economic Zone;
- (d) levy, user or service charges or fees or rent for the use of properties belonging to the Authority;
- (e) Performing such other functions as may be prescribed.

FUNCTIONS OF AUTHORITY

Question : 14 (Dec 2020) & (Dec 2018)

Section 34 of Special Economic Zones Act, 2005 casts upon the Authority a duty to undertake such measures for the development, operation and management of Special Economic Zone. Explain.

(4 marks)

Answer :

Functions of Authority

Section 34 of the Special Economic Zones Act, 2005 casts upon the Authority a duty to undertake such measures as it thinks fit for the development, operation and management of the respective Special Economic Zone.

Section 34(2) provides for following measures :

- (a) the development of infrastructure in the Special Economic Zone;
- (b) promoting exports from the Special Economic Zone;
- (c) reviewing the functioning and performance of the Special Economic Zone;
- (d) levy user or service charges or fees or rent for the use of properties belonging to the Authority;
- (e) performing such other functions as may be prescribed.

POWER OF THE CENTRAL GOVERNMENT TO SUPERSEDE AUTHORITY

Question : 15 (June 2019) & (Dec 2023)

Explain under what circumstances the Central Government is empowered to supersede any authority constituted under Special Economic Zones Act, 2005? What will be the consequences if such power is exercised by Central Government?

(5 marks)

Answer :

- Section 40 empowers the Central Government to supersede an Authority for a maximum period of six months if at any time, it is of the opinion that an Authority is unable to perform, or has persistently made default in the performance of the duty imposed on it or has exceeded or abused its powers, or has wilfully or without sufficient cause, failed to comply with any direction issued by it.
- However, before issuing a notification superseding an authority, the Central Government is required to give reasonable time to that Authority to make representation against the proposed suppression and consider the representations, if any, of the Authority.
- Section 40(2) dealing with the consequences of publication of the notification superseding the Authority, provides that,
 - (a) the Chairperson and other Members of the Authority shall, notwithstanding that their term of office has not expired as from the date of supersession, vacate their offices as such;
 - (b) all the powers, functions and duties which may, by or under the provisions of the Act, be exercised or discharged by or on behalf of the Authority shall, during the period of supersession, be exercised and performed by such person or persons as the Central Government may direct;
 - (c) all property vested in the Authority shall, during the period of supersession, vest in the Central Government.
- Section 40(3) also provides that on the expiration of the period of supersession specified in the notification, the Central Government may extend the period of supersession for such further period not exceeding six months or reconstitute the Authority in the prescribed manner.

CHAPTER : 7 LAW RELATING TO FOREIGN CONTRIBUTION REGULATION

SAILENT FEATURES & OBJECTIVE

Question : 1 (Dec 2023, Old Syllabus)

Discuss the salient features of Foreign Contribution (Regulation) Amendment Act, 2020.

(4 marks)

Answer :

The salient features of the Foreign Contribution (Regulation) Amendment Act, 2020 inter alia, are asunder: -

- (a) Amended Section 3(1) (c) of the Act to include "public servant" also within its ambit, to provide that no foreign contribution shall be accepted by any public servant;
- (b) Amended Section 7 of the Act to prohibit any transfer of foreign contribution to any association/person;
- (c) Amended section 8(1) of the Act to reduce the limit for defraying administrative expenses from existing "fifty per cent." to "twenty per cent.";
- (d) Inserted of a new Section 12A empowering the Central Government to require Aadhaar number, etc., as identification document;
- (e) Inserted of a new Section 14A enabling the Central Government to permit any person to surrender the certificate granted under the Act;
- (f) Amended Section 17 of the Act to provide that every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" which shall be opened by him in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify and for other consequential matters relating thereto.

Question : 2 (Dec 2018)

The object of the Foreign Contribution (Regulation) Act, 2010 is to legalise foreign donations and hospitality to office bearers of political parties. Comment.

(5 marks)

Answer :

Provision Of Law:

The object of the Foreign Contribution (Regulation) Act, 2010 is

- regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance; and
- utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto.

As per Section 3(1) of the Foreign Contribution (Regulation) Act, 2010 prohibits following person to accept foreign contribution:

- (a) candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) member of any Legislature;
- (e) political party or office-bearer thereof;
- (f) organisation of a political nature as may be specified under section 5(1) by the Central Government;
- (g) association or company engaged in the production or broadcast of audio news or audio-visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in section 2(1)(r) of the Information Technology Act, 2000 or any other mode of mass communication;
- (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Conclusion/Analysis:

In view of the above, the statement, the object of the Foreign Contribution (Regulation) Act, 2010 is to legalise foreign donations and hospitality to office bearers of political parties is incorrect.

FOREIGN COMPANY

Question : 3 (Dec 2024)

What is a 'Foreign Company' and what are the conditions for receiving Foreign Contribution by a Person Resident in India as per provisions of the Foreign Contribution (Regulation) Act, 2010.

(5 marks)

Answer :

According to Section 2(g) of the Foreign Contribution (Regulation) Act, 2010 "Foreign Company" means any company or association or body of individuals incorporated outside India and includes—

- (i) a foreign company within the meaning of section 591 of the Companies Act, 1956=;
- (ii) a company which is a subsidiary of a foreign company;
- (iii) the registered office or principal place of business of a foreign company referred to in sub-clause (i) or company referred to in sub-clause (ii);
- (iv) a multi-national corporation

Any "Person" can receive foreign contribution subject to the following conditions:

- It must have a definite cultural, economic, educational, religious or social programme.
- It must obtain the FCRA registration/prior permission from the Central Government
- It must not be prohibited under Section 3 of FCRA, 2010.

It may be noted that "Person" includes:

- i) An individual:
- ii) A Hindu undivided family:
- iii) An association;
- iv) A company registered under section 25/8 of the companies Act [Section 2(1)(m)]

FOREIGN CONTRIBUTION

Question : 4 (June 2024)

Gama is resident in India and citizen of India. He is going to receive the foreign contribution from US. Explain the foreign contribution and conditions under which he can receive such foreign contribution under Foreign Contribution (Regulation) Act, 2010?

(5 marks)

Answer :

According to Section 2(1)(h) the Foreign Contribution (Regulation) Act, 2010, "Foreign Contribution" means the donation, delivery or transfer made by any foreign source,

- i. of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;
- ii. of any currency, whether Indian or foreign;
- iii. of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999.

Conditions to receive Foreign Contribution:

Any "Person" can receive foreign contribution subject to the following conditions:

- It must have a definite cultural, economic, educational, religious or social programme.
- It must obtain the FCRA registration/prior permission from the Central Government
- It must not be prohibited under Section 3 of FCRA, 2010.

It may be noted that "Person" includes:

- i) An individual;
- ii) A Hindu undivided family;
- iii) An association;
- iv) A company registered under section 25/8 of the companies Act [Section 2(1)(m)]

Question : 5 (June 2021), (Dec 2022), (Dec 2018) & (June 2024, Old Syllabus)

"Section 3(1) of the Foreign Contribution (Regulation) Act (FCRA), 2010 deals with prohibition to receive foreign contribution". Discuss.

(5 marks)

Answer :

As per Section 3(1) of the Foreign Contribution (Regulation) Act, 2010 prohibits following person to accept foreign contribution:

- (a) candidate for election;

- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) member of any Legislature;
- (e) political party or office-bearer thereof;
- (f) organisation of a political nature as may be specified under section 5(1) by the Central Government;
- (g) association or company engaged in the production or broadcast of audio news or audio-visual news or current affairs programmes through any electronic mode, or any other electronic form as defined in section 2(1)(r) of the Information Technology Act, 2000 or any other mode of mass communication;
- (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Question : 6 (June 2022)

What kinds of restrictions and prohibition have been imposed upon person, resident of India and citizen of India to accept foreign contribution under the Foreign Contribution (Regulation) Act, 2010?

(5 marks)

Answer :

As per Section 3(1) of the Foreign Contribution (Regulation) Act, 2010 prohibits following person to accept foreign contribution;

- (a) candidate for election;
- (b) correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;
- (c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;
- (d) member of any Legislature;
- (e) political party or office-bearer thereof;
- (f) organisation of a political nature as may be specified under section 5(1) by the Central Government;
- (g) association or company engaged in the production or broadcast of audio news or audio-visual news or current affairs programmes through any electronic mode, or any other electronic form as

defined in section 2(1)(r) of the Information Technology Act, 2000 or any other mode of mass communication;

(h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g).

Section 3(2) states that:

(a) No person, resident in India, and no citizen of India resident outside India, shall accept any foreign contribution, or acquire or agree to acquire any currency from a foreign source, on behalf of any political party, or any person referred to in sub-section (1), or both.

(b) No person, resident in India, shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to any person if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to any political party or any person referred to in sub-section (1), or both.

(c) No citizen of India resident outside India shall deliver any currency, whether Indian or foreign, which has been accepted from any foreign source, to

(i) any political party or any person referred to in sub-section (1), or both; or

(ii) any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a political party or to any person referred to in sub-section (1), or both.

According to Section 3(3) of the Act,

no person receiving any currency, whether Indian or foreign, from a foreign source on behalf of any person or class of persons, referred to in section 9, shall deliver such currency

(a) to any person other than a person for which it was received; or

(b) to any other person, if he knows or has reasonable cause to believe that such other person intends, or is likely, to deliver such currency to a person other than the person for which such currency was received.

Question : 7 (Dec 2024, Old Syllabus) & (Dec 2020)

Discuss the circumstances in which the Foreign Contribution (Regulation) Act, 2010 does not apply.

(5 marks)

Answer :

According to Section 4 of the Act, nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of section 10,

(a) by way of salary, wages or other remuneration due to him or to any group of persons working under him, from any foreign source or by way of payment in the ordinary course of business transacted in India by such foreign source; or

(b) by way of payment, in the course of international trade or commerce, or in the ordinary course of business transacted by him outside India; or

(c) as an agent of a foreign source in relation to any transaction made by such foreign source with the Central Government or State Government; or

(d) by way of a gift or presentation made to him as a member of any Indian delegation, provided that such gift or present was accepted in accordance with the rules made by the Central Government with regard to the acceptance or retention of such gift or presentation; or

(e) from his relative; or

(f) by way of remittance received, in the ordinary course of business through any official channel, post office, or any authorised person in foreign exchange under the Foreign Exchange Management Act, 1999; or

(g) by way of any scholarship, stipend or any payment of like nature.

It may be noted that in case any foreign contribution received by any person specified under section 3, for any of the purposes other than those specified under this section, such contribution shall be deemed to have been accepted in contravention of the provisions of section 3.

ORGANISATION OF POLITICAL NATURE

Question : 8 (Dec 2023)

Explain the provisions of section 5 of the Foreign Contribution (Regulation) Act, 2010 relating to procedure to notify on Organization of a political nature.

(5 marks)

Answer :

- According to section 5(1) of the Foreign Contribution (Regulation) Act, 2010, Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify

such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub- section (1) of section 3.

- The Central Government may, by rules made by it, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.
- As per Section 5(2) of the Act, before making an order under sub-section (1), the Central Government shall give the organisation in respect of whom the order is proposed to be made, a notice in writing informing it of the ground or grounds, on which it is proposed to be specified as an organisation of political nature under that sub- section.
- Section 5(3) states that the organisation to whom a notice has been served under sub-section (2), may, within a period of thirty days from the date of the notice, make a representation to the Central Government giving reasons for not specifying such organisation as an organisation under sub-section (1). The Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the organisation was prevented by sufficient cause from making the representation within thirty days.
- Section 5(4) provides that the Central Government may, if it considers it appropriate, forward the representation referred to in sub-section (3) to any authority to report on such representation.
- The Central Government may, after considering the representation and the report of the authority referred to in sub-section (4), specify such organisation as an organisation of a political nature not being a political party and make an order under sub-section (1) accordingly.
- Every order under sub-section (1) shall be made within a period of one hundred and twenty days from the date of issue of notice under sub-section (2). In case no order is made within the said period of one hundred and twenty days, the Central Government shall, after recording the reasons therefor, make an order under sub- section (1) within a period of sixty days from the expiry of the said period of one hundred and twenty days.

FOREIGN HOSPITALITY

Question : 9 (Dec 2022)

What do you understand by foreign hospitality? List the categories of persons who require prior approval from the Ministry of Home Affairs before accepting Foreign Hospitality?

(4 marks)

Answer :

According to the Foreign Contribution (Regulation) Act, 2010, Foreign Hospitality means any offer, not being a purely casual one, made in cash or kind by a foreign source for providing a person with the costs of travel to any foreign country or territory or with free board, lodging, transport or medical treatment.

As per Section 6 of the Foreign Contribution Regulation Act, 2010

The following categories of persons require prior approval from Ministry of Home Affairs before accepting Foreign Hospitality:

- Members of a Legislature
- Office bearers of political parties
- Judges
- Government servants, Public Servants
- Employees of any corporation or any other body owned or controlled by the Government.

Question : 10 (Dec 2023)

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

(5 marks)

Answer :

Provision Of Law:

As per Section 6 of the Foreign Contribution Regulation Act, 2010

The following categories of persons require prior approval from Ministry of Home Affairs before accepting Foreign Hospitality:

- Members of a Legislature
- Office bearers of political parties
- Judges
- Government servants, Public Servants
- Employees of any corporation or any other body owned or controlled by the Government.

Conclusion/Analysis:

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

RESTRICTION TO UTILISE FOREIGN CONTRIBUTION FOR ADMINISTRATIVE PURPOSE

Question : 11

ABC Charitable Trust registered under FCRA utilizes the foreign contribution for personal benefit of trustees instead of stated objectives. Discuss the consequences under the Foreign Contribution Regulation Act, 2010

Answer :

Provision Of Law:

According to Section 8 of the Act, every person, who is registered and granted a certificate or given prior permission under the Act and receives any foreign contribution,

- (a) shall utilise such contribution for the purposes for which the contribution has been received: Provided that any foreign contribution or any income arising out of it shall not be used for speculative business:

Provided further that the Central Government shall, by rules, specify the activities or business which shall be construed as speculative business for the purpose of this section;

- (b) shall not defray as far as possible such sum, not exceeding twenty percent of such contribution, received in a financial year, to meet administrative expenses:

Provided that administrative expenses exceeding twenty percent of such contribution may be defrayed with prior approval of the Central Government.

The Central Government may prescribe the elements which shall be included in the administrative expenses and the manner in which the administrative expenses shall be calculated.

Conclusion/Analysis:

Since the trust diverted foreign contribution for personal gain, it amounts to misutilization. The Central Government may cancel its registration under Section 14, and the trustees may also face penal consequences for contravention of FCRA.

POWER OF CENTRAL GOVERNMENT TO PROHIBIT RECEIPT OF FOREIGN CONTRIBUTION

Question : 12 (Dec 2021) & (Dec 2019)

Enumerate the powers of the Central Government to prohibit receipt of foreign contribution under the Foreign Contribution (Regulation) Act, 2010.

(5 marks)

Answer :

According to Section 9 of the Foreign Contribution (Regulation) Act, 2010, the Central Government may—

- (a) prohibit any person or organisation not specified in section 3, from accepting any foreign contribution;
- (b) require any person or class of persons, not specified in section 6, to obtain prior permission of the Central Government before accepting any foreign hospitality;
- (c) require any person or class of persons not specified in section 11, to furnish intimation within such time and in such manner as may be prescribed as to the amount of any foreign contribution received by such person or class of persons as the case may be, and the source from which and the manner in which such contribution was received and the purpose for which and the manner in which such foreign contribution was utilised;
- (d) without prejudice to the provisions of sub-section (1) of section 11, require any person or class of persons specified in that sub-section to obtain prior permission of the Central Government before accepting any foreign contribution;
- (e) require any person or class of persons, not specified in section 6, to furnish intimation, within such time and in such manner as may be prescribed, as to the receipt of any foreign hospitality, the source from which and the manner in which such hospitality was received;

Provided that no such prohibition or requirement shall be made unless the Central Government is satisfied that the acceptance of foreign contribution by such person or class of persons, as the case may be, or the acceptance of foreign hospitality by such person, is likely to affect prejudicially-

- (i) the sovereignty and integrity of India; or
- (ii) public interest; or

- (iii) freedom or fairness of election to any Legislature; or
- (iv) friendly relations with any foreign State; or
- (v) harmony between religious, racial, social, linguistic or regional groups, castes or communities.

POWER OF CG

Question : 13 (June 2025)

Under what circumstances can the Central Government cancel the certificate granted under Section 12 for receiving foreign contribution under the Foreign Contribution (Regulation) Act, 2010?

(5 marks)

Answer :

Section 14 of the Foreign Contribution (Regulation) Act, 2010 provides that the Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if.

(1) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or

(i) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(ii) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or

(iii) the holder of certificate has violated any of the provisions of this Act or rules or order made there under; or

(iv) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct

CANCELLATION OF CERTIFICATE

Question : 14 (June 2022)

“Cancellation of certificate under the Foreign Contribution (Regulation) Act, 2010”. Discuss.

(4 marks)

Answer :

Section 14 of the Foreign Contribution (Regulation) Act, 2010 provides that the Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if

(1) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or

(i) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(ii) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or

(iii) the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or

(iv) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

(3) Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate.

MANAGEMENT OF FOREIGN CONTRIBUTION OF PERSON WHOSE CERTIFICATE HAS BEEN CANCELLED OR SURRENDERED

Question : 15 (Dec 2022)

Elucidate the provisions regarding the management of foreign contribution of person whose certificate has been cancelled or surrendered.

(5 marks)

Answer :

1. Section 15(1) of the Foreign Contribution (Regulation) Act, 2010 provides that the foreign contribution and assets created out of the foreign contribution in the custody of every person

whose certificate has been cancelled under section 14 or surrendered under section 14A shall vest in such authority as may be prescribed.

2. The authority referred to in section 15 (1) above may, if it considers necessary and in public interest, manage the activities of the person referred to in that sub-section for such period and in such manner, as the Central Government may direct and such authority may utilise the foreign contribution or dispose of the assets created out of it in case adequate funds are not available for running such activity.
3. The authority referred to in section 15(1) shall return the foreign contribution and the assets vested upon it under that sub-section to the person referred to in the said sub-section if such person is subsequently registered under this Act.

OFFENCES AND PENALTIES

Question : 16 (Dec 2019)

State the provisions regarding the penalties and punishment provided under the Foreign Contribution (Regulation) Act, 2010. (4 marks)

Answer :

- Section 36 deals with Making of False Statement, Declaration or Delivering False Accounts.
- Section 34 provides that any person, on whom any prohibitory order has been served under section 10, pays, delivers, transfers or otherwise deals with, in any manner whatsoever, any article or currency or security, whether Indian or foreign, in contravention of such prohibitory order, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both; and notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the court trying such contravention may also impose on the person convicted an additional fine equivalent to the market value of the article or the amount of the currency or security in respect of which the prohibitory order has been contravened by him or such part thereof as the court may deem fit.
- Section 35 of the Foreign Contribution (Regulation) Act, 2010 on the other hand provides for punishment with imprisonment for a term which may extend to five years, or with fine, or with both for accepting, or assisting any person, political party or organisation in accepting, any foreign contribution or any currency or security from a foreign source, in contravention of any provision of this Act or any rule or order made thereunder.
- Section 36 deals with Power to Impose Additional Fine where Article or Currency or Security is not Available for Confiscation.

- As per Section 37 of the Act, whoever fails to comply with any provision of this Act for which no separate penalty has been provided in this Act shall be punished with imprisonment for a term which may extend to one year, or with fine or with both.
- Section 38 provides that notwithstanding anything contained in this Act, whoever, having been convicted of any offence under section 35 or section 37, in so far as such offence relates to the acceptance or utilisation of foreign contribution, is again convicted of such offence shall not accept any foreign contribution for a period of five years from the date of the subsequent conviction.
- Section 39 deals with offences by companies and Section 41 provides for composition of certain offences.

UNIQUE ACADEMY FOR COMMERCE

CHAPTER : 8 PREVENTION OF MONEY LAUNDERING

PREVENTION OF MONEY LAUNDERING - GLOBAL INITIATIVES

Question : 1

Briefly discuss the international efforts in preventing the money laundering.

(5 marks)

Answer :

- The process of money laundering involves cleansing of money earned through illegal activities like extortion, drug trafficking and gun running etc.
- The tainted money is projected as clean money through intricate processes of placement, layering and laundering.
- The serious threat posed by money laundering to the financial systems and sovereignty was being progressively realized by various countries of the world.
- As a consequence of this realization, the international community took the following initiatives to curb the menace of money laundering:

(i) The 1998 United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention of 1998), provided a comprehensive legal definition of money laundering. This definition has formed the basis of subsequent legislations on Money Laundering Laws of various countries;

(ii) The Basle statement of principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money laundering; and

(iii) The Financial Action Task Force on money laundering (FATF), 1989 made 40 recommendations, which provide the foundation for comprehensive legislation to combat the problem of money laundering. The recommendations were classified under various heads. Some of the important heads are:-

- (a) Declaration of laundering of moneys earned through serious crimes should be treated a criminal offence;
- (b) to work out modalities of disclosure by financial institutions regarding suspicious transactions;
- (c) Confiscation of the proceeds of crime;
- (d) declaring money laundering to be an extraditable offence; and

(e) promoting international cooperation in investigation of money laundering.

IMPACT OF MONEY LAUNDERING ON DEVELOPMENT

Question : 2 (Dec 2023, Old Syllabus) & (Dec 2024, Old Syllabus)

What influence does money laundering have on economic development?

(3 marks)

Answer :

- Economies with growing or developing financial centers, but inadequate controls are particularly vulnerable to money laundering, as against the established financial center countries, which implement comprehensive anti-money laundering regimes.
- The gaps in a national anti-money laundering protecting system are exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective countermeasures.
- As with the damaged integrity of an individual financial institution, there is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organised crime.
- In times of decelerating growth, an infusion of hard currency can bolster a country's foreign reserves; ease the hardship associated with budget tightening policies and moderate foreign indebtedness. While these are short term benefits associated with an inflow of criminal monies, the long-term effects are mostly negative.
- One difference between official borrowing and laundered funds is that the former can be controlled by Government, whereas the funds owned by criminals escape the government's ability to control and regulate the economy.
- The possible social, economic and political effects of money laundering, if left unchecked or dealt with ineffectively, are serious. Through the process of money laundering, organised crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments.

- Thus, the economic and political influence of criminal organisations can weaken the social fabric, ethical standards and ultimately the democratic institutions of society.

Question : 3 (June 2019)

What are the effects of Money laundering on the economic development of a country?

(3 marks)

Answer :

- The possible social, economic and political effects of money laundering, if left unchecked or dealt with ineffectively, are serious.
- Through the process of money laundering, organised crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments.
- Thus, the economic and political influence of criminal organisations can weaken the social fabric, ethical standards and ultimately the democratic institutions of society.
- There is a damping effect on foreign direct investment when a country's commercial and financial sectors are perceived to be subject to the control and influence of organised crime.

THE FINANCIAL ACTION TASK FORCE (FATF)

Question : 4 (June 2023)

Explain in brief the role of the Financial Action Task Force (FATF) in the prevention of money laundering under The Prevention of Money Laundering Act, 2002?

(4 marks)

Answer :

- i. The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.
- ii. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

- iii. The FATF is a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.
- iv. The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.
- v. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field.
- vi. The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.
- vii. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.

MONEY LAUNDERING

Question : 5 (Dec 2024)

Ravinder is a public servant and a sum of ₹ 50 Lakhs was recovered from his car parked outside his house while he was sitting in his car with Uttam, a businessman who allegedly handed over this money to clear his Income Tax file pending with Ravinder. Explain whether this money can be regarded as ‘Proceeds of Crime’ under the Prevention of Money Laundering Act, 2002? What defense can Ravinder submit to prove that he is not guilty? Support your answer with relevant case law.

(5 marks)

Answer :

Provision Of Law:

- In the case of **Directorate of Enforcement {Appellant(s)} vs. Padmanabhan Kishore** {Respondent(s)} (Arising out of SLP (Crl.) No. 2668 of 2022) Judgement dated October 31, 2022, Supreme Court of India inter-alia observed that the definition of “proceeds of crime” in PML Act, inter alia, means any property derived or obtained by any person as a result of criminal activity relating to a scheduled offence.
- The offences punishable under Sections 7, 12 and 13 are scheduled offences, as is evident from paragraph 8 of Part-A of the Schedule to the PML Act.
- Any property thus derived as a result of criminal activity relating to offence mentioned in said paragraph 8 of Part-A of the Schedule would certainly be “proceeds of crime”.
- Section 3 states, inter alia, that whoever knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering.

The Defence that Ravinder could submit is:

- It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money.
- If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of misappropriation or species thereof but certainly not of bribe.
- The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over.
- Thus, the requisite intent would always be at the core before the amount is handed over.
- Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter alia, the aspects of possession or acquisition thereof.
- By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime.
- Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime.
- The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person.
- Further, Supreme Court of India held that on a bare perusal of the complaint made by the Enforcement Directorate, it is quite clear that the respondent was prima facie involved in the activity connected with the proceeds of crime.

Conclusion/Analysis:

As per the provisions stated above Yes, this money can be regarded as Proceeds of Crime' under the Prevention of Money Laundering Act, 2002.

Question : 6 (Dec 2020) & (June 2024, Old Syllabus)

Define Money Laundering under Section 3 of the Prevention of Money Laundering Act, 2002. What is the punishment for offence of money laundering under Section 4 of the Act?

(3 marks)

Answer :

- According to Section 2(1) (p) of the Prevention of Money Laundering Act, 2002 "money-laundering" has the meaning assigned to it in section 3 of the Act.
- Section 3 of the Prevention of Money Laundering Act, 2002 states that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or actually involved in any process or activity connected with the proceeds of crime including its concealment,

possession, acquisition or use and projecting or claiming it is an untainted property shall be guilty of offence of money laundering.

- Section 4 provides that any person who commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also liable to fine.
- However, where the proceeds of crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances Act, the punishment may extend to rigorous imprisonment for ten years.

Question : 7 (Dec 2018)

What do you understand by the term “Money Laundering” under the Prevention of Money Laundering Act, 2002?

(3 marks)

Answer :

- Section 3 of the Prevention of Money Laundering Act, 2002 states that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it is an untainted property shall be guilty of offence of money laundering. Money laundering is the processing of criminal proceeds to disguise its illegal origin.
- The process of money laundering can be classified into three stages, namely, placement, layering and integration.

Question : 8 (June 2025)

X was caught transferring funds through illegal export of opium from India to South Africa. State whether X has committed any offence under the Prevention of Money Laundering Act, 2002. Elucidate the punishment that may be imposed on X under the Act.

(5 marks)

Answer :

Provision of Law:

- According to Section 3 of the Prevention of Money Laundering Act, 2002, whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.
- Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering.
- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine.
- But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

Conclusion/Analysis:

As per the provisions of the Prevention of Money Laundering Act, 2002 Mr. X has Committed an offence under Section 3 and Section 23 of this Act and he may be punished as per the aforesaid provisions of section 4 of the Prevention of Money Laundering Act, 2002.

Question : 9 (Dec 2021)

“Money laundering is an Economic Crime”. What punishment is provided for it under Prevention of Money Laundering Act, 2002? (3 marks)

Answer :

- Section 4 of the Prevention of Money Laundering Act, 2002 provides that any person who commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also liable to fine.
- However, where the proceeds of crime involved in money laundering relates to any offence specified under the Narcotic Drugs and Psychotropic Substances Act, the punishment may extend to rigorous imprisonment for ten years.

ATTACHMENT OF PROPERTY INVOLVED IN MONEY LAUNDERING

Question : 10

State the powers of the Director to provisionally attach property under PMLA.

(5 marks)

Answer :

- Section 5 of the protection of Money-Laundering Act, 2002 authorises the Director or any officer not below the rank of Deputy Director authorised by him and who has reason to believe on the basis of material in his possession that any person is in possession of any proceeds of money laundering;
- such person has been charged of having committed a scheduled offence and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime to, provisionally attach by order in writing such property for a period not exceeding 180 days from the date of the order.
- The said provisional attachment does not debar the person who has the possession of the property from enjoying the same but the said person is prohibited from creating any third-party interest in the said property.
- The Director or any other officer who provisionally attaches any property is required to forward a copy of the order along with material in his possession to the Adjudicating Authority immediately and thereafter required to file, within a period of thirty days from such attachment file a complaint, stating the facts of such attachment before the Adjudicating Authority.

OFFENCES TO BE COGNIZABLE AND NON-BAILABLE

Question : 11

Offences under the Prevention of Money Laundering Act, 2002 are cognizable and non -bailable.
Comment.

(5 marks)

Answer :

- Section 45 declares every offence punishable under the Act to be cognizable. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release; and where the Public Prosecutor opposes the application, unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while in bail.

- Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs.
- However the special court shall not take cognizance of any offence punishable under Section 4, except upon a complaint in writing made by
 - (i) the Director or
 - (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or special order made by that Government.
- Section 45(1A) provides that notwithstanding anything contained in Code of Criminal Procedure, 1973 or any other provision of this Act, no police officer shall investigate into an offence under this Act, unless specifically authorized, by the Central Government by a general or special order, and subject to such conditions as may be prescribed.
- It may be noted that "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 , and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.

OBLIGATION OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Question : 12 (June 2021)

Explain the obligations which have been imposed upon the banks to remain cautious under the Prevention of Money Laundering Act, 2002.

(3 marks)

Answer :

Chapter IV of the Act deals with obligations of Banking companies, financial institutions and intermediaries.

The obligations which have been imposed upon banks to remain cautious under the Prevention of Money Laundering Act, 2002 are:

According to Section 12(1) requires every reporting entity shall—

- (a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;
- (b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

Section 12(2) provides that every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

Section 12(3) states that the records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.

Question : 13 (June 2021)

Which information should be preserved by the banks under Prevention of Money Laundering Act, 2002?

(4 marks)

Answer :

According to the Prevention of Money Laundering Act, 2002 requires every Bank shall—

- (a) Maintain a record of all transactions, including information relating to transactions in such manner as to enable it to reconstruct individual transactions.
- (b) Furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed.
- (c) Maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.
- (d) Preserved information such as the nature of the transactions; the amount of the transaction and the currency in which it was denominated; the date on which the transaction was conducted; and the parties to the transaction.

Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

The records shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

RBI MASTER DIRECTION-KNOW YOUR CUSTOMER (KYC) DIRECTION

Question : 14 (Dec 2019)

What do you mean by the KYC guidelines as given under the Prevention of Money Laundering Act, 2002?

(3 marks)

Answer :

- Reserve Bank of India issued Master Circular on Know Your Customer (KYC) Guidelines under Prevention of Money Laundering Act, (PMLA), 2002 and Banks were advised to follow certain customer identification procedure for opening of accounts and monitoring transactions of a suspicious nature for the purpose of reporting it to appropriate authority.
- The objective of Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Measures/Combating of Financing of Terrorism (CFT) guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities.
- KYC procedures also enable banks to know/understand their customers and their financial dealings better which in turn help them manage their risks prudently.
- In terms of the provisions of Prevention of Money-Laundering Act, 2002 and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005, as amended from time to time by the Government of India as notified by the Government of India, Regulated Entities (REs) are required to follow certain customer identification procedures while undertaking a transaction either by establishing an account-based relationship or otherwise and monitor their transactions.
- REs shall take steps to implement the provisions of the aforementioned Act and Rules, including operational instructions issued in pursuance of such amendment(s).
- The 4 key elements of the KYC Policy include Customer Acceptance Policy, Customer Identification Procedures, Monitoring of Transactions and Risk Management.

REGULATED ENTITIES

Question : 15 (June 2024)

What is meant by “Regulated Entities” (REs) under the Prevention of Money-Laundering Act, 2002?

(5 marks)

Answer :

The “Regulated Entities” (REs) under the protection of Money-Laundering Act, 2002 means:

- a) all Scheduled Commercial Banks (SCBs), Regional Rural Banks (RRBs)/ Local Area Banks (LABs)/ All Primary (Urban) Co-operative Banks (UCBs)/ State and Central Co-operative Banks (StCBs/CCBs) and any other entity which has been licenced under Section 22 of Banking Regulation Act, 1949, which as a group shall be referred as ‘banks’.
- b) All India Financial Institutions (AIFIs)
- c) All Non-Banking Finance Companies (NBFCs), Miscellaneous Non- Banking Companies (MNBCs) and Residuary Non-Banking Companies (RNBCs).
- d) All Payment System Providers (PSPs), System Participants (SPs) and Prepaid Payment Instrument Issuers (PPI Issuers).
- e) All authorised persons (APs) including those who are agents of Money Transfer Service Scheme (MTSS), regulated by the Regulator.

UNIQUE ACADEMY FOR COMMERCE

CHAPTER : 9 LAW RELATING TO FUGITIVE ECONOMIC OFFENDERS

FUGITIVE ECONOMIC OFFENDER

Question: 1

Define the term Fugitive Economic Offender (FEO) and What is the Proceeds of Crime under the Fugitive Economic Offenders Act, 2018?

(3 marks)

Answer:

- Any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who –
 - (i) has left India so as to avoid criminal prosecution; or
 - (ii) being abroad, refuses to return to India to face criminal prosecution is a fugitive economic offender.
- It may be noted that Scheduled Offence means an offence specified in the Schedule appended to the Fugitive Economic Offenders Act, 2018 if the total value involved in such offence or offences is one hundred crore rupees or more.
- Proceeds of Crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a Scheduled Offence, or the value of any such property, or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

PROCEDURE FOR DECLARATION OF FEO

Question: 2

Discuss the procedure to be followed to declare a person as Fugitive Economic Offenders.

(5 marks)

Answer:

Procedure for Declaration of Fugitive Economic Offender

(1) Where the Director appointed for the purposes of the Prevention of Money-laundering Act, 2002 or any other officer not below the rank of Deputy Director authorised by the Director, has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that any individual is a fugitive economic offender, he may file an application in such form and prescribed manner in the Special Court that such individual may be declared as a fugitive economic offender.

(2) The application shall contain—

- (a) reasons for the belief that an individual is a fugitive economic offender;
- (b) any information available as to the whereabouts of the fugitive economic offender;
- (c) a list of properties or the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;
- (d) a list of properties or benami properties owned by the individual in India or abroad for which confiscation is sought;
- (e) and a list of persons who may have an interest in any of the properties listed under clauses (c) and (d) above.

Proceeds of Crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a Scheduled Offence, or the value of any such property, or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

(3) Where an application has been duly filed, the Special Court shall issue a notice to an individual who is alleged to be a fugitive economic offender.

(4) The notice shall also be issued to any other person who has any interest in the property mentioned in the application.

(5) A notice of Special Court shall—

- (a) require the individual to appear at a specified place and time not less than six weeks from the date of issue of such notice; and

(b) state that failure to appear on the specified place and time shall result in a declaration of the individual as a fugitive economic offender and confiscation of property under the Act.

(6) A notice shall also be forwarded to such authority, as the Central Government may notify, for effecting service in a contracting State. The authority shall make efforts to serve the notice within a period of two weeks in such prescribed manner.

Contracting State means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise.

(7) A notice may also be served to the individual alleged to be a fugitive economic offender by electronic means to—

(a) his electronic mail address submitted in connection with an application for allotment of Permanent Account Number under section 139A of the Income-tax Act, 1961;

(b) his electronic mail address submitted in connection with an application for enrolment under section 3 of the Aadhaar; or

(c) any other electronic account as may be prescribed, belonging to the individual which is accessed by him over the internet, subject to the satisfaction of the Special Court that such account has been recently accessed by the individual and constitutes a reasonable method for communication of the notice to the individual.

(8) Where any individual to whom notice has been issued by the Special Court shall appears in person at the place and time specified in the notice, the Special Court may terminate the proceedings under the Act.

(9) Where any individual to whom notice has been issued fails to appear at the place and time specified in the notice, but enters appearance through counsel, the Special Court may in its discretion give a period of one week to file a reply to the application.

(10) Where any individual to whom notice has been issued fails to enter appearance either in person or through counsel, and the Special Court is satisfied—

(a) that service of notice has been affected on such party; or

(b) that notice could not be served in spite of best efforts because such individual has evaded service of notice, it may, after recording reasons in writing, proceed to hear the application.

POWER TO DISALLOW CIVIL CLAIMS

Question: 3 (Dec 2023)

Faizal is a fugitive economic offender and has left India to avoid legal proceedings against him. Discuss the provisions relating to power of civil/tribunal to disallow civil claims and attach his property.

(5 marks)

Answer:

Power to Disallow Civil Claims

- Section 14 of the Fugitive Economic Offenders Act, 2018 deals with power to disallow civil claims. It provides that notwithstanding anything contained in any other law for the time being in force.
 - a. On a declaration of an individual as a fugitive economic offender any court or tribunal in India in any civil proceeding before it, may, disallow such individual from putting forward or defending any civil claims and
 - b. Any Court or Tribunal in India in any civil proceeding before it, may disallow any company or limited liability partnership from putting forward or defending any civil claim, if an individual filing the claim on behalf of the company or the limited liability partnership or any promoter or key managerial personnel or majority shareholder of the company or an individual having a controlling interest in the limited liability partnership has been declared as a fugitive economic offender.

Attachment of Property

- Section 5 of the Fugitive Economic Offenders Act, 2018 empower the Director or any other officer authorised by the Director, not below the rank of Deputy Director, may with the permission of the Special Court, attach any by an order in writing in prescribed manner.
- The Director or any other officer authorised by the Director, not below the rank of Deputy Director, authorised by the Director may by an order in writing, at any time prior to the filing of the application to the Special Court attach any property

1. For which there is a reason to believe that the property is proceeds of crime, or is a property or benami property owned by an individual who is a fugitive economic offender and
 2. Which is being or is likely to be dealt with in a manner which may result in the property being unavailable for confiscation.
- Director or any other officer who provisionally attaches any property shall within a period of thirty days from the date of such attachment file an application before the Special Court.
 - The attachment of any property shall continue for a period of one hundred and eighty days from the date of order of such attachment or such other period as may be extended by the special court before the expiry of such period.

POWER OF SURVEY

Question: 4 (June 2024)

Discuss the power of survey by director under law relating to Fugitive Economic Offenders Act, 2018?

(5 marks)

Answer:

According to Fugitive Economic Offenders Act, 2018 where a director or any other officer authorised by the Director, on the basis of material in his possession, has reason to believe (the reason for such belief to be recorded in writing), that an individual may be fugitive economic offender, he may enter any place:

- i) within the limit of the area assigned to him, or
- ii) in respect of which he is authorised for the purposes of this section, by such other authority, who is assigned the area within which such place is situated.

Where the director or any officer authorised by the Director, on the basis of material in his possession, has reason to believe (the reason for such belief to be recorded in writing), that an

individual may be fugitive economic offender and it is necessary to enter any place, he may request any proprietor, employee or any other person who may be present at that time, to-

- a) afford him the necessary facility to inspect such records as he may require and which may be available at such place:
- b) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein: and
- c) Furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings.

The Director, or any other officer acting under this section may:

- i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom:
- ii) make any inventory of any property checked or verified by him; and
- iii) record the statement of any person at the property which may be useful for or relevant to, any proceeding.

SEARCH AND SEIZURE

Question: 5

Mr. R, against whom an application is filed to declare him a Fugitive Economic Offender, is suspected of holding crucial records and assets related to proceeds of crime. The Director or an officer authorized by him believes that such documents and property are concealed in his business premises. The officer conducts a search and seizes the documents for production before the Special Court. State the provisions relating to power of search and seizure under the Fugitive Economic Offenders Act, 2018.

(5 marks)

Answer:

Where the Director or any other officer not below the rank of Deputy Director authorised by him, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person:

- (i) may be declared as a fugitive economic offender;
- (ii) is in possession of any proceeds of crime;
- (iii) is in possession of any records which may relate to proceeds of crime; or
- (iv) is in possession of any property related to proceeds of crime, then, subject to any rules made in this behalf, he may authorise any officer subordinate to him to-

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property; and
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act.

Where an authority, upon information obtained during survey, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence.

RULES OF EVIDENCE

Question: 6 (Dec 2024)

Explain the Rules of Evidence and Standard of proof required by the Special Court under Fugitive Economic Offenders Act, 2018.

(5 marks)

Answer:

- According to the Fugitive Economic Offenders Act, 2018, the rules of evidence state that the burden of proof for establishing:

(a) that an individual is a fugitive economic offender; or

(b) that a property is the proceeds of crime or any other property in which the individual alleged

to be a fugitive economic offender has an interest, shall be on the Director or the person authorised by the Director to file the application.

- Notwithstanding anything contained in any other law for the time being in force, where any person claims that any interest in any property was acquired bona fide and without knowledge of the fact that, such property constitutes proceeds of crime, the burden of proving such fact shall lie upon him.
- The standard of proof applicable to the determination of facts by the Special Court under the Act shall be preponderance of probabilities.

APPEALS

Question: 7

An individual aggrieved by the order of the Special Court under FEO Act wants to challenge it. What is the appellate mechanism available?

(3 marks)

Answer:

- (1) An appeal shall lie from any judgment or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
- (2) Every appeal shall be preferred within a period of thirty days from the date of the judgment or order appealed from.
- (3) High Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.
- (4) No appeal shall be entertained after the expiry of period of ninety days.

CHAPTER : 10 LAW RELATING TO BENAMI TRANSACTIONS AND PROHIBITION

SAILENT FEATURES OF THE ACT

Question : 1 (June 2019)

Explain the salient features of the Benami Transactions (Prohibition) Act, 1988.

(3 marks)

Answer :

The Salient Features of the Benami Transactions (Prohibition) Act, 1988 are as under:

- It defines a benami transaction and benami property and also provides for exclusions and transactions which shall not be construed benami.
- It provides the consequences of entering into a prohibited benami transactions.
- It lays down the procedure for determination and related penal consequences in the case of a prohibited benami transaction.
- It also provides that the powers of civil court shall be available to authorities under the said Act.
- Miscellaneous Provisions have been provided for service of notice, protection of action taken in good faith, etc.
- Central Government empowers to make rules for the implementation of the provisions of the Act.
- It enables the Central Government in consultation with the Chief Justice of the High Court to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Act.
- It provides penalty for entering into benami transactions and for furnishing any false documents in any proceeding under the Act.
- It provides for transfer of any suit or proceeding in respect of a benami transaction pending in any court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal.

BENAMI TRANSACTIONS

Question : 2 (Dec 2023)

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

(5 marks)

Answer :

Provision of Law:

According to Section 2(9) of the Prohibition of Benami Transactions Act, 1988, benami transaction means:

(A) a transaction or an arrangement -

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

Except when the property is held by -

- (i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
- (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;
- (iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
- (iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint- owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name.

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership.

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.

Conclusion/Analysis:

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

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

Question : 3 (Dec 2020)

What do you understand by "Benami Transaction" under the Benami Transactions (Prohibition) Act, 1988?

(4 marks)

Answer :

According to Section 2(9) of the Prohibition of Benami Transactions Act, 1988, benami transaction means:

(A) a transaction or an arrangement -

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

Except when the property is held by -

- (i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
- (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;
- (iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
- (iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint- owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name.

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership.

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.

PROHIBITION OF BENAMI TRANSACTIONS

Question : 4 (Dec 2022)

State the provisions regarding prohibition and punishment for 'Benami Transactions' given under the Benami Transactions (Prohibition) Act, 1988.

(3 marks)

Answer :

- As per Section 3(1) of the Act, no person shall enter into any benami transaction.
- Section 3(2) provides that whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
- According to Section 3(3) where any person enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall be punishable in accordance with the provisions contained in Chapter VII.
- Chapter VII deals with offences and prosecution. It provides that if a person is found guilty of offence of benami transaction by the competent court, he shall be punishable with rigorous imprisonment for a term not less than one year but which may extend to 7 years and shall also be liable to fine which may extend to 25% of the fair market value of the property.

MANNER OF SERVICE OF NOTICE

Question : 5 (June 2021)

In what manner and to whom the service of notice will be served under the Benami Transactions (Prohibition) Act, 1988?

(3 marks)

Answer :

Section 25 of the Benami Transactions (Prohibition) Act, 1988 deals with the manner of service of notice. Sub-section (1) of this section provides that a notice under sub-clause (1) of section 24 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

Any notice referred to above may be addressed---

- (i) in case of an individual, to such individual;
- (ii) in the case of a firm, to the managing partner or the manager of the firm;
- (iii) in the case of a Hindu undivided family, to karta or any member of such family;
- (iv) in the case of a company, to the principal officer thereof;
- (v) in the case of any other association or body of individuals, to the principal officer or any member thereof;
- (vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

ADJUDICATION OF BENAMI PROPERTY

Question : 6 (Dec 2018)

Explain Adjudication of Benami Property under the Benami Transaction Act, 1988.

(3 marks)

Answer :

- Section 26 of the Benami Transactions (Prohibition) Act, 1988 relates to adjudication of benami property.
- Sub-section (1) of this section provides that on receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons:
 - i. The person specified as a benamidar therein
 - ii. Any person referred to as the beneficial owner therein or identified as such
 - iii. Any interested party, including a banking company
 - iv. Any person who has made a claim in respect of the property
- However, the Adjudicating Authority shall issue notice within a period of thirty days from the date on which a reference has been received. Further, the notice shall provide a period of time of not less than thirty days to the person to whom such notice is issued to furnish the information sought.

- Sub-section (2) of this section provides that where such property is held jointly by more than one person, the Adjudicating Authority shall make endeavours to serve notice to all persons holding such property.
- However, where the notice is served on one of the aforesaid persons the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property.
- Sub-section (3) of this section provides that the Adjudicating Authority shall, after considering the reply, if any, to the notice issued under sub-section(1);making or causing to be made such inquiries and calling for such reports or evidence as it deems fit; and taking into account all relevant materials, provide an opportunity of being heard to the person specified as a benamidar therein, the Initiating Officer, and any other person who claims to be the owner of such property.
- Thereafter, the Adjudicating Authority shall pass an order holding the property not to be a benami property and revoking the attachment order; or holding the property to be a benami property and confirming the attachment order in all other cases.
- Sub-section (4) of this section provides that where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is benami property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part or properties is held benami.
- Sub-section (5) of this section provides that where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to him by the Initiating Officer is benami property, it shall provisionally attach the property and the property shall be deemed to be a property referred to it on the date of receipt of the reference under sub-section (5) of section 24.
- Sub-section (6) of this section provides that the Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or suo moto, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable it to adjudicate upon and settle all the questions involved in the reference.
- Sub-section (7) of this section provides that no order under sub-section (3) shall be passed after the expiry of one year from the end of the month in which the reference under section 24 was received. As per section 7 of the Act, the Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act. An Adjudicating Authority shall consist of a Chairperson and at least two other Members.

CONFISCATION AND VESTING OF BENAMI PROPERTY

Question : 7 (Dec 2023)

Elaborate the law and procedure in respect of confiscation and vesting of benami property under the Benami Transactions (Prohibition) Act, 1988.

(4 marks)

Answer :

- Section 27 of the Benami Transactions (Prohibition) Act, 1988 deals with confiscation and vesting of benami property.
- Sub-section (1) of this section provides that where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property.
- However, where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46.
- Further, confiscation of the property shall be made in accordance with such procedure as may be prescribed.
- Sub-section (2) of this section provides that the above shall not apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the benami transaction.
- Sub-section (3) of this section provides that where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.
- Sub-section (4) of this section provides that any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.
- Sub-section (5) of this section provides that where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

Question : 8 (June 2023)

Discuss the provisions for the confiscation and vesting of benami property under the Benami Transactions (Prohibition) Act, 1988.

(4 marks)

Answer :

- Section 27 of the Benami Transactions (Prohibition) Act, 1988 deals with confiscation and vesting of benami property.
- Sub-section (1) of this section provides that where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property.

- However, where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46.
- Further, confiscation of the property shall be made in accordance with such procedure as may be prescribed.
- Sub-section (2) of this section provides that the above shall not apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the benami transaction.
- Sub-section (3) of this section provides that where an order of confiscation has been made, all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.
- Sub-section (4) of this section provides that any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.
- Sub-section (5) of this section provides that where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.

MANAGEMENT OF PROPERTIES CONFISCATED

Question : 9 (June 2024)

How is the Management of properties confiscated under the Law relating to Benami Transactions and Prohibition?

(5 marks)

Answer :

- Section 28 of the Benami Transactions (Prohibition) Act, 1988 relates to management of properties confiscated under this Act. Sub-section (1) of this section provides that the Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-section (1) of section 27 has been made, in such manner and subject to such conditions, as may be prescribed.
- Sub-section (2) of this section provides that the Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.
- Sub-section (3) of this section provides that the Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under sub-section (2) of section 27 in such manner and subject to such conditions as may be prescribed.

POSSESSION OF THE PROPERTY

Question : 10 (Dec 2024, Old Syllabus)

State the provisions relating to 'Possession of property' for which the order of confiscation has been passed under the Benami Transactions (Prohibition) Act, 1988.

(3 marks)

Answer :

- Section 29 of the Benami Transactions (Prohibition) Act, 1988, relates.
- Sub-section (1) of this section provides that where an order of confiscation in respect of a property under subsection (1) of section 27 has been made, the Administrator shall proceed to take the possession of such property.
- Sub-section (2) of this section provides that the Administrator shall,
 - (a) by notice in writing, order within seven days of the date of the service of notice any person, who may be in possession of the benami property, to surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf;
 - (b) in the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty such officer to comply with the requisition.
- It may be noted that "Administrator" means an Income-tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961

SPECIAL COURTS

Question : 11 (June 2025)

Explain the provisions relating to Special Courts constituted under Section 50 of the Prohibition of Benami Property Transactions Act, 1988.

(5 marks)

- Section 50 of the Benami Transactions Prohibition Act, 1988 relates to Special Courts.
- Section 50 (1) provides that the Central Government, in consultation with the Chief Justice of the High Court, shall for trial of an offence punishable under this Act, by notification, designate one

or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

- Section 50 (2) provides that while trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.
- Section 50(3) states that the Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by -
 - (i) the authority; or
 - (ii) any officer of the Central Government or State Government authorized in writing by that Government by a general or special order made in this behalf.

According to Section 50(4) every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made by the Special Court to conclude the trial within six months from the date of filing of the complaint.

OFFENCES BY COMPANIES

Question : 12 (Dec 2024)

Explain the provisions of 'Offences by Companies' under Section 62 of the Benami Transactions (Prohibition) Act, 1988.

(5 marks)

Answer :

- Section 62 of the Benami Transaction (Prohibition) Act, 1988 relates to consequences in case of offences by companies. Subsection (1) of this section provides that where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly.
- Section 62(2) states that nothing contained in subsection (1) of this section shall render any person liable to punishment, if he proves that the contravention took place without his knowledge.
- Section 62(3) provides that notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place 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 the contravention and shall be liable to be proceeded against and punished accordingly.

OFFENCES AND PROSECUTION

Question : 13 (Dec 2019)

State the provisions regarding punishment for Benami Transactions incorporated under the Benami Transaction (Prohibition) Act, 1988.

(3 marks)

Answer :

- According to Benami Transactions (Prohibition) Act, 1988 where any person enters into any benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction, he shall be punishable in accordance with the provisions contained in Chapter VII of the Act.
- Chapter VII of the Benami Transactions (Prohibition) Act, 1988 deals with offences and prosecution.
- Section 53 provides that if a person is found guilty of offence of benami transaction by the competent court, he shall be punishable with rigorous imprisonment for a term not less than one year but which may extend to 7 years and shall also be liable to fine which may extend to 25% of the fair market value of the property.
- Section 54 relates to penalty for false information whereas Section 62 relates to consequences in case of offences by Company.

CHAPTER : 11 COMPETITION ACT

COMPETITION, COMPETITION LAW AND COMPETITION POLICY

Question : 1 (Dec 2020)

What are the objectives of Competition Act, 2002?

(3 marks)

Answer :

The objectives of the Competition Act, 2002 are as under:

- The Competition Act, 2002 has been enacted to provide,
- keeping in view of the economic development of the country,
- for the establishment of a Commission to prevent practices having adverse effect on competition,
- to promote and sustain competition in the markets,
- to protect the interest of consumers and
- to ensure freedom of trade carried on by other participant in the markets in India and for matters connected therewith or incidental thereto.

Question : 2 (Dec 2022)

Discuss 'Competition Law and Policy' under the Competition Act, 2002.

(3 marks)

Answer :

- The World Bank and OECD in its Report A Framework for the Design and Implementation of Competition Law and Policy pointed out that a dynamic and competitive environment, underpinned by sound competition law and policy, is an essential characteristic of a successful market economy.
- Effective enforcement of competition law and active competition advocacy can also be powerful catalysts for successful economic restructuring.

- This in turn fosters flexibility and mobility of resources, which in the current global business environment are critical elements for the competitiveness of firms and industries across nations.
- Although the field of competition law and policy is evolving rapidly and includes many different viewpoints on specific issues, recognition is growing that effective competition law is important in shaping business culture and that its proper implementation needs to allow for the education of business people, government officials, the judiciary, and the interested public.
- The basic purpose of Competition Policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy.
- Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets.
- The second element is legislation designed to prevent anti-competitive business practices with minimal Government intervention, i.e., a competition law.
- Competition law by itself cannot produce or ensure competition in the market unless this is facilitated by appropriate Government policies. On the other hand, Government policies without a law to enforce such policies and prevent competition malpractices would also be incomplete.

Question : 3 (Dec 2021)

The basic purpose of Competition Policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy. Discuss.

(5 marks)

Answer :

- The basic purpose of Competition Policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy.
- Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets.
- The second element is legislation designed to prevent anti-competitive business practices with minimal Government intervention, i.e., a competition law.
- Competition law by itself cannot produce or ensure competition in the market unless this is facilitated by appropriate Government policies. On the other hand, Government policies without a law to enforce such policies and prevent competition malpractices would also be incomplete.
- Competition policies cover a much broader set of instruments than competition law and typically include all policies aimed at increasing the intensity of competition or rivalry in local and national markets by lowering entry barriers and opportunities for harmful coordination, to ensure that markets work effectively and serve the interests of all citizens.
- Competition law is only a subset of a nation's competition policies. Competition policies typically include pro-competition approaches to trade, investment, sectoral regulation, and consumer protection.

Question : 4 (June 2019)

What is the purpose of competition policy of India and Competition Act, 2002?

(3 marks)

Answer :

The basic purpose of Competition Policy and Competition Act, 2002 is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy.

Competition policy typically has two elements:

- (i) One is a set of policies that enhance competition in local and national markets.
- (ii) The second element is legislation designed to prevent anti-competitive business practices with minimal Government intervention, i.e., a competition law.

The Competition Act, 2002 seeks to provide, keeping in view the economic development of the country, for the establishment of Competition Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India.

Question : 5 (Dec 2023, Old Syllabus)

What is the basic purpose of Competition Law and Policy?

(3 marks)

Answer :

- The basic purpose of Competition Policy and law is to preserve and promote competition as a means of ensuring efficient allocation of resources in an economy.
- Competition policy typically has two elements: one is a set of policies that enhance competition in local and national markets.
- The second element is legislation designed to prevent anti- competitive business practices with minimal Government intervention, i.e., a competition law.
- Competition law by itself cannot produce or ensure competition in the market unless this is facilitated by appropriate Government policies. On the other hand, Government policies without a law to enforce such policies and prevent competition malpractices would also be incomplete.

IMPORTANT DEFINITIONS

Question : 6 (June 2023)

An Organization constituted by the owners of Cement Industries unanimously decided to raise the price of cement above competitive levels resulting in injury to the consumers and to the economy. But the decision taken by the organization was not in writing and also not intended to be enforced by legal proceedings. Discuss whether the decision taken by organization may be considered as an 'agreement' under the provisions of the Competition Act, 2002?

(3 marks)

Answer :

According to Section 2(b) of the Competition Act, 2002 the term agreement includes any arrangement or understanding or action in concert –

- i. whether or not, such arrangement, understanding or action is formal or in writing; or
- ii. whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings. [Section 2(b)]

Question : 7 (Dec 2018)

Who is “consumer” under the Competition Act, 2002?

(3 marks)

Answer :

As per Section 2(f) of the Competition Act, 2002, “Consumer” means any person who—

- i. buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
- ii. hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any

system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use.

Question : 8 (Dec 2019)

What do you mean by the term 'person' as given under the Competition Act, 2002?

(3 marks)

Answer :

In terms of Section 2(l) of the Competition Act, 2002 "person" includes—

- i. an individual;
 - ii. a Hindu undivided family;
 - iii. a company;
 - iv. a firm;
 - v. an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
 - vi. any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
 - vii. any body corporate incorporated by or under the laws of a country outside India;
 - viii. a co-operative society registered under any law relating to co-operative societies;
 - ix. a local authority;
 - x. every artificial juridical person, not falling within any of the preceding sub-clauses.
- [Section 2(l)]

Question : 9 (June 2022)

Define the term 'Service' under the Competition Act, 2002?

(3 marks)

Answer :

As per Section 2(u) of the Competition Act, 2002, "Service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of

electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

Question : 10 (June 2019) & (Dec 2022)

Explain what is meant by Bid-rigging, tie-in agreement, Exclusive dealing agreement, and Refusal to deal.

(5 marks)

Answer :

Bid Rigging

According to Section 3 of the Competition Act, 2002 “bid rigging” means any agreement, between enterprises or persons engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

Section 3(4) of the Competition Act, 2002 defines the terms “Tie-in agreement”, “Exclusive supply agreement” & “Refusal to Deal”

Tie-In Arrangement

“Tie-In Arrangement” includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services.

Exclusive Dealing Agreement

“Exclusive Dealing Agreement” includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be.

Refusal to Deal

“Refusal to Deal” includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods or services; are sold or from whom goods or services are bought.

CARTEL

Question : 11 (Dec 2020)

Elite Club is a club of eight Indian banks. The club covers entire Indian territory for its operations and dealings. The club covered entire India with a view of fixing rates of deposits, lending and other rates on banking facilities. The club covered all banking products and services and members of the club fixed interest rates for loans and savings for private/household including commercial customers; as well as the fees consumers had to pay for certain services. The club also provides services for money transfers and export financing. One of the customers of a 'Bank', which is a member of the club, made a complaint against the club acting as a 'cartel' to the Competition Commission of India. Examine the validity of the complaint.

(5 marks)

Answer :

Provision Of Law:

According to Section 2(c) of the Competition Act, 2002, Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.

Some of the conditions that are conducive to cartelization are:

- high concentration - few competitors
- high entry and exit barriers
- homogeneity of the products (similar products)
- similar production costs
- excess capacity
- high dependence of the consumers on the product
- history of collusion

Conclusion/Analysis:

- Coming to the factual matrix provided in the present case, certain banks have come together under the forum of a Club and are together by agreement amongst themselves, fixing the rate of deposits, lending, fees and other rates on banking facilities including loans and savings for private/household including commercial customers thereby limiting control or attempting to control the price of such services.

- Keeping in view of the definition of the term cartel stated above it may be said that the activities of limiting control or attempting to control the price of banking services would constitute cartel.
- The complaint made by the customer is therefore, prima facie valid.

Question : 12 (Dec 2024, Old Syllabus), (June 2021) & (Dec 2021)

What is cartel? What are conditions conducive to cartel?

(3 marks)

Answer :

According to Section 2(c) of the Competition Act, 2002, Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.

Some of the conditions that are conducive to cartelization are:

- high concentration - few competitors
- high entry and exit barriers
- homogeneity of the products (similar products)
- similar production costs
- excess capacity
- high dependence of the consumers on the product
- history of collusion

Question : 13 (Dec 2018)

Explain the concept of Cartel with reference to the Competition Act, 2002.

(3 marks)

Answer :

- According to Section 2(c) of the Competition Act, 2002, Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst

themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.

- The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.
- An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country.
- An import cartel comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country.
- An export cartel is made up of enterprises based in one country with an agreement to cartelize markets in other countries. In the Competition Act, cartels meant exclusively for exports have been excluded from the provisions relating to anti-competitive agreements.
- This is because such cartels do not adversely affect markets in India and are hence outside the purview of the Competition Act.
- If there is effective competition in the market, cartels would find it difficult to be formed and sustained.

Question : 14 (June 2024)

ABC Bearing Limited along with other four companies, who are the key Competitors in the market decided among themselves to revise the prices to be quoted to Original Equipment Manufacturers (OEMs). Discuss whether this act amounts to Cartelisation under the Competition Act, 2002?

(3 marks)

Answer :

Provision of Law:

- According to Section 2(c) of the Competition Act, 2002, Cartel includes an association of producers, sellers or distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of or, trade in goods or provision of services.
- The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.
- An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country.
- An import cartel comprises enterprises (including an association of enterprises) that get together for the purpose of imports into the country.
- An export cartel is made up of enterprises based in one country with an agreement to cartelize markets in other countries. In the Competition Act, cartels meant exclusively for exports have been excluded from the provisions relating to anti-competitive agreements.

- This is because such cartels do not adversely affect markets in India and are hence outside the purview of the Competition Act.
- If there is effective competition in the market, cartels would find it difficult to be formed and sustained.

Conclusion/Analysis:

Competition Commission of India in the matter of ABC Bearing Ltd., dated June 05, 2020 held that where key Competitors in bearings market discussed amongst themselves to decide on revision of prices to be quoted to Original Equipment Manufacturers (OEMs), thereby their independence is compromised, facilitating them to quote price revisions to OEMs different than what they would have quoted independently, will amount to Cartel as defined under Section 2(c) of the Competition Act, 2002.

Competition Commission of India in the case of **All India Tyre Dealers Federation Vs. Tyre Manufacturers** observed that no explicit agreement is required in order to prove cartelisation, it may be proved even through the intention or conduct of parties.

So, in the light of the above case, this Act of ABC Bearing Limited amounts to Cartelisation.

Question : 15 (Dec 2022) & (Dec 2019)

What are the conditions that are conducive to cartelization?

(3 marks)

Answer :

Some of the conditions that are conducive to cartelization are:

- high concentration - few competitors
- high entry and exit barriers
- homogeneity of the products (similar products)
- similar production costs
- excess capacity
- high dependence of the consumers on the product
- history of collusion

VERTICAL AGREEMENTS

Question : 16 (June 2021)

What do you understand by Vertical Agreements under the Competition Act, 2002? State various types of Vertical Agreements mentioned in the Competition Act, 2002.

(3 marks)

Answer :

Section 3(4) of the Competition Act, 2002 provides that any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including

- a) tie-in arrangement;
- b) exclusive dealing agreement;
- c) exclusive distribution agreement;
- d) refusal to deal;
- e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.

TIE-IN AGREEMENT

Question : 17 (Dec 2024, Old Syllabus)

Explain 'tie-in agreement' and 'exclusive dealing agreement' under the Competition Act, 2002.

(3 marks)

Answer :

Section 3(4) of the Competition Act, 2002 defines the terms "Tie-in agreement" & "Exclusive supply agreement".

Tie-In Arrangement

“Tie-In Arrangement” includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services.

Exclusive Dealing Agreement

“Exclusive Dealing Agreement” includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be.

Question : 18 (Dec 2022)

Define the terms “tie-in agreement” and “exclusive dealing agreement” under the Competition Act, 2002.

(3 marks)

Answer :

Section 3(4) of the Competition Act, 2002 defines the terms “Tie-in agreement” & “Exclusive supply agreement”.

Tie-In Arrangement

“Tie-In Arrangement” includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services.

Exclusive Dealing Agreement

“Exclusive Dealing Agreement” includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be.

ANTI COMPETITIVE AGREEMENTS

Question : 19 (Dec 2021)

What do you understand by Anti-Competitive Agreements under the Competition Act, 2002?

(3 marks)

Answer :

- Anti-Competitive Agreements are those agreements that have their object as to prevent, restrict or distort competition in India.
- According to Section 3(1) of the Competition Act, 2002, no enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.
- As per Section 3(2) any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.
- Section 3(3) states that any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

a) directly or indirectly determines purchase or sale prices;

b) limits or controls production, supply, markets, technical development, investment or provision of services;

c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

d) directly or indirectly results in bid rigging or collusive bidding,

shall be presumed to have an appreciable adverse effect on competition.

Question : 20 (Dec 2020) & (Dec 2018)

What do you understand by “Anti-Competitive Agreement” under Competition Act, 2002?

(3 marks)

Answer :

An anti-competitive agreement under the Competition Act, 2002 is an agreement having appreciable adverse effect on competition. Anti-competitive agreements include, but are not limited to:

- agreement to limit production and/or supply;
- agreement to allocate markets;
- agreement to fix price;
- bid rigging or collusive bidding;
- conditional purchase/ sale (tie-in arrangement);
- exclusive supply / distribution arrangement; | resale price maintenance; and
- refusal to deal.

BID-RIGGING IS ANTI-COMPETITIVE

Question : 21 (June 2024, Old Syllabus)

'Bid rigging is Anti-Competitive'. Explain the above statement in the context of the Competition Act, 2002.

(3 marks)

Answer :

- As per Competition Act, 2002 Bidding, as a practice, is intended to enable the procurement of goods or services on the most favourable terms and conditions.
- Invitation of bids is resorted to both by Government (and Government entities) and private bodies (companies, corporations, etc.).
- But the objective of securing the most favourable prices and conditions may be negated if the prospective bidders collude or act in concert.
- Such collusive bidding or bid rigging contravenes the very purpose of inviting tenders and is inherently anti-competitive.
- If bid rigging takes place in Government tenders, it is likely to have severe adverse effects on its purchases and on public spending.
- Bid rigging or collusive bidding is treated with severity in the law. The presumptive approach reflects the severe treatment.

Question : 22 (Dec 2021)

What is 'Collusive bidding'? In which ways collusive bidding may occur?

(3 marks)

Answer :

- As per Competition Act, 2002 Bidding, as a practice, is intended to enable the procurement of goods or services on the most favourable terms and conditions.
- Invitation of bids is resorted to both by Government (and Government entities) and private bodies (companies, corporations, etc.).
- But the objective of securing the most favourable prices and conditions may be negated if the prospective bidders collude or act in concert.
- Such collusive bidding or bid rigging contravenes the very purpose of inviting tenders and is inherently anti-competitive.
- Some of the most commonly adopted ways in which collusive bidding or bid rigging may occur are:
 - i. agreements to submit identical bids
 - ii. agreements as to who shall submit the lowest bid, agreements for the
 - iii. submission of cover bids (voluntarily inflated bids)
 - iv. agreements not to bid against each other,
 - v. agreements on common norms to calculate prices or terms of bids
 - vi. agreements to squeeze out outside bidders
 - vii. agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis.
- If bid rigging takes place in Government tenders, it is likely to have severe adverse effects on its purchases and on public spending.
- Bid rigging or collusive bidding is treated with severity in the law. The presumptive approach reflects the severe treatment.

Question : 23 (June 2023)

Mention the most commonly adopted ways in which collusive bidding or bid rigging may occur.

(3 marks)

Answer :

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

- a) agreements to submit identical bids
- b) agreements as to who shall submit the lowest bid, agreements for the
- c) submission of cover bids (voluntarily inflated bids)
- d) agreements not to bid against each other,
- e) agreements on common norms to calculate prices or terms of bids
- f) agreements to squeeze out outside bidders

- g) agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis.

Question : 24 (Dec 2019) & (Dec 2023)

In which circumstances collusive bidding or bid rigging may occur as per the Competition Act, 2002?

(3 marks)

Answer :

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

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

DOMINANT POSITION

Question : 25 (June 2019)

What is meant by dominant position under the Competition Act, 2002?

(3 marks)

Answer :

According to Section 4 of the Competition Act, 2002 “Dominant Position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

- i. operate independently of competitive forces prevailing in the relevant market; or
- ii. affect its competitors or consumers or the relevant market in its favour.

PREDATORY PRICING

Question : 26 (Dec 2020) & (June 2024, Old Syllabus)

What is predatory pricing? Explain.

(3 marks)

Answer :

The term "Predatory Price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Thus, the two conditions precedent to bring a case with the ambit of predatory pricing are:

- i. Selling goods or provision of services at a price which is below its cost of production and
- ii. That practice is resorted to eliminate the competition or to reduce competition.

PROHIBITION OF ABUSE OF DOMINANT POSITION

Question : 27 (Dec 2023)

Titto is seller of dental floss in the market where he holds monopoly as there are only handful sellers in this product line of dental care. The competitor accuses him of possessing dominant position and abusing the same. Explain the understanding of dominant position and abuse of the same.

(5 marks)

Answer :

Dominant Position:

According to Section 4(1) of the Act, no enterprise or group shall abuse its dominant position.

Section 4(2) states that there shall be an abuse of dominant position under sub-section (1), if an enterprise or a group, —

- a. directly or indirectly, imposes unfair or discriminatory—
 - i. condition in purchase or sale of goods or service; or

- ii. price in purchase or sale (including predatory price) of goods or service.

- b. limits or restricts—
 - i. production of goods or provision of services or market therefor; or
 - ii. technical or scientific development relating to goods or services to the prejudice of consumers; or

- c. indulges in practice or practices resulting in denial of market access in any manner; or

- d. makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

- e. uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Abuse Of Dominant Position:

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

- Abuse of dominant position includes:
 - i. imposing unfair conditions or price,
 - ii. predatory pricing,
 - iii. limiting production/market or technical development,
 - iv. creating barriers to entry,
 - v. applying dissimilar conditions to similar transactions,
 - vi. denying market access, and
 - vii. using dominant position in one market to gain advantages in another market.

Question : 28 (Dec 2021) & (Dec 2018)

What constitutes 'abuse of Dominance' under Competition Act, 2002? Critically analyse the relevant provisions.

(3 marks)

Answer :

- Section 4 of the Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position.
- Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour.
- Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit.
- Abuse of dominant position includes:
 - i. imposing unfair conditions or price,
 - ii. predatory pricing,
 - iii. limiting production/market or technical development,
 - iv. creating barriers to entry,
 - v. applying dissimilar conditions to similar transactions,
 - vi. denying market access, and
 - vii. using dominant position in one market to gain advantages in another market.

COMBINATION

Question : 29 (Dec 2021) & (Dec 2018)

What do you understand by the term “Combination” under the Competition Act, 2002?

(3 marks)

Answer :

- Combination under the Competition Act, 2002 means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has direct or indirect control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act.
- The thresholds are specified in the Act in terms of assets or turnover in India and outside India. Entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination shall be void.

THRESHOLD LIMIT

Question : 30 (June 2022)

What is the threshold limit for regulation of combination under section 5 under the Competition Act, 2002?

(3 marks)

Answer :

The Threshold limits for regulation of combination under Section 5 of the Competition Act, 2002 are following:

In exercise of the powers conferred by Section 20(3) of the Competition Act, 2002, the Central Government vide its Notification dated March 07, 2024 and in consultation with the Competition Commission of India, enhanced, on the basis of the wholesale price index and exchange rate of rupee, the value of assets and the value of turnover, by One hundred and fifty percent for the purposes of section 5 of the Competition Act. The value of assets and turnover after revision is as under:

Thresholds For Filing Notice				
Enterprise Level		Assets	Or	Turnover
	India	> 2500 INR Crore		> 7500 INR Crore
	In India or Outside India	> USD 1.25 bn with at least > 1250 INR Crore in India		> USD 3.75 bn with at least > 3750 INR Crore in India
OR				
Group Level		Assets	Or	Turnover
	India	> 10000 INR Crore		> 30000 INR Crore
	In India or Outside India	> USD 5 bn with at least > 1250 INR Crore in India		> USD 15 bn with at least > 3750 INR Crore in India

De-Minimis Thresholds: In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 it has also been decided with regards to de-minimis thresholds that the value of assets and turnover be enhanced from INR 350 crore (rupees three hundred fifty crore) to INR 450 crore (rupees four hundred fifty crore) for assets and from INR 1000 crore (rupees one thousand crore) to INR 1250 crore (rupees one thousand two hundred fifty crore) for turnover.

Thresholds For Availing of De-Minimis Exemption				
		Assets	Or	Turnover
Target Enterprise	In India	< Rs.450 Crore		< Rs.1250 Crore

COMPETITION COMMISSION OF INDIA

Question : 31 (Dec 2022)

Discuss briefly, the establishment, composition and term of office of chairperson and other members of Competition Commission of India.

(5 marks)

Answer :

Establishment of Competition Commission of India

- Section 7 of the Act empowers the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".
- The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- The head office of the Commission shall be at such place as the Central Government may decide from time to time. The Commission may establish offices at other places in India.

Composition of Competition Commission of India

- According to Section 8 the Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.
- The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, technology, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.
- The Chairperson and other Members shall be whole-time Members.

Question : 32 (June 2021)

State the composition to constitute the Competition Commission of India, under the Competition Act, 2002.

(3 marks)

Answer :

- According to Section 8 the Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.

- The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, technology, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.
- The Chairperson and other Members shall be whole-time Members.

APPOINTMENT OF DIRECTOR GENERAL

Question : 33 (Dec 2023, Old Syllabus)

Explain the provisions of appointment of “Director General” under the Competition Act, 2002.

(5 marks)

Answer :

- Director General is an important functionary under the Competition Act, 2002.
- Section 16 empowers the Commission with the prior approval of the Central Government appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.
- The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.
- Every Additional, Joint, Deputy and Assistant Directors General or such officers or other employees, shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

Question : 34 (June 2024, Old Syllabus)

State the duties of Competition Commission of India under Section 18 of the Competition Act, 2002.

(3 marks)

Answer :

As per Competition Commission of India (CCI) under Section 18 of the Competition Act 2002, duties deals with duties and functions of the Commission.

It states that subject to the provisions of this Act,

- i. it shall be the duty of the Commission to eliminate practices having adverse effect on competition,
- ii. promote and sustain competition,
- iii. protect the interests of consumers and
- iv. ensure freedom of trade carried on by other participants, in markets in India:

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country:

Provided further that, the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with any statutory authority or department of Government.

FACTORS TO DETERMINE WHETHER AN AGREEMENT HAS AAEOC

Question : 35 (June 2021), (Dec 2024, Old Syllabus) & (June 2019)

How the competition commission will determine whether an agreement has appreciable adverse effect on competition?

(3 marks)

Answer :

Section 19(3) of the Competition Act,2002 provides that the Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:

- a) creation of barriers to new entrants in the market;
- b) driving existing competitors out of the market;
- c) foreclosure of competition;
- d) benefits or harm to consumers;
- e) improvements in production or distribution of goods or provision of services;

f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

FACTORS FOR DETERMINING DOMINANT POSITION OF AN ENTERPRISE

Question : 36 (Dec 2021) & (Dec 2018)

What are the factors which are taken into account by the Commission to determine the dominance position of an enterprise under the Competition Act, 2002. Discuss.

(5 marks)

Answer :

The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:

- a) market share of the enterprise;
- b) size and resources of the enterprise;
- c) size and importance of the competitors;
- d) economic power of the enterprise including commercial advantages over competitors;
- e) vertical integration of the enterprises or sale or service network of such enterprises;
- f) dependence of consumers on the enterprise;
- g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- i) countervailing buying power;
- j) market structure and size of market; social obligations and social costs;
- k) social obligations and social costs;
- l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
- m) any other factor which the Commission may consider relevant for the inquiry.

RELEVANT GEOGRAPHIC MARKET & RELEVANT PRODUCT MARKET

Question : 37 (Dec 2023, Old Syllabus)

What factors are important to determine 'relevant geographic market' and 'relevant product market' under the Competition Act, 2002?

(5 marks)

Answer :

Factors for Relevant Geographic Market

The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely: —

- a) regulatory trade barriers;
- b) local specification requirements;
- c) national procurement policies;
- d) adequate distribution facilities;
- e) transport costs;
- f) language;
- g) consumer preferences;
- h) need for secure or regular supplies or rapid after-sales services;
- i) characteristics of goods or nature of services;
- j) costs associated with switching supply or demand to other areas.

Factors for Relevant Product Market

The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:

- a) physical characteristics or end-use of goods 1[or the nature of services];
- b) price of goods or service;
- c) consumer preferences;
- d) exclusion of in-house production;
- e) existence of specialised producers;

- f) classification of industrial products;
- g) costs associated with switching demand or supply to other goods or services;
- h) categories of customers.

FACTORS FOR DETERMINING

Question : 38 (June 2025) & (Dec 2022)

State the factors that the Competition Commission of India should consider while determining whether a combination is likely to have an appreciable adverse effect on competition under the Competition Act, 2002.

(5 marks)

Answer :

As per Section 20(4) of the Competition Act, 2000, for the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:

- (a) Actual and potential level of competition through imports in the market
- (b) Extent of barriers to entry into the market;
- (c) Level of concentration in the market;
- (d) Degree of countervailing power in the market;
- (e) Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (f) Extent of effective competition likely to sustain in a market;
- (g) Extent to which substitutes are available or are likely to be available in the market;
- (h) Market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (i) Likelihood that the combination would result in the removal of vigorous and effective competitor or competitors in the market;
- (j) Nature and extent of vertical integration in the market;
- (k) Possibility of a failing business;
- (l) Nature and extent of innovation;

(m) Relative advantages, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition.

(n) Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

PROCEDURE FOR INQUIRY INTO CERTAIN AGREEMENTS & DOMINANT POSITION OF ENTERPRISE

Question : 39 (June 2022)

What is the procedure for inquiry of complaint under section 19 of the Competition Act, 2002?

(5 marks)

Answer :

Section 26 deals with procedure for Inquiry into Certain Agreements and Dominant Position of Enterprise.

It states that:

- 1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:
- It may be noted that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.
- 2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.

3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

3A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.

3B) The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.

4) The Commission may forward a copy of the report referred to in sub-section (3) and (3B) to the parties concerned.

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) and (3B) to the Central Government or the State Government or the statutory authority, as the case may be.

5) If the report of the Director General referred to in sub-section (3) and (3B) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

8) If the report of the Director General referred to in sub-section (3) and (3B) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

9) Upon completion of the investigation or inquiry under sub-section (7) or sub-section (8), as the case may be, the Commission may pass an order closing the matter or pass an order under section 27, and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

- Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned.

ORDERS BY COMMISSION AFTER INQUIRY INTO AGREEMENTS OR ABUSE OF DOMINANT POSITION

Question : 40 (Dec 2018), (Dec 2022) & (June 2023)

What are the orders that may be issued by the Competition Commission of India after inquiry into any agreement entered into by any enterprise or association of enterprises or any person or association of persons or an enquiry into abuse of dominant position under Section 27 of the Competition Act, 2002?

(5 marks)

Answer :

Section 27 of the Act provides that where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:

a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position.

Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover or income, as the case may be, for each year of the continuance of such agreement, whichever is higher.

c) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

d) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

e) pass such other order or issue such directions as it may deem fit:

It may be noted that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.

DIVISION OF AN ENTERPRISE ENJOYING DOMINANT POSITION

Question : 41 (Dec 2024, Old Syllabus) & (June 2021)

Who is authorized to pass an order for division of an enterprise which is enjoying dominant position under the Competition Act, 2002? Explain the provisions with regard to division of enterprise enjoying dominant position.

(5 marks)

Answer :

- Section 28(1) of the Act provides that the Commission may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.
- Section 28(2) states that in particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely: —
 - a. the transfer or vesting of property, rights, liabilities or obligations;
 - b. the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
 - c. the creation, allotment, surrender or cancellation of any shares, stocks or securities;
 - d. the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
 - e. the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
 - f. any other matter which may be necessary to give effect to the division of the enterprise.
- Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

PROCEDURE FOR INVESTIGATION OF COMBINATIONS

Question : 42 (Dec 2019) & (Dec 2024, Old Syllabus)

Explain the stages involved in the procedure for investigation of combination by the Competition Commission of India under Section 29 of the Competition Act, 2002.

(5 marks)

Answer :

The procedure for investigation of combination by the Commission has been stipulated under Section 29 of the Competition Act, 2002. It involves following stages-

(1) Where the Commission is of the prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within fifteen days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

(1B) The Commission shall, within thirty days of receipt of notice under sub-section (2) of section 6, form its prima facie opinion referred to in sub-section (1).

(2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under sub section (1A), whichever is later, direct the parties to the said combination to publish details of the combination within seven days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

(3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within ten days from the date on which the details of the combination were published under sub-section (2).

(4) The Commission may, within seven days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.

(5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within ten days from the expiry of the period specified in sub-section (4).

(6) After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions contained in section 29A or section 31, as the case may be.

Notwithstanding anything contained in this section, the Commission may accept appropriate modifications offered by the parties to the combination or suo motu propose modifications, as the case may be, before forming a prima facie opinion under sub-section (1).

ACTS TAKING PLACE OUTSIDE INDIA BUT HAVING AN EFFECT ON COMPETITION IN INDIA

Question : 43 (Dec 2020) & (June 2019)

Describe the jurisdiction of Competition Commission of India to inquire and pass orders in respect of acts and agreement taking place outside India which are likely to have an appreciable adverse effect on competition in relevant market in India.

(3 marks)

Answer :

The Competition Commission of India has the power to inquire and pass orders in respect of acts and agreements taking place outside India which are likely to have appreciable adverse effect on competition in relevant market in India.

Section 32 of the Competition Act, 2002 deals with acts taking place outside India but having an effect on competition in India. Section 32 of the Competition Act, 2002 extends the jurisdiction of Competition Commission of India to inquire and pass orders in accordance with the provisions of the Act into an agreement or dominant position or combination, which is likely to have, an appreciable adverse effect on competition in relevant market in India, notwithstanding that:

- a) an agreement referred to in section 3 has been entered into outside India; or
- b) any party to such agreement is outside India; or
- c) any enterprise abusing the dominant position is outside India; or
- d) a combination has taken place outside India; or
- e) any party to combination is outside India; or
- f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire in accordance with the provisions contained in sections 19, 20, 26, 29, 29A and 30 of the Act into such agreement or abuse of dominant position or combination if such

agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India and pass such orders as it may deem fit in accordance with the provisions of this Act.

- The above clearly demonstrates that acts taking place outside India but having an effect on competition in India will be subject to the jurisdiction of Commission.
- The Competition Commission of India will have jurisdiction even if both the parties to an agreement are outside India but only if the agreement, dominant position or combination entered into by them has an appreciable adverse effect on competition in the relevant market of India.

POWER TO ISSUE INTERIM ORDERS

Question : 44 (Dec 2023, Old Syllabus)

Can Competition Commission of India during pendency of inquiry issue interim order? Discuss with relevant case laws.

(3 marks)

Answer :

- Section 33 provides that where during an inquiry, the Commission is satisfied that an act in contravention of section 3(1) or section 4(1) or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.
- In ***Competition Commission of India v. Steel Authority of India*** (Civil Appeal No. 7779 of 2010, judgment dated September 09, 2010), Supreme Court observed that during an inquiry and where the Commission is satisfied that the act is in contravention of the provisions stated in Section 33 of the Act, it may issue an order temporarily restraining the party from carrying on such act, until the conclusion of such inquiry or until further orders without giving notice to such party, where it deems it necessary.
- This power has to be exercised by the Commission sparingly and under compelling and exceptional circumstances. The Commission, while recording a reasoned order inter alia should:
 - (a) record its satisfaction (which has to be of much higher degree than formation of a prima facie view under Section 26(1) of the Act) in clear terms that an act in contravention of the stated provisions has been committed and continues to be committed or is about to be committed;
 - (b) It is necessary to issue order of restraint and

- (c) from the record before the Commission, it is apparent that there is every likelihood of the party to the lis, suffering irreparable and irretrievable damage or there is definite apprehension that it would have adverse effect.

POWER OF COMMISSION TO REGULATE ITS OWN PROCEDURE

Question : 45 (June 2023)

Explain the procedure which is being regulated by the Competition Commission of India under Section 36(2) while trying the suit under the provisions of the Competition Act, 2002.

(5 marks)

Answer :

- According to Section 36 of the Competition Act, 2002, in the discharge of its functions, the Competition Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.
- The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely: -
 - a) summoning and enforcing the attendance of any person and examining him on oath;
 - b) requiring the discovery and production of documents;
 - c) receiving evidence on affidavit;
 - d) issuing commissions for the examination of witnesses or documents;
 - e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, any public record or document or copy of such record or document from any office.

RECTIFICATION OF ORDERS

Question : 46 (June 2023)

Discuss the provisions when the order passed by the Competition Commission of India may be rectified under the Competition Act, 2002.

(3 marks)

Answer :

- Section 38(1) of the Competition Act, 2002 provides that the Competition Commission of India may amend any order passed by it under the provisions of this Act with a view to rectifying any mistake apparent from the record.
- Section 38(2) provides that subject to other provisions of this Act, the Commission may make –
 - (a) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order;
 - (b) an amendment under sub-section (1) of its own motion;
- Explanation. —For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

EXECUTION OF ORDERS OF COMMISSION IMPOSING MONETARY PENALTY

Question : 47 (June 2022)

How can the order of Competition Commission imposing monetary penalty be executed under the Competition Act, 2002? Explain.

(5 marks)

Answer :

1. If a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty in such manner as may be specified by the regulations.
2. In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.
3. Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income-tax Act, 1961 and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income- tax and sums

imposed by way of penalty, fine and interest under the Income-tax Act, 1961 and to the Commission instead of the Assessing Officer.

DUTIES OF DIRECTOR GENERAL

Question : 48 (June 2024, Old Syllabus)

Discuss the duties of the Director General as per the Competition Act, 2002.

(5 marks)

Answer :

Section 41 of the Act empowers the Director General to investigate contraventions. It provides that:

- (1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.
- (2) The Director General shall have all the powers as are conferred upon the Commission under sub-section (2) of section 36.
- (3) Without prejudice to sub-section (2), it shall be the duty of all officers, other employees and agents of a party which are under investigation-
 - a. to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which are in their custody or power to the Director General or any person authorised by it in this behalf; and
 - b. to give all assistance in connection with the investigation to the Director General
- (4) The Director General may require any person other than a party referred to in sub-section (3) to furnish such information or produce such books, papers, other documents or records before it or any person authorised by it in this behalf if furnishing of such information or the production of such books, papers, other documents or records is relevant or necessary for the purposes of its investigation.
- (5) The Director General may keep in his custody any information, books, papers, other documents or records produced under sub-section (3) or sub-section (4) for a period of one hundred and eighty days and thereafter shall return the same to the person by whom or on whose behalf the information, books, papers, other documents or records were produced:

- Provided that the information, books, papers, other documents or records may be called for by the Director General if they are needed again for a further period of one hundred and eighty days by an order in writing:
- Provided further that the certified copies of the information, books, papers, other documents or records, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the information, books, papers, other documents or records are produced at their own cost.

(6) The Director General may examine on oath-

- a. any of the officers and other employees and agents of the party being investigated; and
- b. with the previous approval of the Commission, any other person, in relation to the affairs of the party being investigated and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(7) The examination under sub-section (6) shall be recorded in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against it.

(8) Where in the course of investigation, the Director General has reasonable grounds to believe that information, books, papers, other documents or records of, or relating to, any party or person, may be destroyed, mutilated, altered, falsified or secreted, the Director General may make an application to the Chief Metropolitan Magistrate, Delhi for an order for seizure of such information, books, papers, other documents or records.

(9) The Director General may make requisition of the services of any police officer or any officer of the Central Government to assist him for all or any of the purposes specified in sub-section (10) and it shall be the duty of every such officer to comply with such requisition.

(10) The Chief Metropolitan Magistrate, Delhi may, after considering the application and hearing from the Director General, by order, authorise the Director General-

- a. to enter, with such assistance, as may be required, the place or places where such information, books papers, other documents or records are kept
 - b. to search that place or places in the manner specified in the order, and
 - c. to seize information, books, papers, other documents or records as it considers necessary for the purpose of the investigation
- Provided that certified copies of the seized information, books, papers, other documents or records, as the case may be, may be provided to the party or person from whose place or places such documents have been seized at its cost

(11) The Director General shall keep in his custody such information, books, papers, other documents of records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the party or person from whose custody or power they were seized and inform the Chief Metropolitan Magistrate, of such return

- Provided that the Director General may before returning such information, books, papers, other documents or records take copies of, or extracts thereof or place identification marks on them or any part thereof.

(12) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to search or seizure made under that Code

Explanation -For the purposes of this section,

a) Agent in relation to any person, means any one acting or purporting to act for or on behalf of such person, and includes the bankers, and persons employed as auditors and legal advisors, by such person;

b) Officers in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;

c) any reference to officers and other employees or agents shall be construed as a reference to past as well as present officers and other employees or agents, as the case may be.

PENALTIES

Question : 49 (Dec 2019)

What penalties are prescribed by the Competition Act, 2002 for contravention of orders of the Competition Commission.

(3 marks)

Answer :

- The Competition Act, 2002 prescribes penalties for contravention of orders of the Competition Commission of India.
- According to Section 42 of the Act, the Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.
- If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under sections 6, 27, 28, 31, 32, 33, 42A, 43, 43A, 44 and 45 of the Act, he

shall be liable to a penalty which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

- If any person does not comply with the orders or directions issued, or fails to pay the penalty imposed, he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit.
- It may be noted that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorised by it.

Question : 50 (June 2024, Old Syllabus)

Explain the provisions of Section 42A of the Competition Act, 2002 regarding Compensation in case of Contravention of orders of the Competition Commission of India.

(3 marks)

Answer :

Section 42A provides that without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 6, 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.

Question : 51 (Dec 2024, Old Syllabus)

State the penalty provisions for failure to comply with directions of Competition Commission and Director General under Section 43 of the Competition Act, 2002.

(3 marks)

Answer :

As per Section 43 of the Act, if any person fails to comply, without reasonable cause, with a direction given by—

- a. the Commission under sub-sections (2) and (4) of section 36; or
 - b. the Director General while exercising powers referred to in sub-section (2) of section 41,
- such person shall be liable to a penalty which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.

Question : 52 (June 2021)

Describe the penalties which may be imposed for non-furnishing of information and for making false statement on combination under the Competition Act, 2002.

(5 marks)

Answer :

According to Section 43A if any person or enterprise fails to give notice to the Commission under sub-section (2) or sub-section (4) of section 6 or contravenes sub-section (2A) of section 6 or submit information pursuant to an inquiry under sub-section (1) of section 20, the Commission may impose on such person or enterprise, a penalty which may extend to one per cent., of the total turnover or assets or the value of transaction referred to in clause (d) of section 5, whichever is higher, of such a combination:

It may be noted that in case any person or enterprise has given a notice under sub-section (4) of section 6 and such notice is found to be void ab initio under sub-section (6) of section 6, then a notice under sub-section (2) of section 6 may be given by the acquirer or parties to the combination, as may be applicable, within a period of thirty days of the order of the Commission under sub-section (6) of that section and no action under this section shall be taken by the Commission till the expiry of such period of thirty days.

POWER TO IMPOSE LESSER PENALTY

Question : 53 (June 2024, Old Syllabus)

Discuss the power of the Competition Commission of India to impose lesser penalty under the Competition Act, 2002.

(5 marks)

Answer :

- Section 46(1) provides that the Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, than leviable under this Act or the rules or the regulations made under the Act.
- Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure:
- Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section.
- Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission.

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings, —

(a) not complied with the condition on which the lesser penalty was imposed by the Commission; or

(b) had given false evidence; or

(c) the disclosure made is not vital, and thereupon such producer, seller, distributor, trader or service provider may be tried for the contravention with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

(2) The Commission may allow a producer, seller, distributor, trader or service provider included in the cartel, to withdraw its application for lesser penalty under this section, in such manner and within such time as may be specified by regulations.

(3) The Director General and the Commission shall be entitled to use for the purposes of this Act, any evidence submitted by a producer, seller, distributor, trader or service provider in its application for lesser penalty, except its admission.

(4) Where during the course of the investigation, a producer, seller, distributor, trader or service provider who has disclosed a cartel under sub-section (1), makes a full, true and vital disclosure under sub-section (1) with respect to another cartel in which it is alleged to have violated section 3, which enables the Commission to form a prima facie opinion under sub-section (1) of section 26 that there exists another cartel, then the Commission may impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, in respect of the cartel already being investigated, without prejudice to the producer, seller, distributor, trader or service provider obtaining lesser penalty under sub-section (1) regarding the newly disclosed cartel.

COMPETITION ADVOCACY

Question : 54 (Dec 2019) & (Dec 2023, Old Syllabus)

Explain the term 'Competition Advocacy'. State, whether the Central/State Government may make a reference to the Competition Commission for its opinion on possible effects of such policy on the competition under the Competition Act, 2002?

(5 marks)

Answer :

Section 49 of the Competition Act, 2002 deals with Competition Advocacy. Under Section 49 the Central Government/State Government may seek the opinion of the Competition Commission on the possible effects of the policy on competition or any other matter.

In this context, Section 49 envisages that while formulating a policy on the competition, the Central/State Government may make a reference to the Commission for its opinion on possible effect of such a policy on the competition, or any other matter.

On receipt of such a reference, the Commission shall, give its opinion on it to the Central Government/State Government, within sixty days of making such a reference and the latter may formulate the policy as it deems fit.

The role of the Commission is advisory and the opinion given by the Commission shall not be binding upon the Central Government/State Government in formulating such a policy.

The Commission is also empowered to take suitable measures for the

- (a) promotion of competition advocacy;
- (b) creating awareness about the competition; and
- (c) imparting training about competition issues.

Creating awareness about benefits of competition and imparting training in competition issues is expected to generate conducive environment to promote and foster competition, which is sine-qua non for accelerating economic growth.

APPEAL TO APPELLATE TRIBUNAL

Question : 55 (Dec 2024, Old Syllabus)

Explain the provision of appeal, filed against the order of the Appellate Tribunal, under the Competition Act, 2002.

(3 marks)

Answer :

- Section 53B provides that the Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.
- Every appeal shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed.
- Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.
- Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent. of that amount in the manner as directed by the Appellate Tribunal.
- On receipt of an appeal, the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
- The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
- The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

RIGHT TO LEGAL REPRESENTATION

Question : 56 (Dec 2023, Old Syllabus)

Explain the provisions relating to “Right to legal representation” in context of the Competition Act, 2002.

(3 marks)

Answer :

- According to Section 53-S of the Act, a person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.
- The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.
- The Commission may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

CASE STUDY

Question : 57 (Dec 2024)

Jindal Steel and Power Ltd. (JSPL), furnished information to the Competition Commission of India (CCI), invoking Sec. 19 read with Sec. 26(1) of the Competition Act, 2002 and alleged that Steel Authority of India Ltd. (SAIL), the respondent, had entered into an exclusive supply agreement with the Indian Railways for supply of rails. According to Sec. 3(4) of the Competition Act 2000, an exclusive supply agreement would be considered to be anti-competitive if it causes an appreciable adverse effect on competition in India. In this case, the other rail suppliers in the industry did not have an opportunity to place their bids because no tender floated by the Respondent. This resulted in filing a complaint before the Competition Commission of India (CCI) for the abuse of dominant position by SAIL. CCI registered the information provided by JSPL and directed SAIL to submit its comments within two weeks with respect to the information provided to CCI. SAIL made a prayer for an extension of six weeks for filing comments, which CCI rejected. CCI found a prima facie case against the respondents. It directed the Director General (DG) to investigate, granting liberty to the respondent to file its views and comments before the DG during the investigation. SAIL challenged the correctness of this order before Appellate Tribunal on the ground of not being heard and hence a violation of natural justice.

Commission made an application before Appellate Tribunal to implead it (SAIL) as a party to appeal. The investigation by DG was stayed by the Appellate Tribunal, it rejected CCI's plea for impleadment on the reasoning that it was neither a necessary party nor a proper party and observed that reasoning must be given for any order, direction, or decision taken. Commission went in appeal to the Supreme Court against this order of the Appellate Tribunal.

From the above Case Study, answer the following questions as per provisions of the Competition Act, 2002:

(a) What is the meaning of Exclusive Supply/Distribution Agreement?

(2 marks)

(b) What is an Anti-Competitive Agreement?

(2 marks)

(c) What is the purpose of appointing Director General under Section 16(1) of the Competition Act, 2002?

(2 marks)

(d) Whether the parties, including informant (JSPL) or the affected party (SAIL), are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case?

(3 marks)

(e) Explain the provisions of 'Inquiry into certain Agreements and Dominant Position of Enterprise' under Section 19(1) of the Competition Act, 2002.

(3 marks)

(f) Explain the provisions of "Procedure for inquiry into certain Agreements and Dominant Position of Enterprise" under Section 26 of the Competition Act, 2002.

(3 marks)

Answer(a)

Explanation to Section 3 of the Competition Act, 2002 defines the term "Exclusive Dealing Agreement"/ "Exclusive Distribution Agreement".

Exclusive Dealing Agreement

"Exclusive Dealing Agreement" includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;

Exclusive Distribution Agreement

"Exclusive Distribution Agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or services or allocate any area or market for the disposal or sale of the goods or services;

Answer(b)

An anti-competitive agreement under the Competition Act, 2002 is an agreement having appreciable adverse effect on competition. Anti-competitive agreements include, but are not limited to:

- agreement to limit production and/or supply;
- agreement to allocate markets;
- agreement to fix price;
- bid rigging or collusive bidding;
- conditional purchase/ sale (tie-in arrangement);
- exclusive supply / distribution arrangement; resale price maintenance; and
- refusal to deal.

Answer(c)

Hon'ble Supreme Court in the case of **CCI v. SAIL** (2010) 10 SCC 744 observed that the Director General (DG) appointed under Section 16(1) of the Act is a specialized investigating wing of the Commission. DG being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself to whom the investigation is directed with dual purpose;

1. to collect material and verify the information, as may be, directed by the Commission,
2. to enable the Commission to examine the report upon its submission by the DG and to pass appropriate orders after hearing the parties concerned.

Further, Section 16(1) of the Competition Act, 2002 as amended in 2023 provides that Commission may with the prior approval of the Central Government appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

Answer(d)

In the case of Competition Commission of India v. Steel Authority of India (Civil Appeal No. 7779 of 2010, judgment dated September 09, 2010), looked into the ambit and scope of power vested with the Commission under Section 26(1) of the Competition Act and whether the parties, including the informant or the affected party, are entitled to notice or hearing, as a matter of right, at the preliminary stage of formulating an opinion as to the existence of the prima facie case.

With regard to notice and/or hearing at the stage of forming prima facie decision by the Commission under Section 26(1) of the Act, Supreme Court of India held that neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor any party can claim, as a matter of right,

notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a prima facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter.

Hence informant (JSWL) and / or the affected party (SAIL) are not entitled to receive notice or hearing as a matter of right at the preliminary stage of the prima facie case.

Answer (e)

Section 19(1) of the Competition Act, 2002 provides that the Commission may inquire into any alleged contravention of the provisions contained in section 3(1) or section 4(1) either on its own motion or on—

(a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

(b) a reference made to it by the Central Government or a State Government or a statutory authority.

It may be noted that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen. Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.

Answer(f)

Section 26 of the Competition Act deals with procedure for Inquiry into Certain Agreements and Dominant Position of Enterprise. It states that:

(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter: It may be noted that if the subject matter

of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

(3A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.

(3B) The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.

CHAPTER : 12 LAW RELATING TO CONSUMER PROTECTION

IMPORTANT DEFINITIONS

Question : 1 (Dec 2024, Old Syllabus)

Anurag purchased a bottling machine and appointed Anuj exclusively to operate the machine. Explain, whether Anurag is a consumer under Consumer Protection Act, 2019. If he purchases and operates the machine by himself, will he be considered as consumer.

(4 marks)

Answer :

Provision of Law:

- A purchase of goods can be said to be for a 'commercial purpose only if the goods have been purchased for being used in some profit-making activity on a large-scale, and there is close and direct nexus between the purchase of goods and the profit-making activity.
- In case of ***Laxmi Engineering Works vs. P.S.G. Industrial Institute***, Supreme Court held that the explanation to Section 2(1)(d) is clarificatory in nature.
- It observed that whether the purpose for which a person has bought goods is a 'commercial purpose' is always a question of facts and to be decided in the facts and circumstances of each case.
- If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment such purchaser of goods would yet be a consumer.
- The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer.
- But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

Conclusion/Analysis:

As per the provisions stated above, Anurag is not consumer in first case and in second he is consumer.

Question : 2 (June 2022)

Ramu purchased a tractor from Mahendra Ltd. for tilling the land but he used it in idle time for transportation of agricultural produce on hire. Some defects were developed in the engine of the tractor. He complained to Mahendra Ltd., but all in vain. Then he filed a suit in Consumer Disputes Redressal Forum for damages caused by the defects. Mahendra Ltd. pleaded that Ramu is not a 'consumer' within the definition of section 2(7) of the Consumer Protection Act, 2019, as he is using the tractor for commercial purposes. Whether Ramu will succeed in his case? Refer to relevant provisions of law in support of your answer with reference to case law, if any.

(3 marks)

Answer :

Provision of Law:

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

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

For the purposes of this clause, -

- a. the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- b. the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

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

Conclusion/Analysis:

In view of the provisions of Consumer Protection Act and decided case law stated above, Ramu is a consumer under the Consumer Protection Act, 1986 and he can file the claim if there is any defect in the tractor.

Question : 3 (Dec 2023)

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

(5 marks)

Answer :

Provision of Law:

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

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

For the purposes of this clause, -

- a. the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- b. the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

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

Conclusion/Analysis:

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

Question : 4 (Dec 2022)

Ramesh purchased a tractor from Mahi Limited for tilling the land but he used it during idle time for transportation of agricultural produce on hire. Some defects were developed in the engine of the tractor. He complained to Mahi Limited, but all in vain. Then he filed a suit in Consumer Dispute Redressal Forum for damages caused by the defects. Mahi Limited pleaded that Ramesh is not a 'consumer' within the definition of section 2(1) (d) of the Consumer Protection Act, 1986, as he is using the tractor for commercial purposes. Whether Ramesh will succeed in his case? Refer to relevant provisions of Law in support of your answer with reference to case laws, if any?

(4 marks)

Answer :

Provision of Law:

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

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

For the purposes of this clause, –

- a. the expression “commercial purpose” does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- b. the expressions “buys any goods” and “hires or avails any services” includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

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

Conclusion/Analysis:

Yes, In the light of the above facts and circumstances, Ramesh, will succeed in his own case. He is still a Consumer within the definition of the Consumer Protection Act.

Question : 5 (Dec 2021)

A is the tenant of B. A asks B to clean, repair and maintain the building. B refuses. There is no provision in the lease agreement in respect of cleaning, repairing and maintaining the building. However ‘A’ files a claim against ‘B’ under Consumer Protection Act, 2019. Decide referring the relevant provisions of law.

(4 marks)

Answer :

Provision of Law:

- The present problem relates to Consumer Protection Act, 2019. Issue involved in the question is whether A is the consumer or not.
- A files for relief under the Consumer Protection Act, 2019 in view of the definition of “Consumer” given in the Act.
- As per Section 2(7) of the Consumer Protection Act, Consumer means any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

- Further, in case of **Laxmiben Laxmichand Shah v. Sakerben Kanji Chandan and others** 2001 CTJ 401 (Supreme Court) (CP), the Supreme Court held that the tenant entering into lease agreement with the landlord cannot be considered as consumer under Section 2(1)(d) of the Act. Where there was no provision in the lease agreement in respect of cleaning, repairing and maintaining the building, the rent paid by tenant is not the consideration for availing these services and therefore, no question of deficiency in service.

Conclusion/Analysis:

Therefore, going by the above judgement and definition of consumer in the Consumer Protection Act, 2019, A cannot be a consumer for services of cleaning, repairing and maintaining the building which is not part of lease agreement and for which rent he is paying cannot be considered to be consideration. If he is not consumer, there is no question of deficiency of service under the Consumer Protection Act, 2019.

Question : 6 (June 2021)

Ms. Rubina was operated in General Hospital Nagpur, which was under control of the Government of Maharashtra, free of charge for family planning i.e. tubectomy. Subsequently, she gave birth to a female child. She filed a complaint against the State of Maharashtra and the doctor, who performed the operation, claiming ` 2 lakh for negligence in performing the operation. Rubina sought the relief of ` 2 lakh under the Consumer Protection Act, 1986, stating that the negligence of the doctor and the State of Maharashtra, being the controller of the hospital may be treated as deficiency in the service. Decide, whether Rubina will succeed?

(3 marks)

Answer :

Provision of Law:

- As per Section 2(7) of the Consumer Protection Act, Consumer means any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.
- The term 'service' is defined under Section 2(42) of the Act as to mean Service means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing,

supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

Conclusion/Analysis:

- But in the instant case, the tubectomy is rendered free of charge which will not fall within the ambit of the definition of “service” under the Consumer Protection Act, 1986.
- For the same reason, Rubina is not a consumer as per the provisions of the Act.
- Therefore, Rubina will not succeed under the Consumer Protection Act, 1986.

Question : 7 (June 2023)

Ranu, hired a taxi car from his residence to airport as he and his family were going from Mumbai to Bengaluru. The taxi was in a poor condition and the driver had not adequate rest and drove rashly. Eventually, it went burst in the middle due to which Ranu and his family could not reach the airport in time to catch their flight. Decide whether Ranu may be treated as a ‘consumer’ under the Consumer Protection Act, 2019?

(4 marks)

Answer :

Provision of Law:

- As per Section 2(7) of the Consumer Protection Act, Consumer means any person who hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.
- Further, as per Section 2(11) of the Consumer Protection Act, 2019, Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes –
 - (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
 - (ii) deliberate withholding of relevant information by such person to the consumer.

Conclusion/Analysis:

- As per the provisions stated above, Ranu who hired the taxi service for his travel along with his family could not reach well in time at the airport to catch the flight. There was also deficiency in performance of service rendered by taxi driver, which caused loss to Ranu.
- Therefore, Ranu is a consumer as per the above stated provisions of Consumer Protection Act, 2019.

Question : 8 (Dec 2024)

Lokesh was suffering from a serious ailment. He was admitted to a Well-Known private hospital in Gurugram. He was subjected to various tests. Even after diagnosis and subsequent treatment, his condition deteriorated. The doctor advised surgery during which Lokesh collapsed and died. Sushma his wife, preferred a claim for compensation of ` 50 lakhs under the Consumer Protection Act for deficiency in services. The hospital authority contented that medical profession was being unnecessarily hounded. Is the contention tenable? Refer the relevant case law as per the provisions of Consumer Protection Act, 2019.

(5 marks)

Answer :

Provision of Law:

- The Hon'ble Supreme Court. **Dr. Harish Kumar Khurana vs. Joginder Singh** (CA 7380 of 2009) judgement dated September 8, 2021 held that medical professionals cannot be held negligent merely because the treatment is not successful or patient dies during surgery.
- Every death of a patient cannot on the face of it be considered as death due to medical negligence unless there is material on record to suggest to that effect.
- It is necessary that the hospital and the doctors are required to exercise sufficient care in treating the patient in all circumstance.
- However, in unfortunate cases though death may occur and if it is alleged to be due to medical negligence and a claim in that regard is made, it is necessary that sufficient material or medical evidence should be available before the adjudicating authority to arrive at a conclusion.
- The accident during the course of medical or surgical treatment has a wider meaning. Ordinarily an accident means an unintended and unforeseen injurious occurrence, something that does not occur in the usual course of events or that could not be reasonably anticipated.

Conclusion/Analysis:

In the light of above case, contention of Sushma is not tenable.

Question : 9 (June 2023)

Distinguish Between: 'Contract of service' and 'Contract for service' under Consumer Protection Act, 2019.

(3 marks)

Answer :

- The Supreme Court in the case of **Indian Merchants Association vs. V P Shantha**, (CA No. 688 of 1993 decided on 13th November 1995) observed that a contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion.
- A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance.
- The Parliamentary draftsman was well aware of this well-accepted distinction between 'contract of service' and 'contract for services' and had deliberately chosen the expression 'contract of service' instead of the expression 'contract for service' in the exclusionary part of the definition of 'service', this being the reason being that an employer could not be regarded as a consumer in respect of the services rendered by his employee in pursuance of contract of employment.

Question : 10

MNO Ltd. sells a washing machine without issuing a proper bill. Later, the machine malfunctions. Can the consumer claim relief under the Act? Discuss with reference to "Unfair Trade Practice" Consumer Protection Act, 2019.

(3 marks)

Answer :

As per the Section 2(47) of the Consumer Protection Act, Unfair Trade Practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely: -

- manufacturing of spurious goods or offering such goods for sale or adopting deceptive practices in the provision of services;

- not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;
- refusing, after selling goods or rendering services, to take back or withdraw defective goods or to withdraw or discontinue deficient services and to refund the consideration thereof, if paid, within the period stipulated in the bill or cash memo or receipt or in the absence of such stipulation, within a period of thirty days;
- disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of any law for the time being in force.

Conclusion/Analysis:

As per the provisions stated above, yes the consumer can claim relief under the Act as proper bill was not issued by MNO Ltd.

RIGHTS OF CONSUMERS

Question : 11

State any four rights of consumers under Consumer Protection Act, 2019

(3 marks)

Answer :

Consumer Rights include -

- the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;
- the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate fora;
- the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- the right to consumer awareness.

CONSUMER PROTECTION COUNCIL

Question : 12

What are the functions of the Central Consumer Protection Authority (CCPA)?

(3 marks)

Answer :

According to section 18(1), the Central Authority empowers to:

- (a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers rights under this Act;
- (b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;
- (c) ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act or the rules or regulations made thereunder;
- (d) ensure that no person takes part in the publication of any advertisement which is false or misleading.

CONSUMER PROTECTION COUNCIL

Question : 13

A famous actor endorses a skincare product which turns out to be harmful and misleading. Analyze the liability of the celebrity under Consumer Protection Act, 2019.

(5 marks)

Answer :

- Section 21 provides that where the Central Authority is satisfied after investigation that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may, by order, issue directions to the concerned trader or manufacturer or endorser or advertiser or publisher, as the case may be, to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in that order.
- The Central Authority may, for every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.

- Where the Central Authority deems it necessary, it may, by order, prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year.
- Central Authority may, for every subsequent contravention, prohibit such endorser from making endorsement in respect of any product or service for a period which may extend to three years.
- Where the Central Authority is satisfied after investigation that any person is found to publish, or is a party to the publication of, a misleading advertisement, it may impose on such person a penalty which may extend to ten lakh rupees.
- No endorser shall be liable to a penalty, if he has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed by him.
- No person shall be liable to such penalty if he proves that he had published or arranged for the publication of such advertisement in the ordinary course of his business:
- Provided that no such defence shall be available to such person if he had previous knowledge of the order passed by the Central Authority for withdrawal or modification of such advertisement.

DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION

Question : 14 (June 2024)

“Shardha Heights,” a duly registered welfare society, took the proactive step of filing an application with the District Consumer Disputes Redressal Commission. The application was on behalf of 12 allottees who had encountered significant issues with Shobha Ltd. a real estate developer. These allottees alleged that despite booking units with Shobha Ltd. on various dates and making substantial payments towards the purchase, they had yet to receive possession of their properties. However, the District Commission took a decisive stance, rejecting the complaint lodged by Shardha Heights. Their decision rested on the assertion that Shardha Heights lacked the necessary legal standing, or locus standi, to file such a complaint. ‘The Commission reasoned that Shardha Heights did not qualify as either a ‘Consumer’ or a ‘Recognised’ consumer association’ under the applicable regulations. In light of this setback, Shardha Heights is now seeking to appeal against the District Commission’s ruling.

Considering the above statements, answer the following questions:

- Define Recognised Consumer Association as per Consumer Protection Act, 2019 ?
- Whether Shardha Heights is a ‘Recognised Consumer Association’ as per Consumer Protection Act, 2019? Explain.
- What is the Manner of filing Complaint to District Consumer Disputes Redressal Commission under Section 35 of the Consumer Protection Act, 2019?
- Can complaint be filed before Consumer Commission online? Explain.
- To whom an Appeal can be filed by Shardha Heights against the order of District Consumer Disputes Redressal Commission and what is limitation period for doing so?

(vi) What are the restrictions on filing an appeal against the order of District Consumer Disputes Redressal Commission?

(vii) State the constitution of the District Consumer Disputes Redressal Commission.

(2 marks each)

Answer :

Answer (i)

As per the section 35(1) of the Consumer Protection Act, 2019, "Recognised Consumer Association" means any voluntary consumer association registered under any law for the time being in force.

Answer (ii)

- "Recognised Consumer Association" means any voluntary consumer association registered under any law for the time being in force.
- In the case of ***Sobha Hibiscus Condominium vs. MW Soshia Developer's Ltd.***, judgement dated February 2020, Hon'ble Supreme Court observed that in essence voluntary consumer association will be a body formed by group of person's coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law
 - Yes, Shardha Heights, being a duly registered welfare society, is a "Recognised Consumer Association as per Consumer Protection Act, 2019.

Answer(iii)

Section 35 Consumer Protection Act 2019 provides that a complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Commission by –

(a) the consumer, –

- i. to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or
- ii. who alleges unfair trade practice in respect of such goods or service.

(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or

who alleges unfair trade practice in respect of such goods or service, is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of, or for the benefit of, all consumers so interested; or

(d) The Central Government, the Central Authority or the State Government, as the case may be.

- It may be noted that the complaint may be filed electronically in the prescribed manner.
- Every complaint filed shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

Answer (iv)

- Yes, the complaint be filed before Consumer Commission online in the prescribed manner at <http://edaakhil.nic.in/>

A complaint:

- Should be in writing
- Can be filed in a regular way (offline)
- Can be filed online – <http://edaakhil.nic.in/>

A complaint can be presented by the complainant in person or by his agent. It can even be sent by registered post along with the court fee.

Answer (v)

- According to Section 41 of the Consumer Protection Act, 2019 any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed.
 - It may be noted that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period.
- Shradha Heights may appeal to the State Commission.

Answer (vi)

There are certain restriction on appeal, unless the person fulfil the following conditions namely

- No appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.
- No appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

Answer (vii)

Section 28 of the Consumer Protection Act, 2019 empowers the State Government to establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State. State Government may also, if it deems fit, establish more than one District Commission in a district. Each District Commission shall consist of –

(a) a President; and

(b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

Question : 15 (June 2024, Old Syllabus)

Anya bought goods worth ` 5 lakh to be installed in her house in Delhi. There is a defect in the goods and she intends to make the complaint in the consumer forum. State the forum where she can make the complaint and discuss its jurisdiction as per the Consumer Protection Act, 2019.

(4 marks)

Answer :

Provision of Law:

According to Section 34 of the Consumer Protection Act, 2019 read with Consumer Protection (Jurisdiction of the District Commission, the State Commission and the National Commission) Rules, 2021, the District Commission shall have jurisdiction to entertain complaints where the value of the goods or services paid as consideration does not exceed one crore rupees.

A complaint shall be instituted in a District Commission within the local limits of whose jurisdiction, –

- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office,

- or personally works for gain, provided that in such case the permission of the District Commission is given; or
- (c) the cause of action, wholly or in part, arises; or
 - (d) the complainant resides or personally works for gain.

The District Commission shall ordinarily function in the district headquarters and may perform its functions at such other place in the district, as the State Government may, in consultation with the State Commission, notify in the Official Gazette from time to time.

Conclusion/Analysis:

So, Anya can approach the District Commission who can entertain complaints as the value of the goods or services paid as consideration is only Rs. 5 lacs.

APPEAL TO NATIONAL COMMISSION

Question : 16 (Dec 2023, Old Syllabus)

Raichand & Sons supplied deficient pipes and fitting materials to Rakesh & Sons. Rakesh & Sons preferred an application before the State Commission, for which State Commission had awarded Rs. 1.5 Crore as compensation to be paid by Raichand & Sons to Rakesh & Sons. When the opposite party Raichand & Sons preferred an appeal to the National Commission, they were asked to pay 50 percent of the award money. Examine the validity of requirement of deposit for making appeal to National Consumer Dispute Redressal Commission under the Consumer Protection Act, 2019.

(4 marks)

Answer :

- The Hon'ble Supreme Court in the case of ***Manohar Infrastructure and Constructions Private Limited vs. Sanjeev Kumar Sharma & Ors.*** dated December 07, 2021 held that the condition of pre-deposit for entertaining appeal under Section 51 of the Consumer Protection Act, 2019 is mandatory.
- Section 51 of the Consumer Protection Act, 2019 provides that no appeal by a person, who is required to pay any amount in terms of order of the State Commission shall be entertained by the NCDRC unless the appellant has deposited 50 percent of that amount.
- The Court in answering the question laid down the following:
 1. Pre-deposit of 50 per cent of amount as ordered by the State Commission under second proviso to Section 51 of the Consumer Protection Act, 2019 is mandatory for entertainment of an appeal by the National Commission;
 2. The object of the said pre-deposit condition is to avoid frivolous appeals;

3. The said pre-deposit condition has no nexus with the grant of stay by the NCDRC.

Conclusion/Analysis:

Therefore, it is mandatory for Raichand & Sons to deposit the money before preferring an appeal to National Consumer Dispute Redressal Commission (NCDRC) under the Consumer Protection Act, 2019.

LIABILITY OF MANUFACTURER & PRODUCT SERVICE PROVIDER

Question : 17 (Dec 2023, Old Syllabus)

In the light of Consumer Protection Act, 2019, highlight the concept of Product Liability Action and discuss the liability of the Product Manufacturer.

(3 marks)

Answer :

According to Section 83 of the Consumer Protection Act, 2019, a product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.

Section 84 of the Consumer Protection Act, 2019 states that a product manufacturer shall be liable in a product liability action, if –

- (a) the product contains a manufacturing defect; or
- (b) the product is defective in design; or
- (c) there is a deviation from manufacturing specifications; or
- (d) the product does not conform to the express warranty; or
- (e) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage.

A product manufacturer shall be liable in a product liability action even if he proves that he was not negligent or fraudulent in making the express warranty of a product.

Question : 18 (Dec 2024, Old Syllabus)

Explain the liability of Product Service Provider under Section 85 of the Consumer Protection Act, 2019.

(3 marks)

Answer :

Section 85 of the Consumer Protection Act, 2019 provides that a product service provider shall be liable in a product liability action, if –

- (a) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or
- (b) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or
- (c) the service provider did not issue adequate instructions or warnings to prevent any harm; or
- (d) the service did not conform to express warranty or the terms and conditions of the contract.

CASE STUDIES

Question : 19 (June 2025)

Swastik Ayurved Pharma Limited is one of the largest producers of Herbal and Ayurvedic products in India. To expand its market share, Swastik regularly advertised the claimed benefits of its products. These advertisements promoted the products as having medicinal properties and the ability to cure ailments without side effects. However, the advertisements lacked any scientific evidence to support such claims. Relying upon these advertisements, Rajeev, a consumer, purchased the products. The products, however, turned out to be ineffective and did not match the claims made in the advertisements.

Rajeev, the complainant, lodged a complaint with the Secretary, Ministry of Health, Government of India, alleging that the advertisements released by the company were misleading, false, and deceptive, intended to misguide the general public, and in violation of the Consumer Protection Act, 2019, which mandates that advertisements must be truthful and not misleading.

Further, the Advertising Standards Council of India (ASCI) also found the advertisements to be misleading and in violation of its regulations. It was contended that the company and its directors should be held liable for such misleading and deceptive advertisements. The case was ultimately referred to the Supreme Court under Article 136 of the Constitution of India by way of a special leave to appeal.

From the above case study, answer the following questions as per the provisions of the Consumer Protection Act, 2019:

(i) Who is a “consumer” under the Consumer Protection Act, 2019? Can Rajeev be considered a consumer in this case?

(4 marks)

(ii) Whether the false, misleading and deceptive advertisement may be treated as unfair trade practice? Explain in detail.

(4 marks)

(iii) Can the producer and its directors be penalized for issuing false or misleading advertisements under the Consumer Protection Act, 2019?

(3 marks)

(iv) When and to whom a case may be lodged against and be appealed against such order?

(2 marks)

(v) Distinguish between defect and deficiency under the Consumer Protection Act, 2019?

(2 marks)

Answer (i)

Provision of Law:

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

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

For the purposes of this clause, -

- a. the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;
- b. the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing.

Conclusion/Analysis:

Looking to the provision of Section 2(7) of the Consumer Protection Act, 2019, Mr. Rajeev who purchased the advertised products relying upon the advertisements of Swastik Ayurved Pharma Ltd. is a consumer.

Answer (ii)

According to Section 2(47) of the Consumer Protection Act, 2019, Unfair Trade Practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provisions of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, which are related to the false, misleading and deceptive advertisements under the Consumer Protection Act, 2019:

Making any statement, whether orally or in writing or by visible representation including by means of electronic record, which

- (a) Falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (b) Falsely represents that the services are of a particular standard, quality or grade;
- (c) Represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- (d) Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (e) Permitting the publication of any advertisement whether in any newspaper or otherwise, including by way of electronic record, for the sale or supply at a bargain price of goods or services etc.

Accordingly, if any advertisement which attracts the consumer, will be deemed misleading and violative of the Consumer Protection Act, 2019, which mandates that all advertisements must be truthful and not misleading or deceptive to the public. Further, such false, misleading and deceptive advertisements also violates the advertising standard Council of India regulations.

Answer (iii)

Section 89 of the Consumer Protection Act, 2019 states that any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

- Hence the company and its corporate heads are liable accordingly.

Answer (iv)

Any consumer who is aggrieved by the order of a commission can prefer an appeal in the higher commission within prescribed period from the date of the order.

The appeal can be preferred

- Against order of the District Commission before the State Commission within 45 days
- Against order of the State Commission before the National Commission within 30 days
- Against order of the National Commission before the Supreme Court within 30 days.

Answer (v)

Defect

As per the, Section 2(10) of the Consumer Protection Act, 2019 defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product and the expression “defective” shall be construed accordingly.

Deficiency

As per the Section 2(11) of the Consumer Protection Act, 2019 deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes —

- (i) any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- (ii) deliberate withholding of relevant information by such person to the consumer.

Question : 20 (Dec 2023)

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

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

(5 marks each)

Answer :

Answer (i)

Provision of Law:

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

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

Conclusion/Analysis:

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

Answer (ii)

- According to the Consumer Protection (E-commerce) Rules 2020, every ecommerce entity shall establish an adequate grievance redressal mechanism having regard to the number of grievances ordinarily received by such entity from India, and shall appoint a grievance officer for consumer grievance redressal and shall display the name, contact details, designation of such officer.
- Further, every e-commerce entity shall ensure that the grievance officer acknowledge the receipt of any consumer complaint within forty-eight hours and redresses the complaint within one month from the date of receipt of the complaint.

Answer (iii)

- Section 79 of Consumer Protection Act, 2019 states that the mediation shall be held in the consumer mediation cell attached to the District Commission, the State Commission or the National Commission, as the case may be.
- Where a consumer dispute is referred for mediation by the District Commission or the State Commission or the National Commission, as the case may be, the mediator nominated by such Commission shall have regard to the rights and obligations of the parties, the usages of trade, if any, the circumstances giving rise to the consumer dispute and such other relevant factors, as he may deem necessary and shall be guided by the principles of natural justice while carrying out mediation.
- The mediator so nominated shall conduct mediation within such time and in such manner as may be specified by regulations.

UNIQUE ACADEMY FOR COMMERCE

CHAPTER : 13 LEGAL METROLOGY

INTERNATIONAL ORGANIZATION OF LEGAL METROLOGY (OIML)

Question : 1 (June 2022)

What do you mean by the International Organization of Legal Metrology (OIML) Certification System?

(3 marks)

Answer :

- The OIML Certificate System for Measuring Instruments was introduced in 1991 to facilitate administrative procedures and lower the costs associated with the international trade of measuring instruments subject to legal requirements.
- The System provides the possibility for a manufacturer to obtain an OIML Certificate and a Test Report indicating that a given instrument type (pattern) complies with the requirements of the relevant OIML International Recommendations.
- Certificates are delivered by OIML Member States that have established one or several Issuing Authorities responsible for processing applications by manufacturers wishing to have their instrument types (patterns) certified.
- Certificates issued by OIML are accepted by national metrology services on a voluntary basis, and as the climate for mutual confidence and recognition of test results develops between OIML Members, the System serves to simplify the type (pattern) approval process for manufacturers and metrology authorities by eliminating costly duplication of application and test procedures.

Question : 2 (June 2025)

What are the objectives of the OIML Certification System under the Legal Metrology Act, 2009?

(5 marks)

Answer :

The objectives of the OIML Certification System are:

- (a) to promote the global harmonization, uniform interpretation and implementation of legal metrological requirements for measuring instruments and/or modules;
- (b) to avoid unnecessary re-testing when obtaining national type evaluations and approvals, and to support the recognition of measuring instruments and/or modules under legal metrological control, while achieving and maintaining confidence in the results in support of facilitating the global trade of individual instruments; and
- (c) to establish rules and procedures for fostering mutual confidence among participating OIML Member States and Corresponding Members in the results of type evaluations that indicate conformity of measuring instruments and/or modules, under legal metrological control, to the metrological and technical requirements established in the applicable OIML Recommendation(s).

POWER OF DIRECTOR, CONTROLLER AND LEGAL METROLOGY OFFICERS

Question : 3

Enumerate the powers and functions of Controller and Legal Metrology Officer?

(5 marks)

Answer :

- Section 13 of the Act empowers the Central Government to appoint (by Notification) a Director of legal metrology, Additional Director, Joint Director, Deputy Director, Assistant Director and other employees for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to inter-State trade and commerce.
- The Director and every legal metrology officer, appointed, shall exercise such powers and discharge such functions in respect of such local limits as the Central Government may, by notification, specify.
- Every legal metrology officer shall exercise powers and discharge duties under the general superintendence, direction and control of the Director.
- The Director, the Controller and every legal metrology officer authorised to perform any duty by or under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.
- No suit, prosecution or other legal proceeding shall lie against the Director, the Controller and legal metrology officer authorised to perform any duty by or under this Act in respect of anything which is in good faith done or intended to be done under this Act or any rule or order made there under.
- The Central Government may, with the consent of the State Government and subject to such conditions, limitations and restrictions as it may specify in this behalf, delegate such of the powers of the Director under this Act as it may think fit to the Controller of legal metrology in the State, and such Controller may, if he is of opinion that it is necessary or expedient in the

public interest so to do, delegate such of the powers delegated to him as he may think fit to any legal metrology officer and where any such delegation of powers is made by such Controller, the person to whom such powers are delegated shall exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by way of delegation.

- Section 14 of the Act, provides that the State Government may, by notification, appoint a Controller of legal metrology, Additional Controller, Joint Controller, Deputy Controller, Assistant Controller, Inspector and other employees for the State for exercising the powers and discharging the duties conferred or imposed on them by or under this Act in relation to intra State trade and commerce.
- The Controller and every legal metrology officer so appointed shall exercise such powers and discharge such functions in respect of such local limits as the State Government may, by notification, specify. Every legal metrology officer shall exercise and discharge the duties under the general superintendence, direction and control of the Controller.
- Section 15 of the Act confer powers of inspection on the Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation.

FORFEITURE

Question : 4 (Dec 2022)

“Every non-standard weights and measures used in the course of trade is liable to be forfeited”.
Examine.

(3 marks)

Answer :

- Every non-standard or unverified weight or measure and every package used in the course of, or in relation to, any trade and commerce and seized under section 15, shall be liable to be forfeited, to the State Government.
- However, such unverified weight or measure shall not be forfeited to the State Government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed.
- Every weight, measure or other goods seized under section 15 but not forfeited shall be disposed of by such authority and in such manner as may be prescribed.

DECLARATIONS ON PRE-PACKAGED COMMODITIES

Question : 5 (Dec 2021)

What is the law relating to declarations on prepacked commodity under legal Metrology Act, 2009? Explain.

(3 marks)

Answer :

- Section 18(1) of the Legal Metrology Act, 2009 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.
- Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

Question : 6 (Dec 2020)

A shopkeeper sold a packet of pre-packed chillies which does not bear the declarations required to be made by the manufacturers on pre-packaged commodities. Whether the shopkeeper has committed any act punishable under the Legal Metrology Act, 2009? Discuss. (4 marks)

Answer :

Provision of Law:

- Section 18(1) of the Legal Metrology Act, 2009 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.
- Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.
- Under Section 36 of the Legal Metrology Act, 2009, whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged

commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

- Whoever manufactures or packs or imports or causes to be manufactured or packed or imported, any pre-packaged commodity, with error in net quantity as may be prescribed shall be punished with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees and for the second and subsequent offence, with fine which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

Conclusion/Analysis:

As per the provisions stated above, the shopkeeper has sold pre packed chillies which do not bear the declarations required to be made on pre-packaged commodities, the said shopkeeper has committed an act punishable under Section 36 read with Section 18 of the Legal Metrology Act, 2009.

Question : 7 (June 2024)

Mukesh is a manufacturer of 'Jaggry Powder' and brings this product into the market in the pre-packaged form but the Retail price and Quantity has not been mentioned on the Packet. Is it an offence under the Legal Metrology Act, 2009? If yes, what are the penalties for this offence? Will your answer be different if Mukesh mentions the wrong quantity on pre-packaged 'Jaggry Powder'?

(5 marks)

Answer :

Provision of Law:

- Section 18(1) of the Legal Metrology Act, 2009 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.
- Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.
- Under Section 36 of the Legal Metrology Act, 2009, whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second

offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

- Whoever manufactures or packs or imports or causes to be manufactured or packed or imported, any pre-packaged commodity, with error in net quantity as may be prescribed shall be punished with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees and for the second and subsequent offence, with fine which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

Conclusion/Analysis:

As per the provisions stated above, Yes, it is an offence under the Legal Metrology Act, 2009 and No, answer will not be different if Mukesh mentions the wrong quantity on Pre-Packaged 'Jaggry Powder'.

OFFENCES AND PENALTIES

Question : 8 (Dec 2019)

State the penalty provisions for use of non-standard weight and measures under the Legal Metrology Act, 2009.

(3 marks)

Answer :

- Section 25 of the Legal Metrology Act, 2009 provides for penalty for use of non-standard weight or measure.
- The section stipulates that whoever uses or keeps for use any weight or measure or makes use of any denomination otherwise than in accordance with the standards of weight or measure or the standard of denomination, as the case may be, specified by or under this Act, shall be punished with fine which may extend to twenty-five thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.

Question : 9 (June 2024, Old Syllabus)

What is the penalty for use of non-standard weight or measure under Section 25 of the Legal Metrology Act, 2009?

(3 marks)

Answer :

Section 25 of the Legal Metrology Act, 2009 provides for penalty for use of non-standard weight or measure. The section stipulates that whoever uses or keeps for use any weight or measure or makes use of any numeration otherwise than in accordance with the standards of weight or measure or the standard of numeration, as the case may be, specified by or under this Act, shall be punished with fine which may extend to twenty-five thousand rupees and for the second or subsequent offence, with imprisonment for a term which may extend to six months and also with fine.

Question : 10 (Dec 2024, Old Syllabus)

State the penalty provisions for manufacturing or selling weight or measure, which does not conform to standards of weight/measure as specified under Section 27 of the Legal Metrology Act, 2009.

(3 marks)

Answer :

Section 27 of the Legal Metrology Act, 2009 provides that every person who manufactures or causes to be manufactured or sells or offers, exposes or possesses for sale, any weight or measure which does not conform to the standards of weight or measure specified by or under this Act; or which bears thereon any inscription of weight, measure or number which does not conform to the standards of weight, measure or numeration specified by or under this Act, except where he is permitted to do so under this Act, shall be punished with a fine which may extend to twenty thousand rupees and for the second or subsequent offence with imprisonment for a term which may extend to three years or with fine or with both.

Question : 11 (June 2023)

What are the penalty provisions for vexatious search under the Legal Metrology Act, 2009?

(3 marks)

Answer :

Section 42 of the Legal Metrology Act, 2009 provides for vexatious search and empowers the Director, the Controller or any legal metrology officer, exercising powers under this Act or any rule made thereunder, who knows that there are no reasonable grounds for so doing, and yet searches, or causes to be searched, any house, conveyance or place; or searches any person; or seizes any weight; measure or other movable property shall, for every such offence, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees or with both.

Question : 12 (June 2021)

Explain the provisions regarding penalty for counterfeiting of seal specified under the Legal Metrology Act, 2009.

(3 marks)

Answer :

Section 44 of the Legal Metrology Act, 2009 provides that whoever counterfeits any seal specified by or under this Act or the rules made thereunder, or sells or otherwise disposes of any counterfeit seal or possesses any counterfeit seal, or counterfeits or removes or tampers with any stamp, specified by or under this Act or rules made thereunder, or affixes the stamp so removed on, or inserts the same into, any other weight or measure, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to one year and for the second or subsequent offence, with imprisonment for a term which shall not be less than six months but which may extend to five years.

THE ESSENTIAL COMMODITIES ACT, 1955

Question : 13 (Dec 2024)

Examine the rationale of enacting the Essential Commodities Act, 1955.

(5 marks)

Answer :

- i. The Essential Commodities Act, 1955 was enacted to regulate the production, supply and distribution of, and trade and commerce in, certain commodities which are declared as essential commodities and specified in the Schedule to that Act.

- ii. The Essential Commodities Act, 1955 was enacted to ensure easy availability of essential commodities to the consumers and to protect them from exploitation by unscrupulous traders.
- iii. The Act provides for regulation and control of production, distribution and pricing of commodities, which are declared as essential for maintaining or increasing supplies or for securing their equitable distribution and availability at fair prices.
- iv. The Preamble to the Act says that it is an Act to provide in the interest of the general public for the control of the production, supply and distribution of, and trade and commerce in, certain commodities.
- v. The dominant object and intendment of the Act is to secure equitable distribution and availability at fair prices of essential commodities in the interest of the general public.
- vi. The interest of the general public necessarily connotes the interest of the consuming public and not the interest of the dealer.

Question : 14 (June 2021)

Which commodities have been declared as essential commodities under the Essential Commodities Act, 1955?

(4 marks)

Answer :

Section 2A of the Essential Commodities Act, 1955 dealing with Essential commodities declaration, etc. defines the “essential commodity” as to mean a commodity specified in the Schedule.

Schedule to the Act lists out following commodities:

- (1) drugs: The explanation clarifies that for the purposes of this Schedule, “drugs” has the meaning assigned to it in clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940;
- (2) fertilizer, whether inorganic, organic or mixed;
- (3) foodstuffs, including edible oilseeds and oils;
- (4) hank yarn made wholly from cotton;
- (5) petroleum and petroleum products;
- (6) raw jute and jute textiles;
- (7) (i) seeds of food-crops and seeds of fruits and vegetables;
(ii) seeds of cattle fodder; and
(iii) jute seeds.

Question : 15 (June 2023)

Section 2A of the Essential Commodities Act, 1955 lists 'foodstuffs' as an essential commodity in its Schedule. Discuss with the help of decided case whether 'tea' is also a 'foodstuff' in this sense?

(3 marks)

Answer :

- Section 2A of the Essential Commodities Act dealing with Essential commodities declaration, etc. defines the "essential commodity" as to mean a commodity specified in the Schedule. The term commodities include foodstuff.
 - In the case of **S. Samuel, MD. Harrisons Malayava v. Union of India**, AIR 2004 SC 218, Supreme Court held that Tea is not foodstuff.
 - Even in a wider sense, foodstuffs will not include tea as tea either in the form of the leaves or in the form of beverage, does not go into the preparation of food proper to make it more palatable and digestible.
 - Tea leaves are not eaten. Tea is a beverage produced by steeping tea leaves or buds of the tea plants in the boiled water.
 - Such tea is consumed hot or cold for its flavour, taste and its quality as a stimulant. The stimulating effect is caused by the presence of caffeine therein. Tea neither nourishes the body nor sustains nor promotes its growth.
 - It does not have any nutritional value. It does not help formation of enzymes nor does it enable anabolism. Tea or its beverage does not go into the preparation of any foodstuff. In common parlance, anyone who has taken tea would not say that he has taken or eaten food.
- Thus, tea is not a food.

CHAPTER : 14 REAL ESTATE REGULATION AND DEVELOPMENT LAW

OBJECTIVE & ADVANTAGES OF THE ACT

Question : 1 (June 2021)

Explain the objects and reasons for which the Real Estate (Regulation and Development) Act, 2016 has been enacted. (3 marks)

Answer :

The objects and reasons for which Real Estate (Regulation and Development) Act, 2016 has been framed are as under:

- (a) To regulate and promote the real estate sector.
- (b) To ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner.
- (c) To protect the interest of consumers in the real estate sector.

Question : 2 (Dec 2021)

State the objects and reasons for which Real Estate (Regulation and Development) Act, 2016 has been framed.

(3 marks)

Answer :

The objects and reasons for which Real Estate (Regulation and Development) Act, 2016 has been framed are as under:

- (d) To regulate and promote the real estate sector.
- (e) To ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner.
- (f) To protect the interest of consumers in the real estate sector.

Question : 3 (June 2023)

Discuss the aims and advantages for which Real Estate (Regulation and Development) Act, 2016 (RERA) was enacted.

(3 marks)

Answer :

Real Estate (Regulation and Development) Act, 2016 which aims at protecting the rights and interests of consumers and promotion of uniformity and standardization of business practices and transactions in the real estate sector. It attempts to balance the interests of consumers and promoters by imposing certain responsibilities on both. It seeks to establish symmetry of information between the promoter and purchaser, transparency of contractual conditions, set minimum standards of accountability and a fast-track dispute resolution mechanism.

Advantages of the Act are as under:

- Increased FDI
- Customer management
- Timely completion of the project
- Project planning
- Transparency
- Reduction in litigation.

SALIENT FEATURES OF THE ACT

Question : 4 (Dec 2018)

Explain the salient features of the Real Estate (Regulation and Development) Act, 2016.

(3 marks)

Answer :

The Salient Features of the Real Estate (Regulation and Development) Act, 2016 are as under:

- Establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector.
- Ensure sale of plot, apartment of building, as the case may be, or sale of real estate project, in an efficient and transparent manner.

- Ensure protection the interest of consumers in the real estate sector.
- Establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority (RERA).
- Regulates transactions between buyers and promoters of residential real estate projects.
- Establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs).
- Residential real estate projects, with some exceptions, need to be registered with RERAs.
- Promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these projects also need to register with RERAs.
- Registration of the project, the promoter must upload details of the project on the website of the RERA.
- These include the site and layout plan, and schedule for completion of the real estate project.
- Amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project.

IMPORTANT DEFINATIONS

Question : 5 (June 2024, Old Syllabus)

Distinguish between: Apartment and Building under Real Estate (Regulation and Development) Act, 2016

(3 marks)

Answer :

Apartment

According to Section 2(e) of the Real Estate (Regulation and Development) Act, 2016 “Apartment” whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

Building

According to Section 2(j) of the Real Estate (Regulation and Development) Act, 2016 “Building” includes any structure or erection or part of a structure or erection which is intended to be used for

residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes.

Question : 6 (Dec 2022)

Distinguish between: Carpet area and common area.

(3 marks)

Answer :

Carpet area

According to the Section 2(k) Real Estate (Regulation and Development) Act, 2016:

“Carpet area” means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Common areas

According to the Section 2(n) Real Estate (Regulation and Development) Act, 2016:

“Common areas” means

- (i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;
- (ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;
- (iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;
- (iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;
- (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the real estate project;

(viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use.

Question : 7 (Dec 2024, Old Syllabus)

Define 'Internal Development works' and 'External Development works' under the Real Estate (Regulation and Development) Act, 2016.

Answer :

Internal development works

According to the Section 2(zb) Real Estate (Regulation and Development) Act, 2016:

"Internal development works" means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans.

External Development Works

According to the Section 2(w) Real Estate (Regulation and Development) Act, 2016:

"External Development Works" includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws.

Question : 8 (Dec 2022)

Elaborate the concept of 'Appropriate Government' as stated in section 2(g) of the Real Estate (Regulation and Development) Act, 2016.

(3 marks)

Answer :

Section 2(g) of the Real Estate (Regulation and Development) Act defines 'appropriate Government' to mean as follows:

for the Union territory without Legislature	the Central Government
for the Union territory of Puducherry	the Union territory Government
for the Union territory of Delhi	the Central Ministry of Urban Development
for the State	the State Government

PROJECTS EXEMPT FROM THE AMBIT OF THE ACT

Question : 9 (June 2021)

Which project do not require registration under the Real Estate (Regulation and Development) Act, 2016?

(3 marks)

Answer :

The following projects do not require to be registered under the Real Estate (Regulation and Development) Act, 2016

- (a) area of land proposed to be developed does not exceed 500 Sq. Meters or No. of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

- (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

- (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Question : 10 (June 2025)

A housing scheme project was launched by ABC Ltd. in 2015, which is still ongoing and has not received a completion certificate. On 1.5.2016, the Real Estate (Regulation and Development) Act, 2016 (RERA Act) came into force. ABC Ltd. now wants to register this project with the Real Estate Regulatory Authority under the RERA Act. Advise ABC Ltd. whether it can register this project. Also, state which projects are exempt from the ambit of the RERA Act.

(5 marks)

- In the case of *M/s. Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors. etc*, the Supreme Court of India observed that from the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected.
- At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.
- So, ABC Ltd. can register for this project as the completion certificate has not received yet.

Projects exempt from the ambit of the Act

The following projects do not require to be registered under the Act:

- (a) area of land proposed to be developed does not exceed 500 Sq. Meters or No. of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

APPLICATION FOR REGISTRATION OF REAL ESTATE PROJECTS

Question : 11

What is the procedure for registration of a real estate project with the Regulatory Authority?

(3 marks)

Answer :

As per section 4 of the every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

- **Step 1** Applicant has to file an application for registration with RERA in prescribed form along with prescribed fees and documents.
- **Step 2** Application for registration must be either approved or rejected within a period of 30 days from the date of application by the RERA.
- **Step 3** On successful registration, the promoter of the project will be provided with a registration number, a login id and password for the applicant.

FUNCTIONS OF REAL ESTATE AGENTS

Question : 12 (Dec 2020)

Discuss the functions of Real Estate Agent under the Real Estate (Regulation and Development) Act, 2016.

(3 marks)

Answer :

- According to Section 10 of the Real Estate (Regulation and Development) Act, 2016, Every real estate agent which is not registered with the Authority shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area.
- So, firstly they require to register themselves with the authority under section 9 of the Act.
- Every real estate agent maintains and preserves such books of account, records and documents as may prescribed.
- Every real estate agent not to involve himself in any unfair trade practices, namely:
 - i. the practice of making any statement, whether orally or in writing or by visible representation which -
 - a. falsely represents that the services are of a particular standard or grade;
 - b. represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
 - c. makes a false or misleading representation concerning the services.
 - ii. permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.
- Every real estate agent shall facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be and discharge such other functions as may be prescribed.

NO DEPOSIT/ADVANCE TO BE TAKEN BY PROMTER WITHOUT FIRST ENTERING INTO AGREEMENT FOR SALE

Question : 13

XYZ Developers collected 90% of the total consideration from allottees before completing the project. The buyers alleged violation of the RERA Act. Examine the validity of their claim.

(3 marks)

Answer :

Provision of Law:

According to Section 13, a promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.

The agreement for sale shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

Conclusion/Analysis:

As per the provisions stated above, XYZ Developers has violated the law and the buyers claim is valid under law.

RETURN OF AMOUNT & COMPENSATION

Question : 14 (June 2024)

Rajeev booked a Flat in a housing scheme named 'Alpha Tower' Launched by Alpha Pvt. Ltd. by paying the booking amount and executing the 'Buyer's Agreement'. As per the Buyer's Agreement', Flat was to be delivered with 3 years of the Agreement but the promoters of the Company failed to deliver the Flat even after 5 years. Rajeev wants to withdraw from the project and wants the refund

of amount paid. Discuss as per the provisions of Real Estate Regulation and Development Law whether Rajeev can withdraw from the Project?

(5 marks)

Answer :

Provision of Law:

Section 18(1) of the Real Estate Regulation and Development Act, 2016 provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building,

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

- he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.
- Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.
- The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.
- If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

Conclusion/Analysis:

In the light of above provision Rajeev can withdraw from the Project. If he does not wish to withdraw from the project, he shall be paid Interest for every month of delay, till the possession is handed over to him. He shall also be compensated for any loss caused to him as stated above.

Question : 15 (Dec 2024)

“Neev Builders” launched a luxury housing project, issued a prospectus and advertised that these spacious apartments would have scenic views and all the global amenities. Umesh was impressed by this advertisement and made advance payment to book an apartment. However, later discovered

several significant disparities and amenities from the promises made in the advertisement. Umesh wants to withdraw from the project.

Answer the following questions as per the provisions of Real Estate (Regulation and Development) Act, 2016:

- (i) Explain the obligations of Neev Builders regarding veracity of the advertisement or prospectus.
- (ii) Can Umesh withdraw from the project?

(2+3=5 marks)

Answer :

Provision of Law:

(i) Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under the Real Estate (Regulation and Development) Act, 2016.

(ii) If the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under the Real Estate (Regulation and Development) Act, 2016.

Conclusion/Analysis:

In view of the above, Umesh can withdraw from the project. Neev Builders have to compensate any loss sustained by Umesh.

RIGHTS AND DUTIES OF ALLOTTEES

Question : 16 (Dec 2019)

Explain the rights and duties of allottees under Real Estate (Regulation and Development) Act, 2016.

(3 marks)

Answer :

Section 19 of the Real Estate (Regulation & Development) Act, 2016 provides for the various rights and duties of the allottees.

It states that:

1. The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in the Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.
2. The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.
3. The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter.
4. The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under the Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.
5. The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.
6. Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.
7. The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).
8. The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.
9. Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.
10. Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.
11. Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

Question : 17 (June 2022)

What are the rights of the allottees under the Real Estate (Regulation & Development) Act, 2016?

(4 marks)

Answer :

Section 19 of the Real Estate (Regulation & Development) Act, 2016 provides for the various rights and duties of the allottees.

It states that:

1. The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in the Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.
2. The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.
3. The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter.
4. The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under the Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of the Act or the rules or regulations made thereunder.
5. The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.
6. Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.
7. The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

8. The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.
9. Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.
10. Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.
11. Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

REAL ESTATE REGULATORY AUTHORITY

Question : 18 (Dec 2020)

What are the duties and functions of Real Estate Regulatory Authority?

(3 marks)

Answer :

The duties and functions of the Real Estate Regulatory Authority shall include:

- to register and regulate real estate projects and real estate agents registered under the Act;
- to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;
- to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;
- to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;
- to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act and the rules and regulations made thereunder;
- to ensure compliance of its regulations or orders or directions made in exercise of its powers under the Act;
- to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of the Act.

Question : 19 (June 2019)

Explain the functions of 'Real Estate Regulatory Authority' under the Real Estate (Regulation and Development) Act, 2016.

(3 marks)

Answer :

The functions of "Real Estate Regulatory Authority" under the Real Estate (Regulation and Development) Act, 2016 are:-

- to register and regulate real estate projects and real estate agents registered under the Act;
- to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;
- to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;
- to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;
- to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act and the rules and regulations made thereunder;
- to ensure compliance of its regulations or orders or directions made in exercise of its powers under the Act;
- to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of the Act.

POWERS OF TRIBUNAL

Question : 20

Mr. Sharma, an allottee, approached the Real Estate Appellate Tribunal against the decision of the Regulatory Authority. Explain whether the appeal is maintainable and within what time limit under the Real Estate Regulation and Development (RERA) Act, 2016.

Answer :

- Section 44 of the Act deals with application for settlement of disputes and appeals to Appellate Tribunal.
- It provides that the appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.
- Every appeal made to the Appellate Tribunal shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed.
- The Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filling it within that period. On receipt of an appeal, the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.
- The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.
- The appeal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal.
- Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.
- The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

Question : 21 (Dec 2021)

Briefly explain the powers of Tribunal established under Real Estate (Regulation and Development) Act, 2016.

(3 marks)

Answer :

According to Section 53 of the Real Estate (Regulation and Development) Act, 2016 the Powers of Tribunal are as follows:

1. The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.
2. Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.
3. The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.
4. The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examinations of witnesses or documents;
 - (e) reviewing its decisions;
 - (f) dismissing an application for default or directing it ex parte; and
 - (g) any other matter which may be prescribed.
5. All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

ROLE OF COMPANY SECRETARIES

Question : 22 (June 2024, Old Syllabus)

'Company Secretaries are a one stop professional advisory services for Real Estate Projects'.
Comment in the context of Real Estate (Regulation and Development) Act, 2016.

(4 marks)

Answer :

Company Secretaries holding Certificate of Practice by becoming an expert in the Real Estate (Regulation and Development) Act, 2016 can indulge in providing advice in respect of:

- Financial Advisory Services;
- Various applicable provision particular on real estate project;

- Registration and extension procedure of real estate project with competent authority;
- Various obligation, functions and duties of promoter in a real estate project;
- Penal Provisions under the Act;
- Funding Options for Real Estate Project;
- Taxation aspects for Real Estate Project;
- Legal & Regulatory Compliances.

UNIQUE ACADEMY FOR COMMERCE

CHAPTER : 15 INTELLECTUAL PROPERTY RIGHTS

NEED OF INTELLECTUAL PROPERTY

Question : 1

Discuss the need of Intellectual Property Protection Laws in India.

(5 marks)

Answer :

- Every invention involves labour, time, and resources. The length of each project varies substantially. It could be anything from a few seconds to a few years.
- A certain amount of actual money is also necessary for any creative endeavour, along with education or knowledge of course. Any creative professional making all of these investments is making a significant one.
- Therefore, it is important to acknowledge and honour a creator's intellectual works. The word "intellectual property" did not become common usage until the 19th century, despite the fact that many of the legal rules governing intellectual property rights have developed over centuries.
- It wasn't until the latter half of the 20th century that it spread throughout much of the world. In 1967, the World Intellectual Property Organization (WIPO) was founded as a UN body. Since then, the phrase has gained significant traction in the US.
- A comprehensive international system for defining, safeguarding, and upholding intellectual property rights exists.
- It consists of multilateral treaty systems as well as international organisations like the European Union, World Trade Organization, World Intellectual Property Organization, World Customs Organization, and United Nations Commission on International Trade Law (UNCITRAL).

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Question : 2

The World Intellectual Property Organization works to advance the growth and application of the global intellectual property system. Explain.

(3 marks)

Answer :

The World Intellectual Property Organization works to advance the growth and application of the global intellectual property system by:

- Services - run systems which make it easier to obtain protection internationally for patents, trademarks, designs and appellations of origin; and to resolve IP disputes.
- Law - develop the international legal IP framework in line with society's evolving needs.
- Infrastructure - build collaborative networks and technical platforms to share knowledge and simplify IP transactions, including free databases and tools for exchanging information.
- Development - build capacity in the use of IP to support economic development.

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

Question : 3 (Dec 2024)

What are main topics addressed by Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreements?

(5 marks)

Answer :

The TRIPS Agreement addresses five main topics:

- How general rules and fundamental ideas of the global trading system apply to international intellectual property?
- What are the minimum protection criteria for intellectual property rights that members should offer?
- What mechanisms should members offer to defend those rights in their home countries?
- Specific interim framework for resolving intellectual property disputes between WTO members in order to implement TRIPS requirements.
- Special transitional arrangements for the implementation of TRIPS provisions.

INDUSTRIAL PROPERTY

Question : 4 (Dec 2023)

What is meant by an Industrial property under the Intellectual Property Rights?

(5 marks)

Answer :

- The expression 'Industrial Property' is sometimes misunderstood as relating to movable or immovable property used for industrial production.
- However, industrial property is a kind of intellectual property and relates to creation of human mind, e.g., inventions and industrial designs.
- Simply stated, inventions are new solutions to technological problems, and industrial designs are aesthetic creations determining the appearance of industrial products.
- In addition, industrial property includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and the protection against unfair competition.
- The term 'Industrial Property' may not appear entirely logical in the sense that the inventions are only concerned with the industry. In other words, the inventions are exploited in industrial plants while the trademarks, service marks, trade names and service names are concerned with both the commerce as well as industry.
- Notwithstanding the lack of logic, this term has acquired a meaning which clearly covers inventions as well as other marks.
- The Paris Convention also recognised industrial property to cover patent, trademark, service mark, trade names, utility models, industrial designs, indication of source and appellations of origin and the repression of unfair competition.
- Hence, industrial property right is a collective name for rights referring to the commercial or industrial activities of a person.
- These activities may include the activities of industrial or commercial interests. They may be called inventions, creations, new products, processes of manufacture, new designs or model and a distinctive mark for goods etc.
- A person's commercial or industrial activities are covered by a group of rights known as industrial property rights. The actions of commercial or industrial interests may be among these activities.
- They can be referred to as inventions, creations, new products, manufacturing methods, new designs or models, and distinguishing marks for commodities, among other terms.

PATENT

Question : 5

A patent is a monopoly award that gives the inventor control over the output. Critically Examine.

(3 marks)

Answer :

- A patent is a monopoly award that gives the inventor control over the output and, up to a certain point in the demand curve, the price of the patented goods.
- The patent system's primary economic and commercial justification is that it encourages investment in industrial innovation. The upkeep and expansion of a country's stock of valuable, transferable, and industrial assets are both facilitated by innovative technologies.
- An innovation, such as a product or a technique that gives a novel approach to a problem or a new technical solution, is given an exclusive right known as a patent. An invention is the concept for creating a novel and practical product, process, or substance.
- Without the permission of the patent holder, the innovation cannot be made, utilised, disseminated, or sold for a profit. For the duration that the invention is shielded by a patent, the patent holder has the authority to decide who may or may not use the invention.
- The owner of the patent may provide another party a licence to exploit the innovation under mutually agreeable terms.
- Additionally, he has the option to transfer ownership of the patent to the buyer of the right to use the innovation.
- From the day the patent application was submitted, the patent is valid for 20 years. After a patent expires, the invention is no longer protected and becomes part of the public domain, meaning that the owner no longer has the sole right to use the invention.

TRADE MARK

Question : 6 (June 2024)

What is meant by Trade Mark under the Intellectual Property Rights?

(5 marks)

Answer :

Trade Mark

- A trade mark tries to safeguard both the interests of the trader and the customer by differentiating the items of one manufacturer or trader from comparable goods of others.
- A trademark can be any combination of words, characters, numbers, symbols, or devices showing images of people, animals, or both.
- A trademark acts as an effective form of advertising for the goods and their quality since it denotes the relationship between the merchant and the items during the course of commerce.
- The goal of trademark law is to give businesses the ability to acquire an exclusive right to use, share, or assign a mark by registering their mark.
- Similar to this, service marks set one company's services apart from those of other companies. Like inventions and industrial designs, it is patentable. Various combinations of words, letters, numbers, symbols, drawings, images, and even sounds can be used as a trademark.
- These are typically registered for seven years, but by reapplying, they can be renewed indefinitely. It guarantees the owner of the mark the sole right to use it to distinguish products or services, or to grant another person permission to use it in exchange for payment.
- Because of the nature and quality of the goods or service, which are denoted by its distinctive trademark, it aids consumers in recognising and purchasing it.

TRADE SECRETS

Question : 7 (Dec 2024)

A food and beverage company wants to protect its unique recipe under Trade Secrets law. Can they do so? Explain the concept of 'Trade Secrets' with examples. State the duration and conditions for preservation of the trade secrets.

(5 marks)

Answer :

Trade Secret

- A trade secret is a method, practise, procedure, design, instrument, pattern, or collection of information that is not widely known or easily discoverable and through which a company might gain a competitive edge over rivals or clients.
- An enterprise may gain a competitive edge from secret business information.
- Sales techniques, distribution strategies, consumer profiles, marketing plans, client and supplier lists, production procedures, and advertising strategies are all examples of trade secrets.
- A trade secret can be preserved indefinitely, but there must be a significant amount of secrecy, making it difficult to obtain the information unless inappropriate means are used.

- As per the provisions stated above, Yes, they can do so.

NATIONAL INTELLECTUAL PROPERTY RIGHTS POLICY

Question : 8 (June 2025)

The main goals on which National Intellectual Property Right Policy has focused are mainly to encourage innovation, enhance the business climate and commercially utilize intellectual property. Comment.

(5 marks)

The National Intellectual Property Policy outlines seven goals that are further defined with actions that must be taken by the designated nodal Ministry or Department.

The goals are briefly discussed below:

- i. IPR Awareness: Outreach and Promotion - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
- ii. Generation of IPRs - To stimulate the generation of IPR.
- iii. Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.
- iv. Administration and Management - To modernize and strengthen service oriented IPR administration.
- v. Commercialization of IPR - Get value for IPRs through commercialization.
- vi. Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- vii. Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

CHAPTER : 16 LAW RELATING TO PATENTS

PATENTS

Question : 1 (June 2025)

Universal Drugs and Pharma Limited, a multinational pharmaceutical company, was incorporated and registered in Chennai. The company filed a patent application in India under the Patents Act, 1970, for its cancer drug Glivec (Imatinib Mesylate). The application sought to patent a beta-crystalline form of imatinib mesylate, claiming it to be a new form with improved bioavailability and efficacy. However, the Patent Controller of India rejected the application, stating that the drug did not meet the criteria for patentability under Section 3(d) of the Patents Act, 1970. The rejection was based on the ground that Section 3(d) prohibits the patenting of new forms of known substances unless they demonstrate enhanced therapeutic efficacy compared to the original compound. Universal Drugs and Pharma Ltd. challenged the decision before the Intellectual Property Appellate Board (IPAB), but the IPAB upheld the Patent Controller's decision.

The company then filed an appeal before the Supreme Court of India, raising the following key legal issues:

- Whether the beta-crystalline form of imatinib mesylate qualifies for patent protection under Section 3(d) of the Indian Patents Act, 1970, given that the substance was already known but had been presented in a new form?
- Whether the patentability criteria under Section 3(d) are consistent with international standards, or whether they are excessively restrictive?

In view of the above case study, answer the following questions in accordance with the provisions of the Indian Patent Act, 1970:

- (i) What is meant by Patent, and what can be patented?
- (ii) When mere discovery of a new form of a known substance will not to be treated as new invention under section 3(d) of the Patent Act, 1970?
- (iii) What are the rights of patentee under the Patent Act, 1970?
- (iv) Are the patentability criteria under Section 3(d) in accordance with international standards?
- (v) Will Universal Drugs and Pharma Ltd. succeed in its arguments as per the provisions of the Patents Act, 1970?

(2 marks each)

Answer (i)

- Section 2(1) (m) of the Patents Act, 1970, defines the term patent as to mean a patent for any invention granted under Patents Act. Accordingly, a patent is a statutory right for an invention granted for a limited period of time to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.
- Patent is a monopoly grant and it enables the inventor to control the output and within the limits set by demand, the price of the patented products.
- Underlying economic and commercial justification for the patent system is that it acts as a stimulus to investment in the Industrial innovation.
- Innovative technology leads to the maintenance of and increase in nations stock of valuable, tradable and industrial assets.
- An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented.
- However, it must not fall into the categories of inventions that are non-patentable under section 3 and 4 of this Act.

Answer (ii)

- The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- Explanation to clause (d) of the Patent Act, 1970 clarifies that salts, esters, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.

Answer (iii)

Section 48 of the Patent Act, 1970 provides that subject to the other provisions contained in the Patents Act and the conditions specified in section 47, a patent granted under the Act shall confer upon the patentee:

- (a) Where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for, those purposes that product in India.
- (b) Where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.

A patentee enjoys the exclusive right to make and use the patented invention. The patentee also has the right to assign the patent, grant licences, or otherwise deal with the patent, for any

consideration. These rights, created by statute, are circumscribed by various conditions and limitations as prescribed under the Patents Act, 1970.

Answer (iv)

- The Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement is essential for facilitating intellectual property, trade settling intellectual property, trade disputes and giving WTO members the freedom to pursue their own national goals.
- The Trips agreement is an attempt to put these rights under common international law and to close the gap in how they are safeguarded and upheld globally.
- It provides minimal requirements to enforcement and protection of intellectual property owned by citizen of other WTO members by each Government.
- Accordingly, the Patent Act, 1970 including section 3(d) is in compliance with India's International obligation under Trips, as the law did not prevent the patenting of genuine innovations but instead focused on preventing the patenting of minor modification that did not offer significant therapeutic benefits in this instant case.

Answer (v)

- Section 3(d) of the Patent Act, 1970 is the key issue in this problem. It may be emphasized that owner modifications of existing compounds would not qualify for Patent Protection unless they demonstrate a significant enhancement in therapeutic efficacy.
- The Universal Drugs and Pharma Ltd. had failed to prove that the new form of imatinib mesylate provided a substantial increase in efficacy compared to the original substance.
- Further, public interest in ensuring affordable access to essential medicines outweighed the interest of patent holders, otherwise patent of incremental innovations could lead to monopolistic pricing and prevent affordable access to medicines, especially in the case of life-saving drugs.
- Hence, the decision given by the Patent Controller and the Intellectual Property Appellate Board refusing to grant patent protection to the Universal Drugs and Pharma Ltd. is correct.
- This case study is based upon **Novartis AG v/s Union of India**, (2013) 6 SCC1 as decided by the Supreme Court of India.

Question : 2 (June 2024)

In the case of Bishwanath Prasad Radhey Shyam Vs. Hindustan Metal Industries, (1979) 2 SCC 511, it was held by the Hon'ble Supreme Court of India that the object of Patent law is to encourage scientific research, new technology and industrial progress. A limited-time grant of the only right to own, use, or sell a patented method or product encourages the development of new commercially useful inventions. The disclosure of the invention to the Patent Office, which becomes public domain after a predetermined duration of the monopoly, is the cost of the monopoly grant. In Raj Prakash Vs. Mangat Ram Choudhary AIR 1978 Delhi 1, it was held that inventive creation, as is notable, is to

discover something or find something not found or found by anybody previously. It isn't essential that the invention ought to be anything confounded. The fundamental thing is that the creator was first to embrace it. The main issue in this manner, is that each basic creation is asserted, as in the form of novelty or new character, it will be considered as an invention and the cases & specifications must be perused in that light.

Section 2(1) (ja) of the Patent Act, 1970 defines the term inventive step as to mean a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art. Section 6 of the Act provides that who can make an application for a patent for an invention.

Consider the above statements, answer the questions:

(i) What are the criteria for patenting the invention?

(ii) Are mathematical or business methods, computer programs per se, or algorithms patentable? Explain.

(iii) What can be Patented?

(iv) State any two advantages of patent.

(v) Ramchand invented a medicine and was about to apply for a patent. However, he passed away before applying. Can his legal representative apply for the patent?

(2 marks each)

Answer :

Answer (i)

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

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

Answer (ii)

Section 3 of the Patent Act 1970 provides a list in which certain inventions are not patentable. Mathematical or business methods, computer programs per se, or algorithms is not considered an invention as per Section 3(k) of the Act and thus, not patentable.

Answer (iii)

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However, it must not fall into the categories of inventions that are non- patentable under sections 3 and 4 of the Act.

Answer (iv)

Advantages of Patents

- Patentee have the complete rights to restrict outsider from making, operating, providing accessibility to be bought, providing or putting in the product generated by him, without his consent. He has absolute prerogative to utilize his invention and his rights that are very much ensured under the Act.
- The patentee has a privilege to file the suit for encroachment of his patent and can ask for remedies like, Injunction, compensation and a settlement of profit against the individual who encroached his patent.
- Patentee can commercially exploit or pitch his creation to any skilled individual and concede permit to him to abuse his item and in this way the patentee can likewise wins benefit along these lines.
- The holder of the exclusive permit can also avail the rights given to the patentee and can bring a suit if there should arise an occurrence of any encroachment of Patent.
- A patentee gets the privilege to make changes in or alterations of an invention depicted or uncovered in the total determination of the primary innovation and get the particular right of a patent by the substantial change or patent as a matter of addition/certain adjustment.

Answer (v)

- Section 6(1) (c) of the Patents Act,1970 provides that an application for a patent for an invention may be made by the legal representative of any deceased person who immediately before his death was entitled to make such an application.
- Therefore, legal representative of Ramchand can apply for the patent.

Question : 3 (Dec 2023)

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

after years of research and development as also claimed that they have evolved a new process in producing the same drug with a new process hitherto unknown to the Pharmaceutical world. X Pharmaceuticals Ltd. filed a suit against Y Instra Lab Pvt. Ltd for seeking expert ad interim injunction restraining Y Instra Lab Pvt. Ltd. from using the said process for its products and marketing them.

In light of the above, answer the following questions:

(i) Is the process developed by X Pharmaceuticals Ltd., is new and innovative?

(5 marks)

(ii) Identify from the above case study as to whether the process adopted by X Pharmaceuticals Ltd., have been patented or 'combination of drug' have been patented?

(3 marks)

(iii) Can the process developed by X Pharmaceuticals Ltd., be used by Y Instra Lab Pvt. Ltd. in producing its combination of drug?

(4 marks)

(iv) Can X Pharmaceuticals Ltd., restrain Y Instra Lab. Pvt. Ltd. from using the process of combination of drug?

(5 marks)

(v) What relief/award/order can be provided for X Pharmaceuticals Ltd. in this instant case.

(3 marks)

Answer :

Answer (i)

Provision of Law:

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

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

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

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

Conclusion/Analysis:

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

Answer (ii)

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

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

Answer (iii)

- It is evident from the given case study that although X Pharmaceuticals Ltd. is producing pharmaceutical drugs through the application of a process that combines drugs made of chemical materials and micro-organisms, they have only been granted patent registration for the process and not for the end product.
- This clearly states that process patented by X-Pharmaceutical Ltd, was not unknown to the pharmaceutical world and was in use prior to their patent registration, since Y Instra Lab Pvt Ltd has developed drug of a combination of penicillin and lactobacilli by following the same process as X Pharmaceuticals Ltd and had already entered the market for quite a few months.
- Besides this, the process that followed by X-Pharmaceutical Ltd, was patented not the combination of drug itself. So, in the instant case the Y Instra Lab. Pvt. Ltd can use the process as claimed by X Pharmaceutical Ltd.

Answer (iv)

- After going through the entire material facts of the case, it is apparent that the process of making combination drugs of a chemical material and a micro-organism is a well-accepted process.
- Hence the process which X-Pharmaceutical Ltd. claim to have developed is really in use for a long time. So, the Company i.e., X-Pharmaceutical Ltd, cannot be said to have evolved a new process unknown to the pharmaceutical world.
- The significant point is that what is patented by X-Pharmaceutical Ltd. is the "process" and not the combination of drug itself.
- If, prima facie, the process evolved by the X-Pharmaceutical Ltd., is not found to be patentable, the Y Instra Lab. Pvt. Ltd. cannot be restrained from using the said process for its products and for marketing them.
- In the instant case, the Y Instra Lab, Pvt. Ltd. had already entered the market few months back. Therefore, it is not proper to restrain them from continuing to market its products.

Answer (v)

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

WHAT ARE NOT INVENTIONS

Question : 4

AgroGene Biotech Ltd., a startup engaged in agricultural innovation, developed three distinct technologies:

1. A modified form of an already known herbicide, claiming that it works faster and requires lower dosage. The company applied for a patent in India.
2. A new software-based system that uses AI to predict pest attacks on crops. The software, although not linked to any hardware, claims significant improvement in crop protection.
3. A genetically modified plant variety that can grow in arid regions and requires minimal water. The variety was developed in the company's R&D lab and is not naturally occurring.

The Indian Patent Office rejected all three patent applications citing non-patentability under various provisions of the Patents Act, 1970.

AgroGene Biotech challenges the decision, arguing that all three innovations are the result of extensive research and deserve patent protection. Examine the validity of the Patent Office's rejection of all three applications with reference to the relevant provisions of the Patents Act, 1970.

(3 marks)

Answer :

Provision of Law:

- the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any property or mere new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
 - Explanation to clause (d) clarifies that salts, esters, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations and other derivatives of known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.
- a mathematical or business method or a computer programme per se or algorithms;
- a literary, dramatic, musical or artistic work or any other aesthetic creation whatsoever including cinematographic works and television productions.

Conclusion/Analysis:

The Indian Patent Office was correct in rejecting all three applications based on the provisions of the Patents Act, 1970:

- The modified herbicide is merely a new form of a known substance without enhanced efficacy and is thus non-patentable under Section 3(d).
- The AI-based pest prediction software is considered a computer program per se, and in the absence of any novel hardware or technical effect, falls under the exclusion of Section 3(k).
- The genetically modified plant variety, being a plant in whole or part thereof, is not patentable as per Section 3(j), regardless of the scientific effort involved.

Hence, all three inventions fall under statutory exclusions and are rightly refused patent protection under Indian law.

FORM OF APPLICATION AND PROVISIONAL & COMPLETE SPECIFICATION

Question : 5 (Dec 2023)

An application for registration of patents is filled with provisional specification indicating the subject matter to which the invention relates. State the contents of specification.

(5 marks)

Answer :

- A provisional specification is usually filed to establish priority of the invention in case the disclosed invention is only at a conceptual stage and a delay is expected in submitting full and specific description of the invention.
- The provisional specification is a permanent and independent scientific cum legal document and no amendment is allowed in this.
- No patent is granted on the basis of a provisional specification. It has to be followed by a complete specification for obtaining a patent for the said invention.
- Complete specification must be submitted within 12 months of filing the provisional specification.
- Section 10 of the Patents Act, 1970 dealing with contents of Specifications provides that every specification, whether provisional or complete, shall describe the invention and begin with a title sufficiently indicating the subject matter to which the invention relates.

Every complete specification is required to

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

Question : 6 (June 2025)

How a Patent Specification is prepared? When is an Application for patent published as per the Patent Act, 1970?

(5 marks)

Answer :

- A patent specification can be prepared by the applicant himself or his registered and authorized agent.
- The patent specification generally comprises of the title of the invention indicating its technical field, prior art, draw backs in the prior art, the solution provided by the inventor to obviate the drawbacks of the prior art, a concise but sufficient description of the invention and its usefulness, drawings (if any) and details of best method of its working.
- The complete specification must contain atleast one claim or statement of claims defining the scope of the invention for which protection is sought for.
- Every application for patent is published after expiry of 18 months from the date of its filing or priority date whichever is earlier.
- However, following applications are not published.

(A) Application in which secrecy direction is imposed.

(B) Application which has been abandoned u/s 9(1) and i.e. when a provisional application has been filed and the complete application has not been filed with 12 months from the filing of the provisional application.

(C) Application which has been withdrawn 3 months prior to 18 months.

POTENTIAL INFRINGEMENT

Question : 7 (June 2025)

Rajat, the proprietor of RC Associates, filed an application for a patent with the Controller for his new invention of a "Smart Watch." However, the Controller is of the opinion that the invention cannot be performed without a substantial risk of infringement of a claim of another existing patent. What directions may the Controller issue to Rajat under Section 19 of the Patents Act, 1970?

(5 marks)

Answer :

Section 19 of the Patents Act, 1970 provides that if in consequence of the investigations it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent, be inserted in the applicant's complete specification by way of notice to the public within such time as may be prescribed, unless

a) the applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or

b) the complete specification is amended to the satisfaction of the Controller.

The reference shall be inserted in the following form, namely: "Reference has been directed, in pursuance of Section 19(2) of the Patents Act, 1970 to Patent No".

Where after a reference to another patent has been inserted in a complete specification in pursuance of a direction under Section 19(1):

a) that other patent is revoked or otherwise ceases to be in force; or

b) the specification of that other patent is amended by the deletion of the relevant claim; or

c) it is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention, the Controller may, on the application of the applicant delete the reference to that other patent.

TIME FOR PUTTING APPLICATION IN ORDER FOR GRANT

Question : 8 (Dec 2023)

You have recently been appointed as Company Secretary of the Ever Innovative Limited. Your Company receives a notice from the controller of patent that the application filled by your company for the grant of a patent of a new machine was deemed to have been abandoned. How you propose to deal with the matter?

(5 marks)

Answer :

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

- Section 21 of the Act provides that an application for a patent shall be deemed to have been abandoned unless, the applicant has complied within the prescribed period with all the requirements imposed on him by or under the Act, whether in connection with the complete specification or otherwise in relation to the application from the date on which the first statement of objections to the application or complete specification or other documents related thereto is forwarded to the applicant by the Controller.
- Explanation to section 21(1) clarifies that where the application for a patent or any specification or, in the case of a convention application or an application filed under the PCT designating India any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has re-filed it or the applicant proves to the

satisfaction of the Controller that for the reasons beyond his control such document could not be re-filed. Sub-section (2) of Section 21 provides that if at the expiration of the period as prescribed under sub-section (1) an appeal to the High Court is pending in respect of the application for the patent for the main invention; or in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention, the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the period as prescribed under sub-section (1), be extended until such date as the High Court may determine.

- In case, the time within which the appeal mentioned in sub-section (2) may be instituted has not expired, the Controller may extend the period as prescribed under sub-section (1), to such further period as he may determine.
- However, in case of an appeal filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then the requirements may be complied with within the time granted by the Court.

Conclusion/Analysis:

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

RESIDENTS NOT TO APPLY FOR PATENTS OUTSIDE INDIA WITHOUT PRIOR PERMISSION

Question : 9 (June 2024)

Amit, an Indian Resident, wants to make an application outside India for the grant of a patent for an invention. Explain whether he can apply outside India as provisions of the Patents Act, 1970? What will be your answer if the invention is relevant for defence purpose?

(5 marks)

Answer :

Provision Of Law:

- Section 39 of the Patents Act, 1970 provides that no person resident in India shall, except under the authority of a written permit sought in the prescribed manner and granted by or on behalf of

the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India and either no direction has been given under of section 35(1) in relation to the application in India, or all such directions have been revoked.

- Sub-section (2) obliges the Controller to dispose of every such application within the prescribed period.
- However, if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government. Sub-section (3) clarifies that the provisions of section 39 shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.

Conclusion/Analysis:

In this case, yes, Amit can apply outside India subject to above conditions.

RIGHTS OF PATENTEES

Question : 10

Explain the rights conferred on a patentee under the Patents Act, 1970.

(3 marks)

Answer :

Section 48 provides that subject to the other provisions contained in the Patents Act and the conditions specified in section 47, a patent granted under the Act shall confer upon the patentee:

(a) where the subject matter of the patent is a product, the exclusive right to prevent third parties, who do not have his consent, from the act of making, using, offering for sale, selling or importing for those purposes that product in India;

(b) where the subject matter of the patent is a process, the exclusive right to prevent third parties, who do not have his consent, from the act of using that process, and from the act of using, offering for sale, selling or importing for those purposes the product obtained directly by that process in India.

A patentee enjoys the exclusive right to make and use the patented invention. The patentee also has the right to assign the patent, grant licences, or otherwise deal with the patent, for any

consideration. These rights, created by statute, are circumscribed by various conditions and limitations as prescribed under the Patents Act, 1970.

PATENTS OF ADDITION

Question : 11 (Dec 2024)

Ravi holds Patents for a specific design of tamper-proof locks sold under the trade mark "Tech-Lock". He sought an injunction against Sumit for infringement of his patented invention and restrain claiming a patent of addition. Sumit contends that patent of addition does not disclose the innovative step.

(i) State the rules relating to "Patent of Addition" as per Section 54 of the Patent Act, 1970.

(ii) State with support of case law whether the application by Ravi can be rejected on the ground of innovative step?

(3+2=5 marks)

Answer (i)

- Section 54 of the Patents Act, 1970 provides that where an application is made for a patent in respect of any improvement in or modification of an invention described or disclosed in the complete specification, namely the main invention and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.
- Where an invention being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Controller may, if the patentee so requests, revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date of the patent so revoked.
- However a patent shall not be granted as a patent of addition unless the date of filing of the application is the same as or later than the date of filing of the application in respect of the main invention.
- A patent of addition shall not be granted before the grant of the patent for the main invention.

Answer (ii)

- A patent of addition application cannot be rejected on the grounds that the disclosure in the primary application or patent lacked innovative step.
- However, the disclosure in the main application or patent may be used as evidence of innovation against the patent addition application.

- In the matter of **Ravi Kamal Bali v/s Kala Tech and others** the Bombay High Court on 12th February, 2008 dismissed the defendant's arguments that Patent of addition can only be granted if it has an inventive step over the main application.

COMPULSORY LICENCES & PATENT AGENT

Question : 12 (Dec 2024)

Write short notes on the following with regard to the Patents Act, 1970:

- Compulsory Licences
- Patent Agent.

(3+2=5 marks)

Answer :

Compulsory Licences

- Compulsory licenses are authorizations given to a third-party by the Controller General to make, use or sell a particular product or use a particular process which has been patented, without the need of the permission of the patent owner.
- This concept is recognised at both national as well as international levels, with express mention in both (Indian) Patent Act, 1970 and TRIPS Agreement.
- There are certain pre-requisite conditions, given under sections 84-92, which need to be fulfilled if a compulsory license is to be granted in favour of someone.
- Section 84 provides that at any time after the expiration of three years from the date of the grant of a patent, any person interested may make an application to the Controller for grant of compulsory licence on patent on any of the following grounds, namely:
 - a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
 - b) that the patented invention is not available to the public at a reasonably affordable price, or
 - c) that the patented invention is not worked in the territory of India.

Patent Agent

The work relating to drafting of specifications, making of application for a patent, subsequent correspondence with the Patent office on the objections raised, representing the applicant's case at the hearings, filing opposition and defending application against opposition is entrusted to a qualified Patent Agent. Sections 125-132 of the Patents Act, 1970 read with the Patents Rules deal with the Patent Agents.

INTERNATIONAL ARRANGEMENTS

Question : 13

Mr.R, an Indian inventor, applied for a patent in the USA. Within 12 months, he also applied in India claiming priority from the US application. Examine the validity of his claim in light of international conventions.

(4 marks)

Answer :

Provision of Law:

- Section 135(1) provides that where a person has made an application for a patent in respect of an invention in a convention country (basic application) and that person or legal representative or assignee of that person makes an application under the Act for a patent within twelve months after the date on which the basic application was made, the priority date of a claim of the complete specification being a claim based on matter disclosed in the basic application, is the date of making of the basic application.
- The explanation to Section 135(1) clarifies that where applications have been made for similar protection in respect of an invention in two or more convention countries, the period of twelve months shall be reckoned from the date on which the earlier or earliest of the said applications was made.
- In case of an application filed under the Patent Cooperation Treaty designating India and claiming priority from a previously filed application in India, the provisions of sub-sections (1) and (2) shall apply as if the previously filed application were the basic application.
- However, a request for examination under section 11B shall be made only for one of the applications filed in India.

Conclusion/Analysis:

Yes, Mr. R's claim is valid under the Indian Patents Act, 1970. As per Section 135, India allows Convention Applications filed within 12 months of the first application made in a convention country (like the USA) under the Paris Convention. Since Mr. R filed the Indian application within 12 months, he is entitled to claim priority from the date of the US filing.

Therefore, the Indian patent application will be treated as if it was filed on the same date as the US application for the purpose of novelty and priority assessment.

CHAPTER : 17 LAW RELATING TO TRADE MARKS

TRADE MARK

Question : 1

Define the term "Trademark" under the Trademarks Act, 1999.

(3 marks)

Answer :

The term trade mark has been defined under Section 2(1)(zb) of the Act as to mean a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and

- (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and
- (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.

A trademark (popularly known as brand name) in layman's language is a visual symbol which may be a word signature, name, device, label, numerals or combination of colours used by one undertaking on goods or services or other articles of commerce to distinguish it from other similar goods or services originating from a different undertaking.

WELL KNOWN TRADE MARK

Question : 2 (Dec 2024)

'EcoSustain World' is a multinational corporation with a registered well-known Trade Mark protected across different categories of goods and services and a strong global brand reputation. A

new Indian company started using a deceptively similar Trade Mark. Can 'EcoSustain World' protect its trade mark in India?

(i) Explain with an example the significance of a well-known trade mark as per provisions of the Trade Marks Act, 1999.

(ii) Why Registrar will protect 'EcoSustain World'?

(2+3=5 marks)

Answer (i)

In terms of Section 2(1)(zg) of the Trade Marks Act, 1999, a well-known trade mark in relation to any goods or services means a mark which has become so to the substantial segment of the public which uses such goods or services such that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

For Example: Google has been registered as a well-known trademark of Alphabet Inc., which thereby means only Alphabet Inc. can register the term 'Google' for any category of goods and services. Even if the service is not related to the Internet industry, no other company but Alphabet Inc. can register 'Google' as its trademark.

➤ Yes, 'EcoSustain World' can protect its well-known Trademark in India.

Answer (ii)

- With coming up of the Trade Mark Rules 2017, a new procedure has been created that allows the Registrar to proclaim a particular trademark as "well known".
- According to the new rule, a trademark owner can file an application in form TM-M with a request made to the Registrar for declaring the mark to be "well-known".
- A well-known trade mark has been vouchsafed with extraordinary protection and safeguards against passing off and infringement of such trademarks. Well-known trademarks are recognised in India on the basis of their reputation, nationally, internationally and the cross-borders.
- Unlike other trademarks whose goodwill and reputation is limited to a certain specified geographical area and to a certain range of products, well-known trademarks have its goodwill and reputation protected across the nation and across categories of goods and services.
- It is law that restricts the Trade Mark Registry to allow and register any mark as a trademark which is deceptively similar to any of the well-known trademark.

ABSOLUTE GROUNDS FOR REFUSAL OF REGISTRATION

Question : 3 (June 2024)

What are the absolute grounds for refusal of Registration of trade mark under Section 9(l) of the Trade Mark Act, 1999 ?

(5 marks)

Answer :

Section 9(1) of the Trade Mark Act 1999 containing provisions relating to absolute grounds for refusal for registration prohibit the registration of those trademarks,

- (a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;
- (b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;
- (c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered: Provided that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

Question : 4 (June 2024)

Priya wants to start the trading of incense sticks (agarbattis, dhoops) and perfumeries as M/s Priya Perfumery. She made an application to the Registrar of Trade Marks to register a trade mark by name "RAMAYAN". State with reasons whether she will succeed in registering such a Trade Mark under the Trade Marks Act, 1999?

(5 marks)

Answer :

Provision of Law:

According to Section 9(2) of the Trade Marks Act, 1999 the following trademark shall not be registered:

1. If the trademark tends to deceive the public or cause any confusion;

2. In any instance if the trademark hurts any religious sentiment of any demographic section of Indian citizens;
3. It comprises or contains scandalous or obscene matter;
4. Its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

In the case of **Amritpal Singh vs. Lal Babu Priyadarshi , 2005** (30) PTC 94, Intellectual Property Appellate Board (IPAB) the word RAMAYAN was refused registration on the grounds that: Firstly, it was not capable of distinguishing the goods of the applicant and Secondly, that it was likely to hurt religious sentiments of a class of society.

Conclusion/Analysis:

No, Priya will not succeed in registering such a Trade Mark under the Trade Marks Act, 1999.

Question : 5 (Dec 2024)

“Energize-52” is a popular cough syrup manufactured since 2015 by “Jeevan Pharma Company”. The trade mark “Energize-52” was registered in 2017, and almost seven years had expired from the date of its registration. This syrup was highly popular among the consumers who asked for “Energize-52” over the other syrups available and the voluminous sales figures prove its widespread consumer recognition. In January 2024 “Jeevan Pharma Company” discovered that a new Competitor in the market had also launched a similar syrup under the brand name “Energize-T” using a logo and brand name that is deceptively similar to the registered trade mark of “Energize-52”.

In view of the above case, answer the following questions with support of relevant provisions of the Trade Marks Act, 1999:

- (i) Is there an infringement of the trade mark “Energize-52” by the new competitor?
- (ii) What defences can be pleaded by “Energize-T”?
- (iii) What defences can be raised by “Energize-52” to prove the distinctiveness of its trade mark?
- (iv) What are the relative grounds for refusal of trade mark registration?
- (v) What orders can the Court pass against the competitor’s use of the trade mark “Energize-T”?

(2 marks each)

Answer (i)

Yes, there is an infringement of the trademark “Energize-52” by the new competitor through its use of the trademark “Energize-T”. “Energize-52” has been in use since 2015, was registered in the year 2017 and almost seven years have expired from the date of its registration. Since then, it has achieved distinctiveness through voluminous sales and widespread consumer recognition.

Answer (ii)

The present case is similar to the case of *Himalaya Drug Company vs. S.B.L. Ltd. 2013* (53) PTC 1 (Del.) (DB), the competitor can raise the defence that the mark “Energize” is publici juris (belonging to the public), and there is no similarity between the two trademarks. ‘Energize’ will be considered the generic and non-distinctive part of the mark, and it is to be ignored even if the two rival marks are to be taken as a whole.

Answer (iii)

“Energize-52” can provide evidence that it had voluminous sales, was being manufactured since the year 2015 and was registered since the year 2017 and as seven years had expired from the date of the registration, the Registration of the trade mark was taken to be valid as per Trade Marks Act. Their mark has distinctiveness can be proved by providing the orders where the mark has been granted protection. The consumer asked for their product with all its essential and prominent features of the mark.

Answer (iv)

Section 11(1) of the Trade Marks Act, 1999 stipulate on Relative Grounds for Refusal of Registration.

Section 11(1) stipulates that a trade mark shall not be registered if, because of-

- (a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or
- (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

Section 11 (2) states that a trade mark which (a) is identical with or similar to an earlier trade mark; and (b) is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered in the name of a different proprietor, shall not be registered if or to the extent the earlier trade mark is a well known trade mark in India and the use of the later mark without due cause would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trade mark.

Section 11 (3) provides that a trade mark shall not be registered if, or to the extent that, its use in India is liable to be prevented—

- (a) by virtue of any law in particular the law of passing off protecting an unregistered trade mark used in the course of trade; or
- (b) by virtue of law of copyright.

Answer (v)

The Court can restrain the competitor from using the trademark “Energize-T” and can allow them to amend ‘its mark to one that would not be similar to the trademark “Energize-52” of “Jeevan Pharma Company’.

Question : 6 (June 2025)

A Pharmaceutical company develops a new drug with a specific chemical compound ‘Carbon Dioxide’. The Company applied ‘Carbon Dioxide’ to register it as Trademark. Whether this Trademark can be granted as per the Trade Marks, Act, 1999?

(5 marks)

Answer :

Provision Of Law:

Section 13 of the Trade Marks Act, 1999 states that no word:

- (a) which is the commonly used and accepted name of any single chemical element or any single chemical compound (as distinguished from a mixture) in respect of a chemical substance or preparation, or
- (b) which is declared by the World Health Organisation and notified in the prescribed manner by the Registrar from time to time, as an international non-proprietary name or which is deceptively similar to such name, shall be registered as a trade mark and any such registration shall be deemed for the purpose of section 57 to be an entry made in the register without sufficient cause or an entry wrongly remaining on the register, as the circumstances may require.

Conclusion/Analysis:

In the given case, ‘Carbon Dioxide’ is a commonly used and accepted name for a single chemical compound. Hence, it cannot be registered as Trademark.

DURATION, RENEWAL, REMOVAL AND RESTORATION OF REGISTRATION

Question : 7

What is the validity period of registration of a trademark and how can it be renewed?

(3 marks)

Answer :

- Section 25 of the Act deals with duration, renewal of registration, for removal and restoration of registration. It allows registration of a trademark for a period of 10 years.
- In keeping with the generally accepted international practice and to reduce the work-load of the Trade Marks Office, Section 25 allows renewal of registration for successive periods of 10 years, from the date of the original registration or the last renewal.
- With a view to facilitate renewal of registration, Section 25(4) provides for restoration of removed trade marks on payment of renewal fee.
- It can be removed on application to the Registrar on prescribed form on the ground that the mark is wrongly remaining on the register.
- The Registrar also can suo moto issue Notice for removal of a registered trademark.

INFRINGEMENT OF REGISTERED TRADE MARKS

Question : 8

Mr. Ramesh is using a registered trademark without authorization and is selling duplicate goods under the same mark. Which legal provision will apply to protect the genuine trademark holder?

(5 marks)

Answer :

Provision Of Law:

As per section 29(2) of the Act, a registered trade mark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which because of—

- (a) its identity with the registered trade mark and the similarity of the goods or services covered by such registered trade mark; or
- (b) its similarity to the registered trade mark and the identity or similarity of the goods or services covered by such registered trade mark; or
- (c) its identity with the registered trade mark and the identity of the goods or services covered by such registered trade mark, is likely to cause confusion on the part of the public, or is likely to have an association with the registered trade mark.

Conclusion/Analysis:

As per the provisions stated above, the registered trade mark is infringed under Section 29. The genuine trademark holder can initiate legal action against Mr. Ramesh including civil remedies (injunction, damages) and criminal prosecution under relevant provisions.

REGISTRATION TO BE PRIMA FACIE EVIDENCE OF VALIDITY

Question : 9 (June 2025)

ABC Ltd., incorporated in 1996 deals in Plywood under the Trade Names 'UNIPLY'. It came to know in 1999 that XYZ Ltd. is also using the Name 'UNIPLY'. ABC Ltd. filed a suit against the XYZ Ltd. along with an application for a Temporary Injunction. The Court granted an ex-parte temporary injunction to the Appellant. In turn, XYZ Ltd. also filed appeal against ABC Ltd. claiming that it was incorporated in 1993 and they have been carrying business under the Name of 'UNIPLY' since 1993. XYZ Ltd. claimed the prior use of Marks in question. Explain, whether XYZ Ltd. can be restrained from using the name 'UNIPLY' with reference to a case law as per the Trade Marks Act, 1999?

(5 marks)

Answer :

Provision Of Law:

- Section 31 of the Trade Marks Act, 1999 that in all legal proceedings relating to trade mark registered under the Act, the original registration and all subsequent assignments and transmission thereof shall be prima facie evidence of its validity.
- However, as per Section 34 the proprietor or a registered user of a registered trademark is not entitled to interfere with or restrain the use by any person of a trademark identical with or nearly resembling it in relation to goods or services in relation to which that person or a predecessor in title of his has continuously used that trade mark from a prior date.
- Therefore, in case of unregistered marks, the owner of the trade mark may lodge a case against passing off action in case his trademark is used by some other person.

- It has been held by the courts in various cases and the ownership of a trademark is decided by its usage in commercial transactions.

The Supreme Court in *Uniply Industries Ltd. vs. Unicorn Plywood Pvt. Ltd. and Others* observed that:

- (i) for inherently distinctive marks ownership is governed by priority of use for such marks. The first user of sale of goods/services is the owner who is senior to others.
- (ii) These marks are given legal protection against infringement immediately upon adoption and use in trade.
- (iii) Some courts indicate that even prior sales of goods – though small in size with the mark – are sufficient to establish priority, the test being to determine continuous prior user and the volume of sale or the degree of familiarity of the public with the mark.

Conclusion/Analysis:

Therefore, the proprietorship of the trademark is decided by the date of usage of the mark by a person in business transactions.

So, XYZ Ltd. cannot be restrained from using the name 'UNIPLY' as it is using this name since 1993.

ASSIGNMENT AND TRANSMISSION

Question : 10

Mention the provisions relating to assignment and transmission of a registered trademark.

(5 marks)

Answer :

- Section 37 entitles the registered proprietor of a trademark to assign the trade mark and to give effectual receipts for any consideration for such assignment.
- Section 38 deals with the assignability and transmissibility of a registered trade mark with or without goodwill of the business either in respect of all goods or services or part thereof.
- Section 39 provides that unregistered trade mark may be assigned or transmitted with or without the goodwill of the business concerned.
- Section 40 contains restriction on assignments or transmissions of trade mark where multiple exclusive rights would be created in more than one person in relation to same goods or services; same description of goods or services; goods or services or description of goods or services which are associated with each other, which would be likely to deceive or cause confusion.
- Nevertheless, such assignment is not deemed to be invalid, if having regard to the limitations imposed, the goods are to be sold in different markets - either within India or through exports.

- Section 42 stipulates conditions for assignment of a trade mark without goodwill of business.
- Such an assignment shall not take effect unless the assignor obtains directions of the Registrar and advertises the assignment in accordance with the directions of the Registrar and as per the prescribed manner.
- Section 43 deals with the assignability and transmissibility of certification trade marks and provides that the assignment of certification trade mark can only be done only with the consent of the Registrar.
- Section 44 states that associated trademarks shall be assignable and transmissible only as a whole but they will be treated as separate trade marks for all other purposes.
- Section 45 deals with the procedure for registration of assignment and transmission and provides that where the validity of an assignment is in dispute between the parties, the Registrar may refuse to register the assignment or transmission unless the rights of parties are determined by the competent court.

REMOVAL OF TRADE MARK FOR NON-USE

Question : 11

Sunrise Enterprises registered its trademark but failed to use it for a continuous period of 5 years. A third party applied for its removal from the Register. Under which provision can the Registrar act?

(3 marks)

Answer :

- Section 47 deals with removal of a trade mark from the register on the ground of non-use and provides that a trade mark which is not used within five years of its registration, becomes liable for removal either completely or in respect of those goods or services for which the mark has not been used.
- The five years period starts from the date on which the trade mark is actually entered on the register.
- However, Section 47(3) protects a mark from being removed from the register on ground of non-use if such non-use is shown to have been due to special circumstances in the trade which may include restriction imposed by any law or regulation on the use of trade mark in India.

COLLECTIVE MARKS

Question : 12

Explain the concept of "Collective Mark" under the law relating to trademarks.

(5 marks)

Answer :

Collective Marks

- Collective Marks means a trades mark distinguish the goods or services of members of an association of person not being a partnership within the meaning of the Indian Partnership Act, 1932 which is the proprietor of the mark from those of others.
- Sections 61 to 68 contain provisions relating to the registration of Collective trade-marks.
- These sections provide for registration of a collective mark which belongs to a group or association of persons and the use thereof is reserved for members of the group or association of persons.
- Collective marks serve to distinguish characteristic features of the products or services offered by those enterprises.
- It may be owned by an association which may not use the collective mark but whose members may use the same.
- The association ensures compliance of certain quality standards by its members, who may use the collective mark if they comply with the prescribed requirements concerning its use.
- The primary function of a collective mark is to indicate a trade connection with the Association or Organisation.

TRADE MARK AGENT

Question : 13 (June 2025)

Who is "Trademark Agent"? State the qualifications for registration of trademark agent under the law relating to trademarks.

(5 marks)

Answer :

Trade Mark Agent

Section 145 of the Trade Marks Act, 1999 deals with agents and provide that where, by or under the Trade Marks Act, any act, other than the making of an affidavit, is required to be done before the Registrar by any person, the act may, subject to the rules made in this behalf, be done instead of by that person himself, by a person duly authorised in the prescribed manner, who is

- (a) a legal practitioner, or
- (b) a person registered in the prescribed manner as a trade marks agent, or
- (c) a person in the sole and regular employment of the principal.

Qualifications for Registration

Rule 144 of the Trade Marks Rule, 2017 states that subject to the provisions of Rule 145, a person shall be qualified to be registered as a trademark's agent if he

- (i) is a citizen of India,
- (ii) is not less than 21 years of age;
- (iii) is a graduate of any university in India or possesses an equivalent qualification and has passed the examination prescribed in rule 148 or is an Advocate within the meaning of the Advocates Act, 1961 or is a member of the Institute of Company Secretaries of India;
- (iv) is considered by the Registrar as a fit and proper person to be registered as a trademark agent.

UNIQUE ACADEMY FOR COMMERCE

CHAPTER : 18 LAW RELATING TO COPYRIGHT

COPYRIGHT

Question : 1

Define Copyright under the Copyright Act, 1957. State the types of works protected under it.

(3 marks)

Answer :

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

Section 13(1) of the Act provides that copyright shall subsist throughout India in the following classes of works, that is to say,-

- (a) original literary, dramatic, musical and artistic works;
- (b) cinematograph films; and
- (c) sound recording.

TERM OF COPYRIGHT

Question : 2

A renowned photographer publishes a photograph anonymously. After 10 years, his identity is revealed. Explain the term of copyright in this case.

(3 marks)

Answer :

Term of Copyright in Anonymous and Pseudonymous Works

- In the case of literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the work is first published.
- Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until sixty years from the beginning of the calendar year next following the year in which the author dies.

ASSIGNMENT OF COPYRIGHT

Question : 3

Video Master was assigned the video rights of a popular cinematograph film by Nishi Production. Subsequently, Nishi Production granted the satellite broadcasting rights of the same film to a third party. Video Master challenged this act, alleging that the assignment of video rights inherently included the right to satellite broadcast, and therefore, Nishi Production had no authority to assign the same to another party. Nishi Production contended that satellite broadcast rights are distinct from video rights and were never assigned to Video Master.

In light of the provisions of the Copyright Act, 1957, discuss whether the assignment of video rights would include the right of satellite broadcast as well.

(5 marks)

Answer :

Provision of Law:

- Section 18 of the Copyright Act provides that the owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof.
- However, in case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.
- No such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work.
- However, the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copy right society for collection and distribution and any agreement to contrary shall be void.

- The author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.
 - It may be noted that assignee in respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.
 - In **Video Master vs. Nishi Production 1998(3) Bom. CR 782**, judgement dated 21 October, 1997, Hon'ble Bombay High Court considered the issue whether assignment of video rights would include the right of satellite broadcast as well.
 - The Court agreed with the defendant's arguments that there were several public communication channels, including video TV, satellite broadcasting, and terrestrial television broadcasting.
 - The film's owner owned independent copyright in each of those formats, and he could assign it to various people.
- As a result, the video copyright granted to the plaintiff would exclude the satellite broadcast copyright of the film, which was a separate entitlement of the owner of the film.

MODE OF ASSIGNMENT

Question : 4 (Dec 2023)

Manish assigned the copyright of his book to his niece Sujata in 2020. In 2022, due to some misunderstanding between them, Manish wants to revoke the assignment. Sujata contents that she has not made any fault and that she had helped a lot and there is no ground for revocation of assignment. Discuss.

Answer :

Provision of Law:

- Section 19A of the Copyright Act, 1957 deals with disputes with respect to assignment of Copyright. It provides that:
- If an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Commercial Court may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.
- However, the Appellate Board will not pass order to revoke the assignment unless the terms of the assignment are harsh to the assigner.
- Provided also that, no order of revocation of assignment under this sub-section, shall be made within a period of five years from the date of such assignment.

Conclusion/Analysis:

- Thus, Manish can successfully revoke the licence only after 5 years of the assignment if he shows to the Appellate Board that the terms of the assignment are harsh to him.
- Hence, Manish cannot revoke the assignment in 2022 if he has made assignment in 2020.

Question : 5 (Dec 2024)

Rohit has authored a book titled "A Concise History of Jaipur", and the manuscript was given to Varun for printing. A dispute arose among the two as Rohan contended that Varun had no right to publish the book as there was no assignment of the copyright. On the other hand, Varun argued that there was an oral agreement in which Rohit assigned the copyright in exchange for the printing expenses that entitled him to publish it. In reality, Rohit did not give a written or oral copyright assignment in favour of Varun to publish the books.

Based on the above, answer the following questions with relevant provisions of the Copyright Act, 1957.

- (i) Do you think the requirements for the assignment of copyright were fulfilled?
 - (ii) In case of assignment of copyright to Varun, when will it be deemed to have lapsed?
 - (iii) What rights can Rohit claim if the work is utilised in any other form?
 - (iv) When can the court revoke the assignment of copyright if granted to Varun?
 - (v) What will the Court do if it receives a complaint regarding this assignment of copyright?
- (2 marks each)

Answer (i)

- Section 19 of the Copyright Act, 1957 provides that an assignment of the copyright in any work should be in writing signed by the assignor or by his duly authorised agent.
 - The assignment of copyright in any work required to identify such work, and also specify the rights assigned; the duration; territorial extent of such assignment; the amount of royalty and any other consideration payable to the author or his legal heirs during the currency of the assignment and the assignment subject to revision, extension or termination on terms mutually agreed upon by the parties.
- In view of the above provision the requirement of copyright were not fulfilled.

Answer (ii)

- According to Section 19(4) of the Copyright Act, 1957, where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.
- Section 19(5) of the Copyright Act, 1957 provides that if the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

Answer (iii)

- The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member is void.
 - The Assignment of copyright in any work to make a cinematograph film does not affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilization of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.
- Rohit can claim his rights if the work is utilised in the aforesaid form.

Answer (iv)

Section 19A (1) of the Copyright Act, 1957 provides that if an assignee fails to make sufficient exercise of the rights assigned to him, and such failure is not attributable to any act or omission of the assignor, then, the Commercial Court may, on receipt of a complaint from the assignor and after holding such inquiry as it may deem necessary, revoke such assignment.

Answer (v)

- According to Section 19A (2) of the Copyright Act, 1957, If any dispute arises with respect to the assignment of any copyright, the Commercial Court may, on receipt of a complaint from the aggrieved party and after holding such inquiry as it considers necessary, pass such order as it may deem fit including an order for the recovery of any royalty payable:
- Provided that the Commercial Court shall not pass any order under this sub-section to revoke the assignment unless it is satisfied that the terms of assignment are harsh to the assignor in case the assignor is also the author:

TERMINATION OF LICENCE

Question : 6 (June 2025)

When may a license be terminated, granted under the Copyright Act, 1957?

(5 marks)

Answer :

Termination of Licence

Section 32B of the Copyright Act, 1957 deals with termination of licences and provides that if at any time after the granting of a licence, the owner of the copyright in the work or any person authorised by him publishes a translation of such work in the same language and which is substantially the same in content at a price reasonably related to the price normally charged in India for the translation of works of the same standard on the same or similar subject, the licence so granted shall be terminated.

However, such termination shall take effect only after the expiry of a period of three months from the date of service of a notice in the prescribed manner on the person holding such licence by the owner of the right of translation intimating the publication of the translation.

BROADCAST REPRODUCTION RIGHT

Question : 7 (Dec 2023)

Explain the broadcast reproduction rights under the provisions of the Copyright Act, 1957.

(5 marks)

Answer :

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

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

As per Section 37(3) of the Act during the continuance of a broadcast reproduction right in relation to the broadcast or any substantial part thereof

- a) re-broadcasts the broadcast; or
- b) causes the broadcast to be heard or seen by the public on payment of any charges; or

- c) makes any sound recording or visual recording of the broadcast; or
- d) makes any reproduction of such sound recording or visual recording where such initial recording was done without licence or, where it was licensed, for any purpose not envisaged by such licence; or
- e) sells or gives on commercial rental or offer for sale or for such rental, any such sound recording or visual recording referred to in clause (c) or clause (d).

REGISTRATION OF COPYRIGHT

Question : 8 (June 2024)

“The Registrar of Copyrights shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908”. Elaborate the statement in context with the Copyright Act, 1957.

(5 marks)

Answer :

As per Section 74 of the Copyright Act, 1957, the Registrar of Copyrights shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning any public record or copy thereof from any court or office;
- (f) any other matter which may be prescribed.

INFRINGEMENT OF COPYRIGHT

Question : 9 (Dec 2023)

Do the following acts constitute infringement of copyright under the Copyright Act, 1957:

- (i) Prof. Ajay recited in public an extract from a poem by Rabindranath Tagore.
- (ii) ABC Publisher published a compilation of speeches of Atal Bihari Vajpayee, former Prime Minister, delivered in public without permission.

(iii) A newspaper publishes a copy of masterpiece painting of Ganesh while carrying a story on his death.

(iv) A book is not available in India. A librarian makes 10 copies of the book for the use of the Public library.

(v) A magazine reproduces an article on a political topic by Kuldeep Nayar.

(5 marks)

Answer :

Keeping in view provisions of Section 52 and other provisions of the Copyright Act,

1957 answer to given as follows: -

(i) the reading or recitation in public of reasonable extracts from a published literary or dramatic work do not amount to infringement of Copyright.

- Thus, Prof. Ajay can recite in public an extract from a poem by Rabindranath Tagore.

(ii) Using the speech of former Prime Minister privately or reporting in newspaper or Magazine or television as news will not amount to infringement of copyright. But publishing a compilation of speeches of former Prime Minister to mass public without permission will amount to infringement of copyright.

(iii) A fair dealing with any work for the purposes of reporting of current events and current affairs will not amount to infringement of copyright.

- Thus, a newspaper can publish a copy of masterpiece painting of Ganesh with a story on his death.

(iv) Making of not more than 3 copies of a book by or under the direction of the person in charge of a non-commercial public library for the use of the library if such book is not available for sale in India will not amount to infringement of copyright.

- In given case librarian has made 10 copies; hence it amounts to infringement of Copyright.

(v) The reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics will not amount to infringement of copyright. However, if the author of such article has expressly reserved to himself the right of reproduction, then reproduction without his permission will amount to infringement of copyright.

- Thus, if magazine reproduces the article of Kuldeep Nayar on political topic without his permission who has reserved the right of reproduction to himself expressly, it amounts to

infringement of copyright. However, if Kuldeep Nayar has not reserved such right expressly then it will not amount to infringement.

Question : 10 (June 2024)

Francis is a famous lyricist in India & world-wide. Sona, another lyricist copied a very catching phrase from his song, there is likely to be infringement even if the phrase is very short. Mention the commonly known acts which are termed as infringement of copyright. Also discuss the penalties for infringement.

(5 marks)

Answer :

The following are some of the commonly known acts involving infringement of copyright:

- Making infringing copies for sale or hire or selling or letting them for hire;
 - Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
 - Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright;
 - Public exhibition of infringing copies by way of trade; and
 - Importation of infringing copies into India.
- i. Section 63 deals with offences of infringement of copyright or other rights conferred by the Copyright Act, 1957.
 - ii. This section makes, any person who knowingly infringes or abates the infringement of the copyright in a work or any other right conferred under the Act (except for resale share right in original copies), liable to imprisonment for a minimum period of six months which may extend to three years and with minimum fine of fifty thousand rupees which may extend upto rupees two lakhs.
 - iii. However, the court has been empowered to impose a sentence less than six months or a fine less than fifty thousand, if the infringement had not been made for gain in the course of trade or business. In such situations, the section requires the courts to mention adequate and special reasons in the judgement.
 - iv. According to section 63, any person who knowingly infringes or even abets the infringement of the copyright in a work or any other rights conferred by the Copyright Act except the right to resale share in original copies commits the offence of copyright.

POWER OF POLICE TO SEIZE INFRINGING COPIES

Question : 11 (Dec 2024)

Explain the provisions of 'power of police to seize infringing copies' under Section 64 of the Copyright Act, 1957.

(5 marks)

Answer :

- Section 64 of the Copyright Act, 1957 empowers any Police Officer, not below the rank of a sub-inspector, to seize without warrant, all copies of the work and all plates used for the purpose of making infringing copies of the work, wherever they are found.
- However such Police Officer has to satisfy himself before such seizure, that an offence under Section 63 in respect of the infringement of copyright in any work has been, is being or is likely to be committed.
- Further, such Police Officer has been put under obligation to produce before the Magistrate, as soon as practicable, all copies and plates so seized.
- Any interested person may make an application to Magistrate, within fifteen days of such seizure, for restoring to him such copies and plates.
- Section 65 makes liable, any person, who knowingly makes or has in his possession, any plate for the purpose of making infringing copies of any work in which copyright subsists, to imprisonment which may extend to two years and also fine.

CHAPTER : 19 LAW RELATING TO GEOGRAPHICAL INDICATIONS OF GOODS

GEOGRAPHICAL INDICATIONS

Question : 1

What is a Geographical Indication?

(3 marks)

Answer :

Geographical Indication

- It is an indication.
- It originates from a definite geographical territory.
- It is used to identify agricultural, natural or manufactured goods.
- The manufactured goods should be produced or processed or prepared in that territory.
- It should have a special quality or reputation or other characteristics.

CASE OF KANCHEEPURAM HANDLOOM SILK WEAVERS CO-OPERATIVE SOCIETY LTD. V/S UNION OF INDIA

Question : 2 (June 2025)

Kancheepuram Sarees, a famous product made in the Kancheepuram region of Tamil Nadu, was registered under the Geographical Indication of Goods (Registration and Protection) Act, 1999. The Kancheepuram Handloom Silk Weavers Co-operative Society Limited was constituted to register "Kancheepuram G.I" by traditional authentic weavers residing in Kancheepuram region. The registration of a similar society was also made by the non-traditional producers which used the same G.I. against which the dispute arose. The Kancheepuram Society of Traditional Weavers filed a petition challenging the registration of a similar G.I. for the product, claiming that it would result in the misuse and exploitation of their traditional craft.

The petitioners argued that only the authentic weavers from the Kancheepuram region should be entitled to use the G.I. for Kancheepuram Sarees and that "Broader definition could result in the dilution of the uniqueness and quality of the product. Therefore, the G.I. of Kancheepuram Sarees should be exclusive to the traditional weavers, of the Kancheepuram region and the G.I. Act should

be interpreted in a way that protected the authenticity and tradition of the product. Any registration extending the use of G.I. beyond this would lead to the exploitation of their craft. Union of India, the respondent, argued that G.I. Act is intended to protect the geographical origin of a product and does not restrict registration based on the type of producer. It should be extended to all the producers traditional as well as non-traditional weaver communities which produce authentic “Kancheepuram Sarees”.

Considering the above case study, answer the following questions in the light of Geographical Indication of Goods (Registration and Protection) Act, 1999.

(i) What is meant by Geographical Indication?

(ii) What are the benefits of Geographical Indication registration?

(iii) Is there any difference between Geographical Indication and Trade Mark?

(iv) When may a registered Geographical Indication be treated as infringed?

(v) Is the contention of the Union of India, the respondent, correct? Explain.

(2 marks each)

Answer (i)

- As per Section 2(e) of the Geographical Indication of Goods (Registration and Protection) Act, 1999, Geographical Indication in relation to goods means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.
- It may be noted that any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be.

Answer (ii)

Benefit of registration of Geographical Indications are as under:

- It confers legal protection to Geographical Indications in India.
- Prevents unauthorised use of a Registered Geographical Indication by others.
- It provides legal protection to Indian Geographical Indications which in turn boost exports.
- It promotes economic prosperity of producers of goods produced in a geographical territory.

Answer (iii)

A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises. Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

Answer (iv)

The Geographical Indication may be treated to be infringed in the following situations:

- When an unauthorised user uses a geographical indication that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner which mislead the public as to the geographical origin of such goods.
- When the use of geographical indication result in an unfair competition including passing off in respect of registered geographical indication.
- When the use of another geographical indication results in false representation to the public that goods originate in a territory in respect of which a registered geographical indication relates.

Answer (v)

- The Union of India, in defence, contended that the of the Geographical Indication of Goods (Registration and Protection) Act, 1999, is intended to protect the geographical origin of a product and does not restrict registration based on the type of producer.
- The protection under the GI Act should extend to all producers within the region, including those who do not necessarily belong to traditional weaver communities but still produce authentic Kancheepuram sarees, is correct.
- Therefore, the registration to all producers within the region, including both traditional and non-traditional producers, as long as they could show that their products met the standards set for Kancheepuram Sarees.
- The Geographical Indication of Goods (Registration and Protection) Act, 1999 seeks to protect the geographical origin of a product and that broad protection would ensure that the quality and reputation of the product were maintained, without limiting the use of the Geographical Indication to a specific group of producers.

PROHIBITION OF REGISTRATION OF CERTAIN GEOGRAPHICAL INDICATIONS

Question : 3 (June 2024)

“Section 9 of the Geographical Indications of Goods (Registration and Protection Act, 1999 prohibits registration of certain geographical indications.” Discuss.

(5 marks)

Answer :

Section 9 of the Act prohibits registration of certain geographical indications. They are as follows:

- (a) the use of which would be likely to deceive or cause confusion; or
- (b) the use of which would be contrary to any law for the time being in force; or
- (c) which comprises or contains scandalous or obscene matter; or
- (d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India; or
- (e) which would otherwise be disentitled to protection in a court; or
- (f) which are determined to be generic names or indications of goods and are, therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country; or
- (g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be;

- shall not be registered as a geographical indication.
- It may be noted that “generic names or indications”, in relation to goods, means the name of a goods which, although relates to the place or the region where the goods was originally produced or manufactured has lost its original meaning and has become the common name of such goods and serves as a designation for or indication of the kind, nature, type or other property or characteristic of the goods.
- However, in determining whether the name has become generic, account shall be taken of all factors including the existing situation in the region or place in which the name originates and the area of consumption of the goods.

REGISTRATION OF GI

Question : 4

Explain the procedure for registration of a Geographical Indication in India.

(5 marks)

Answer :

Step 1: Filing of application Please check whether the indication comes within the ambit of the definition of a Geographical Indication under section 2(1)(e) of the Act.

The association of persons or producers or any organization or authority should represent the interest of producers of the concerned goods and should file an affidavit how the applicant claims to represent their interest.

- Application must be made in triplicate.
- The application shall be signed by the applicant or his agent and must be accompanied by a statement of case.
- Details of the special characteristics and how those standards are maintained.
- Three certified copies of the map of the region to which the GI relates.
- Details of the inspection structure if any to regulate the use of the GI in the territory to which it relates.
- Give details of all the applicant together with address. If there is a large number of producers a collective reference to all the producers of the goods may be made in the application and the GI. If registered will be indicated accordingly in the register.

Step 2 & 3: Preliminary Scrutiny and Examination

- The Examiner will scrutinize the application for any deficiencies.
- The applicant should within one month of the communication in this regard, remedy the same.
- The content of statement of case is assessed by a consultative group of experts will versed on the subject.
- The will ascertain the correctness of particulars furnished.
- Thereafter an Examination Report would be issued.

Step 4: Show Cause Notice

- If the Registrar has any objection to the application, he will communicate such objection.
- The applicant must respond within two months or apply for a hearing.
- The decision will be duly communicated. If the applicant wishes to appeal, he may within one month make a request.
- The Registrar is also empowered to withdraw an application, if it is accepted in error, after giving an opportunity of being heard.

Step 5: Publication in the Geographical Indications Journal

Every application, within three months of acceptance shall be published in the Geographical Indications Journal.

Step 6: Opposition to Registration

- Any person can file a notice of opposition within three months (extendable by another month on request which has to be filed before three months) opposing the GI application published in the Journal.
- The registrar shall serve a copy of the notice on the applicant.

- Within two months the applicant shall send a copy of the counter statement.
- If he does not do this he shall be deemed to have abandoned his application. Where the counter statement has been filed, the registrar shall serve a copy on the person giving the notice of opposition.
- Thereafter, both sides will lead their respective evidences by way of affidavit and supporting documents.
- A date for hearing of the case will be fixed thereafter.

Step 7: Registration

- Where an application for a GI has been accepted, the registrar shall register the geographical indication. If registered the date of filing of the application shall be deemed to be the date of registration.
- The registrar shall issue to the applicant a certificate with the seal of the Geographical indications registry.

Step 8: Renewal A registered GI shall be valid for 10 years and can be renewed on payment of renewal fee.

Step 9: Additional Protection to Notified Goods Additional protection for notified goods is provided in the Act.

Step 10: Appeal Any person aggrieved by an order or decision may prefer an appeal

Question : 5

How long the registration of Geographical Indication is valid?

(4 marks)

Answer :

- Section 18 of the Act deals with duration, renewal, removal and restoration of registration of Geographical Indication.
- The registration of a geographical indication shall be for a period of ten years, but may be renewed from time to time in accordance with the provisions of this section.
- The registration of an authorised user shall be for a period of ten years or for the period till the date on which the registration of the geographical indication in respect of which the authorized user is registered expires, whichever is earlier.
- The Registrar shall, on application made in the prescribed manner, by the registered proprietor or by the authorised user and within the prescribed period and subject to the payment of the prescribed fee, renew the registration of the geographical indication or authorised user, as the

case may be, for a period of ten years from the date of expiration of the original registration or of the last renewal of registration, as the case may be.

Question : 6

A company started selling sparkling wine in India using the name “Champagne”, though the product was not produced in the Champagne region of France. Examine whether this constitutes infringement under the Geographical Indications of Goods (Registration and Protection) Act, 1999.

(5 marks)

Answer :

Provision of Law:

As per section 22 a registered geographical indication is infringed by a person who, not being an authorized user thereof uses such geographical indication by any means in the designations or presentation of goods that indicates or suggests that such goods originate in a geographical area other than the true place of origin of such goods in a manner goods; or which misleads the persons as to the geographical origin of such goods; or uses any geographical indication in such manner which constitutes an act of unfair competition including passing off in respect of registered geographical indication. It may be noted that “act of unfair competition” means any act of competition contrary to honest practices in industrial or commercial matters.

The following acts shall be deemed to be acts of unfair competition, namely:

- all acts of such a nature as to create confusion by any means whatsoever with the establishment, the goods or the industrial or commercial activities, of a competitor;
- false allegations in the course of trade of such a nature as to discredit the establishment, the goods or the industrial or commercial activities, of a competitor;
- geographical indications, the use of which in the course of trade is liable to mislead the persons as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

A registered geographical indication is infringed by a person who, not being an authorised user thereof uses another geographical indication to the goods which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the persons that the goods originate in the territory, region or locality in respect of which such registered geographical indication relates.

Conclusion/Analysis:

Use of the name “Champagne” for wine not originating from the Champagne region amounts to infringement under Section 22 of the GI Act, 1999, as it misleads consumers and constitutes false representation.

Question : 7

An association registered the GI “Nagpur Orange”. Later, it attempted to assign the GI rights to a private company for commercial exploitation. Can such assignment be made under the Geographical Indications of Goods (Registration and Protection) Act, 1999? Give reasons.

(3 marks)

Answer :

Provision of Law:

- Section 24 of the Act prohibits assignment or transmission of geographical indication. It states that any right to a registered geographical indication shall not be the subject matter of assignment, transmission, licensing, pledge, mortgage or any such other agreement.
- However, on the death of an authorised user his right in a registered geographical indication shall devolve on his successor in title under the law for the time being in force.

Conclusion/Analysis:

Assignment or transfer of a registered Geographical Indication is prohibited under Section 24 of the GI Act, 1999. Hence, the attempt to assign “Nagpur Orange” to a private company is invalid in law.

Question : 8

ABC Ltd. applied to register “Banaras Silk” as a trademark for its textile products. The GI “Banaras Brocades and Sarees” was already registered under the GI Act. Decide whether the trademark application can be granted in the light of the Geographical Indications of Goods (Registration and Protection) Act, 1999

(3 marks)

Answer :

Provision of Law:

- Section 25 of the Act provides that the Registrar of Trade Marks shall, suo-motu or at the request of an interested party, refuse or invalidate the registration of a trade mark which contains or consists of a geographical indication with respect to the goods or class or classes of

goods not originating in the territory of a country, or a region or locality in that territory which such geographical indication indicates, if use of such geographical indications in the trade mark for such goods, is of such a nature as to confuse or mislead the persons as to the true place of origin of such goods or class or classes of goods.

- A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.
- Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

Conclusion/Analysis:

Since “Banaras Brocades and Sarees” is already registered as a GI, registration of “Banaras Silk” as a trademark would be refused under Section 25 of the GI Act, 1999, as GI cannot be registered as a trademark if it misleads about origin.

CASE OF TEA BOARD, INDIA VS. ITC LIMITED

Question : 9 (June 2024)

India Tea Board owns the famous Geographical Indication “Darjeeling” and the logo of the woman holding the tea leaves, as well as the trademark “Darjeeling” under the Trademarks Act, regarding “tea”.

ITC, Limited has used the “Darjeeling Lounge” as the name of its top lounge at its Kolkata hotel, ITC Sonar.

Tea Board of India filed a Lawsuit against ITC Ltd. that by using the word “Darjeeling” in one of its hotel resorts in Kolkata which is a breach of its landmark as well as well as a certificate mark as tea Board is the registered owner of the “Darjeeling” sign.

Tea Board of India moved an interlocutory application for temporary injunction for restraining the ITC Ltd. from using or conducting or making its business at the hotel by the name “Darjeeling Lounge”. Application stated that usage of the word “Darjeeling” in the name and logo by defendants is passing off or attempting to pass off its business or services so as to discredit the fame of Darjeeling tea as a geographical indication and/or to mislead persons.

In light of the above, answer the following questions in the light of the Geographical Indications of Goods (Registration and Protection) Act, 1999:

- (i) Is the contention of the India Tea Board, that ITC Ltd. is engaging in Passing- off, correct? Explain.
- (ii) How a Geographical Indication is different from Trade Mark?
- (iii) Can the Tea Board of India file a complaint against ‘X’ for selling tea varieties at the Railway station under the name ‘Darjeeling Tea Stall’?

(iv) What if ITC Limited has been operating and using the 'Darjeeling Lounge' long before the enactment of the Act?

(v) What is punishment for applying false Geographical Indications?

(2 marks each)

Answer :

Answer (i)

Provision of Law:

- The word "Darjeeling" - as precious to tea as it may be as champagne to sparkling wines of that province in France - cannot be exclusively claimed by the plaintiff by virtue of its registration as a geographical indication or as a certification trade mark.
- Even for a case of passing-off, the use of "Darjeeling" by a person other than the plaintiff can be complained of if the word or the geographical indication has any nexus with the product with which it is exclusively associated upon the registration. It is not necessary to consider whether a "Darjeeling Tea Stall" selling only hot cups of tea can entitle the plaintiff to carry a complaint in respect thereof or a "Darjeeling Tea House" selling all varieties of packaged tea can be said to be in derogation of the plaintiff's rights.
- The defendant's "Darjeeling Lounge" is an exclusive area within the confines of its hotel which is accessible only to its high-end customers. The lounge is a place where such customers and accompanying visitors may frequent, and even sip Darjeeling tea or any other beverage or drink, but there is scarcely any likelihood of deception or confusion in the lounge being named "Darjeeling" for the plaintiff to be granted to any order that it seeks.

Conclusion/Analysis:

In light of above the contention of India Tea Board that the ITC Ltd. is using Passing-off, is not correct.

Answer (ii)

Difference between Geographical Indication & a Trade Mark:

- A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.
- Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

Answer (iii)

- It is not necessary to consider whether a “Darjeeling Tea Stall” selling only hot cups of tea can entitle the plaintiff to carry a complaint in respect thereof or a “Darjeeling Tea House” selling all varieties of packaged tea can be said to be in derogation of the plaintiff’s rights.
- The defendant’s “Darjeeling Lounge” is an exclusive area within the confines of its hotel which is accessible only to its high-end customers.
- The lounge is a place where such customers and accompanying visitors may frequent, and even sip Darjeeling tea or any other beverage or drink, but there is scarcely any likelihood of deception or confusion in the lounge being named “Darjeeling” for the plaintiff to be granted to any order that it seeks.
- Hence, “Darjeeling Tea Stall” can sell all/multiple tea varieties and it cannot be said to be in the derogation of the plaintiff’s rights.

Answer (iv)

- ITC Limited running and using the “Darjeeling Lounge” before the enactment of Geographical Indications of Goods (Registration and Protection) Act, 1999, as to the case of dilution, the name “Darjeeling” has been extensively used in many trading and commercial circles for decades before the GI Act was enacted.
- In a case of dilution by blurring, it is the uniqueness of a mark which is protected even in a case where there is no likelihood of confusion. But the word “Darjeeling” has been and continues to be so widely used as a business name or for like purpose for so long that the plaintiff’s recent plea would, prima facie, not entitle them to enjoy the kind of exclusivity that they asserts/claim.

Answer (v)

According to Section 39 of the Geographical Indication of Goods (Registration and Protection) Act, 1999, any person who apply false Geographical Indications shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. It may be noted that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

PENALTY FOR APPLYING FALSE GEOGRAPHICAL INDICATIONS

Question : 10 (Dec 2023)

Explain the Provision 39 of Geographic indications relating to penalty for false geographical indications.

(5 marks)

Answer :

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

- (a) falsifies any geographical indication; or
- (b) falsely applies to goods any geographical indication; or
- (c) makes, disposes of, or has in his possession, any die, block, machine, plate or other instrument for the purpose of falsifying or of being used for falsifying, a geographical indication; or
- (d) applies to any goods to which an indication of the country or place in which they were made or produced or the name and the address of the manufacturer or person for whom the goods are manufactured is required to be applied under section 71, a false indication of such country, place, name or address; or
- (e) tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied under section 71; or
- (f) causes any of the things above-mentioned in this section to be done, shall, unless he proves that he acted, without intent to defraud,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. It may be noted that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

CHAPTER : 20 LAW RELATING TO DESIGNS

DESIGN

Question : 1

What is meant by 'Design' under the Designs Act, 2000?

(3 marks)

Answer :

As per section 2(d) Design means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, as define in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957.

PROHIBITION OF REGISTRATION OF CERTAIN REGISTRATION

Question : 2 (Dec 2023)

Who is the proprietor of a design and state the prohibition in registration of certain design?

(5 marks)

Answer :

Proprietor of a New or Original Design

According to Section 2(j) of the Designs Act, 2000 proprietor of a New or Original Design means:

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

Prohibition of Registration of Certain Designs

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

- is not new or original; or
- has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
- is not significantly distinguishable from known designs or combination of known designs; or
- comprises or contains scandalous or obscene matter, shall not be registered.

CASE OF M/S BRIGHTO AUTO INDUSTRIES VS. SHRI RAJ CHAWLA

Question : 3 (Dec 2024)

'Heavy Duty Company' manufactures 'Pick-N-Carry Hydraulic Self Mobile Cranes' developed and registered under the Designs Act, 2000. They filed a suit for permanent injunction and infringement against 'Robust Mechanicals Company', who began manufacturing and selling mobile cranes that were visually identical to the original design of 'Heavy Duty Company' claiming that their machine is "new or original".

(i) With the support of a case law, discuss the requirements of for a design to be considered significantly "new or original".

(ii) What is the Court's duty while determining if a design is "new or original"?

(3+2=5 marks)

Answer (i)

- Hon'ble Supreme Court of India held that expression new or original appearing in Section 4 means that the design which has been registered has not been published anywhere or it has

been made known to the public and that it had been invented for the first time or it has not been reproduced by anyone.

- In the matter of *M/s Brighto Auto Industries vs. Shri Raj Chawla* (ILR 1978 (I) Delhi) it was held by the Honorable Court that new is taken generally to mean as different to what has gone before and original as something originating from the author.
- In the matter of novelty the eye has to be the ultimate arbiter and the determination has to rest on the general ocular impression.
- To secure recognition for its newness or originality it is imperative that a design identical with or even materially similar to the relevant design should not have been published or registered previously.
- A slight trivial or infinitesimal variation from a pre-existing design will not qualify it for registration taking into account the nature involved the change introduced should be substantial.
- It is not necessary to justify registration that the whole of the design should be new, the newness may be confined to only a part of it but that part must be a significant one and it should be potent enough to impart to the whole design a distinct identity, unless the registration sought for the said part alone.

Answer (ii)

It is the duty of the Court to take special care that no design shall be counted new or original, unless it is distinct from what previously existed by something essentially new or original which is different from ordinary trade variants, which may have lost, been common matters of test or choice in that trade.

COPYRIGHT ON REGISTRATION

Question : 4

Explain the duration of copyright in a registered design and provisions for its restoration in case of lapse, under the Designs Act, 2000.

(2 marks)

Answer :

- Section 11 provides that when a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration.

- However, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of ten years.

REGISTRATION OF DESIGN

Question : 5 (June 2025)

ES Ltd., a telecommunications company, is in the design phase of a new device that incorporates a cell phone with Internet capabilities. There is a concern that the new device may have nearly the same design as their competitor's product. What requirements ES Ltd. should comply with before applying for registration of the design of the new device under the Designs Act, 2000?

(5 marks)

Answer :

ES Ltd. should comply with the following essential requirements for the registration of 'Design' under the Design Act:

- The design should be new or original, not previously published or used in any country before the date of application for registration. The novelty may reside in the application of a known shape or pattern to new subject matter.
- The design should relate to features of shape, configuration, pattern or ornamentation applied or applicable to an article.
- The design should be applied or applicable to any article by any industrial process.
- The features of the design in the finished article should appeal to and are judged solely by the eye. This implies that the design must appear and should be visible on the finished article, for which it is meant.
- Any mode or principle of construction or operation or anything which is in substance a mere mechanical device, would not be a registrable design. For instance, a key having its novelty only in the shape of its corrugation or bent at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act.
- The design should not include any Trade Mark or property mark or artistic works as defined under the Copyright Act, 1957.

Question : 6 (June 2024)

What is the duration of the registration of a design? Can it be extended? How can the Registration of a Design be cancelled?

(5 marks)

Answer :

Duration of the registration of a design

The duration of the registration of a design is initially ten years from the date of registration, but in cases where claim to priority has been allowed the duration is ten years from the priority date. This initial period of registration may be extended by further period of 5 years on an application made to the Controller before the expiry of the said initial period of ten years.

Cancellation of Registration

According to Section 19 of the Design Act 2000, the registration of a design may be cancelled at any time after the registration of design on a petition for cancellation in prescribed form with fee to the Controller of Designs on the following grounds:

- That the design has been previously registered in India; or
- That it has been published in India or elsewhere prior to date of registration; or
- The design is not new or original; or
- Design is not registrable; or
- It is not a design under Clause (d) of Section 2.

PIRACY OF A DESIGN

Question : 7

What is piracy of a Design?

(5 marks)

Answer :

- Piracy of a design means the application of a design or its imitation to any article belonging to class of articles in which the design has been registered for the purpose of sale or importation of such articles without the written consent of the registered proprietor. Publishing such articles or exposing terms for sale with knowledge of the unauthorized application of the design to them also involves piracy of the design.
- During the existence of copyright in any design it shall not be lawful for any person, without the license or written consent of the registered proprietor:

- i. for the purpose of sale to apply or cause to be applied, to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, or to do anything with a view to enable the design to be so applied;
- ii. to import such article for the purposes of sale;
- iii. to publish or expose or cause to be published or exposed for sale, that article.

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

Question : 8

An exhibitor displayed a new table-lamp design in an international exhibition held in India without applying for registration. Six months later, he filed an application for registration of the design. Will the application be valid? State the legal position under the Designs Act, 2000.

(3 marks)

Answer :

Provision of Law:

The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the publication of a description of the design, during or after the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person else-where during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof.

It may be noted that-

- (a) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and
- (b) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.

Conclusion/Analysis:

The application will not be valid because once a design is published or exhibited in India or any other country prior to its registration, it loses the essential requirement of novelty and originality under

Section 4 of the Designs Act, 2000. Displaying the lamp design in an international exhibition without prior registration amounts to publication, and therefore, the later application (after 6 months) is liable to be rejected.

APPEAL

Question : 9

The Controller of Designs refused registration of a textile pattern submitted by MNO Ltd. The company wants to challenge the order. What is the remedy available to MNO Ltd.? Mention the authority and limitation period for appeal.

(5 marks)

Answer :

An appeal lies to the High Court against an order passed by the Controller under the following provisions:

- i. an order under Section 5, refusing registration of a design;
 - ii. an order under Section 19, passed in a cancellation petition;
 - iii. an order under Section 31, passed in a rectification petition;
 - iv. an order under Section 35, refusing registration on the ground of public order or morality.
- Every appeal shall be made within three months of the date of the order of the Controller. The date of such order is the date on which the order is dispatched.
 - In calculating the said period of three months, the time taken in granting a copy of the order appealed against shall be excluded.
 - The High Court may, if it thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the High Court shall be final.



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