

# **GUIDELINE ANSWERS**

## **EXECUTIVE PROGRAMME**

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**MODULE 1**



**THE INSTITUTE OF  
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**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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

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

**CS Examinations**

December Session

June Session

**Applicability of Amendments to Laws**

upto 31 May of that Calender year

upto 30 November of previous Calender Year

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# JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

## MODULE 1 PAPER 1

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### Question 1

- (a) According to Bentham "every law may be considered in eight different aspects". Discuss.
- (b) 'Article 16 qualifies equality of opportunity in matters of public employment'. However there are certain exceptions to it. Discuss.
- (c) 'No one shall be vexed twice for the same cause'. Explain the principle and the requirements for its application.
- (d) Where the intention of the legislature is not clear in a statute, there are a number of presumptions applied for the interpretation of statutes. Discuss.

(5 marks each)

### Answer 1(a)

Bentham identified that every law may be considered in eight different respects. They are:

1. **Source:** The source of a law is the will of the sovereign, who may conceive laws which he personally issues, or adopt laws previously issued by sovereigns or subordinate authorities, or he may adopt laws to be issued in future by subordinate authorities. Sovereign according to Bentham is any person or assemblage of person to who's will a whole political community is supposed to be in a disposition to pay obedience, and then in preference to the will of any other person.
2. **Subjects:** These may be persons or things. Each of these may be active or passive subjects, i.e., the agent with which an act commences or terminates.
3. **Objects:** The goals of a given law are its objects.
4. **Extent:** Direct extent means that a law covers a portion of land on which acts have their termination; indirect extent refers to the relation of an actor to a thing.
5. **Aspects:** Every law has 'directive' and a 'sanctional' part. The former concerns the aspects of the sovereign will towards an act-situation and the latter concerns the force of a law. The four aspects of the sovereign will are - command, prohibition, non-prohibition and non-command and the whole range of laws are covered under it. These four aspects are related to each other by opposition and concomitancy.
6. **Force:** The motivation to obey a law is generated by the force behind the law.
7. **Remedial appendage:** These are a set of subsidiary laws addressed to the judges through which the judges cure the evil (compensation), stop the evil or prevent future evil.
8. **Expression:** A law, in the ultimate, is an expression of a sovereign's will. The connection with will raises the problem of discovering the will from the expression.

### Answer 1(b)

Article 16(1) of the Constitution of India guarantees to all citizens equality of opportunity in matters relating to employment or appointment of office under the State.

Article 16(2) prohibits discrimination against a citizen on the grounds of religion, race, caste, sex, descent, place of birth or residence. However, there are certain exceptions provided in Article 16(3), 16(4), 16(4A), 16(4B), 16(5) and 16(6). These exceptions are as follows:

- Parliament can make a law that in regard to a class or classes of employment or appointment to an office under the Government of a State or a Union Territory, under any local or other authority within the State or Union Territory, residence within that State or Union Territory prior to such employment or appointment shall be an essential qualification. [Article 16(3)]
- A provision can be made for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. [Article 16(4)]
- Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. [Article 16(4A)]
- Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year. [Article 16(4B)]
- A law shall not be invalid if it provides that the incumbent of an office in connection with the affair of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. [Article 16(5)]
- Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category. [Article 16(6)].

### Answer 1(c)

Section 11 of the Civil Procedure Code, 1908 (the Code) deals with the doctrine of *Res Judicata*. According to the case, *S.B. Temple v. V.V.B. Charyulu*, (1971) 1 SCJ 215, the doctrine underlines the general principle that 'no one shall be twice vexed for the same cause'.

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

It prevents two different decrees on the same subject. Section 11 says that once a res is judicata, it shall not be adjudged again. The principle applies to suits in Section 11 of the Code; but even

where Section 11 does not apply, the principle of res judicata has been applied by Courts for the purpose of giving finality to litigation.

For the applicability of the principle of res judicata embodied in Section 11, the following requirements are necessary:

- (1) The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in later suit. The expression "directly and substantially in issue means an issue alleged by one party and denied or admitted by the other either expressly or by necessary implications (*Lonakutty v. Thomman*, AIR 1976 SC 1645). In the matter of taxation for levy of municipal taxes, there is no question of res judicata as each year's assessment is final for that year and does not govern latter years (*Municipal Corporation v. Madan Mohan*, AIR 1976 43).

A suit for eviction on reasonable requirement was compromised and the tenant was allowed to continue as tenant for the subsequent suit for ejection on the ground of reasonable requirement, it was found that some reasonable requirement had been present during the earlier suit. The second suit was not maintainable.

- (2) The former suit has been decided - former suit means which is decided earlier.
- (3) The said issue has been heard and finally decided.

The issue or the suit itself is heard and finally decided, then it operates as res judicata and not the reasons leading to the decision (*Mysore State E. Board v. Bangalore W.C. & S. Mills*, AIR 1963 SC 1128). However, no res judicata operates when the points could not have been raised in earlier suit. (*Prafulla Chandra v. Surat Roit* AIR 1998 Ori. 41). But when a suit has been decided on merits, and the appeal is dismissed on a preliminary point, it amounts to the appeal being heard and finally decided and the decision operates as res judicata (*Mukunda Jana v. Kanta Mandal*, AIR 1979 NOC 116).

- (4) Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above (*Isher Singh v. Sarwan Singh*, AIR 1965 SC 948).

In short, this principle applies where an issue which has been raised in a subsequent suit was directly and substantially in issue in a former suit between the same parties and was heard and decided finally. Findings incidentally recorded do not operate as res judicata (*Madhvi Amma Bhawani Amma v. Kunjikutty P.M. Pillai*, AIR 2000 SC 2301).

### Answer 1(d)

Where the meaning of the statute is clear there is no need for presumptions. But if the intention of the legislature is not clear, there are a number of presumptions. These are as follows:

- (a) That the words in a statute are used precisely and not loosely.
- (b) That vested rights, i.e., rights which a person possessed at the time the statute was passed, are not taken away without express words, or necessary implication or without compensation.
- (c) That *mens rea*, i.e., guilty mind is required for a criminal act. There is a very strong presumption that a statute creating a criminal offence does not intend to attach liability without a guilty intent. The general rule applicable to criminal cases is "*actus non facit reum nisi mens sit rea*" (The act itself does not constitute guilt unless done with a guilty intent).
- (d) That the state is not affected by a statute unless it is expressly mentioned as being so affected.
- (e) That a statute is not intended to be inconsistent with the principles of International Law. Although the judges cannot declare a statute void as being repugnant to International Law,

yet if two possible alternatives present themselves, the judges will choose that which is not at variance with it.

- (f) That the legislature knows the state of the law.
- (g) That the legislature does not make any alteration in the existing law unless by express enactment.
- (h) That the legislature knows the practice of the executive and the judiciary.
- (i) Legislature confers powers necessary to carry out duties imposed by it.
- (j) That the legislature does not make mistake. The Court will not even alter an obvious one, unless it be to correct faulty language where the intention is clear.
- (jj) The law compels no man to do that which is futile or fruitless.
- (k) Legal fictions may be said to be statements or suppositions which are known, to be untrue, but which are not allowed to be denied in order that some difficulty may be overcome, and substantial justice secured. It is a well settled rule of interpretation that in construing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on which alone the fiction can operate.
- (l) Where powers and duties are inter-connected and it is not possible to separate one from the other in such a way that powers may be delegated while duties are retained and vice versa, the delegation of powers takes with it the duties.
- (m) The doctrine of natural justice is really a doctrine for the interpretation of statutes, under which the Court will presume that the legislature while granting a drastic power must intend that it should be fairly exercised.

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

**Question 2**

- (a) What are the extra judicial remedies available to the plaintiff in an action for tort ?
- (b) Discuss the writ of *quo warranto*.
- (c) What is a decree under the Civil Procedure Code, 1908 ?
- (d) A man was stabbed at the back by a knife and was lying on the floor in a pool of blood. Another person was running away from the scene with his hands full of blood. What kind of presumption one would make from this ? Discuss.

(4 marks each)

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

**Question 2A**

- (i) "Once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it". Discuss.
- (ii) What are the fundamental elements of crime ?
- (iii) What are the essentials of presentation of petition or appeal before the National Company Law Tribunal (NCLT) ?

- (iv) 'The courts in India have developed various formulations to control the exercise of administrative discretion'. Discuss those conditions where the authority is charged with abuse of discretion and judicial review is exercised.

(4 marks each)

### Answer 2(a)

There are two types of remedies available to a person under the Law relating to Torts. These are judicial and extra judicial remedies. The extra judicial remedies are explained as under:

#### Extra judicial remedies

- (a) **Self defence:** It is lawful for any person to use reasonable forces to protect himself, or any other person against any unlawful use of force.
- (b) **Prevention of trespass:** An occupier of land or any person with his authority may use reasonable force to prevent trespassers entering or to eject them but the force should be reasonable for the purpose.
- (c) **Re-entry on land:** A person wrongfully disposed of land may retake possession of land if he can do so in a peaceful and reasonable manner.
- (d) **Re-capture of goods:** It is neither a crime nor a tort for a person entitled to possession of a chattel to take it either peacefully or by the use of a reasonable force from one who has wrongly taken it or wrongfully detained it.
- (e) **Abatement of nuisance:** The occupier of land may lawfully abate (i.e. terminate by his own act), any nuisance injuriously affecting it. Thus, he may cut overhanging branches as spreading roots from his neighbour's trees, but:
- (i) upon giving notice;
  - (ii) by choosing the least mischievous method;
  - (iii) avoiding unnecessary damage.
- (f) **Distress damage feasant:** An occupier may lawfully seize any cattle or any chattel which are unlawfully on his land doing damage there and detain them until compensation is paid for the damage. The right is known as that of distress damage feasant - to distrain things which are doing damage.

### Answer 2(b)

#### Writ of *Quo warranto*

The writ of *quo warranto* enables enquiry into the legality of the claim which a person asserts, to an office or franchise and to oust him from such position if he is a usurper. The holder of the office has to show to the court under what authority he holds the office. It is issued when:

- (i) the office is of public and of a substantive nature,
- (ii) created by statute or by the Constitution itself, and
- (iii) the respondent has asserted his claim to the office. It can be issued even though he has not assumed the charge of the office.

The fundamental basis of the proceeding of *quo warranto* is that the public has an interest to see that an unlawful claimant does not usurp a public office. It is a discretionary remedy which the court may grant or refuse.

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

“Decree” is defined in Section 2(2) of the Civil Procedure Code, 1908(Code) as:

- (i) the formal expression of an adjudication which, so far as regards the Court expressing it;
- (ii) conclusively;
- (iii) determines the rights of the parties;
- (iv) with regard to all or any of the matters in controversy;
- (v) in the suit and may be either preliminary (i.e., when further proceedings have to be taken before disposal of the suit) or final.

The decree shall be deemed to include the rejection of a plaint and the determination of any question within Section 144 (application for restitution) of the Code. But decree does not include:

- (a) any adjudication from which an appeal lies as an appeal from an Order, or
- (b) any order of dismissal for default..

According to the explanation to the definition, a decree may be partly preliminary and partly final. A decree comes into existence as soon as the judgement is pronounced and not on the date when it is sealed and signed. (Order 20 Rule 7)

A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. The preliminary decree is not dependent on the final. On the other hand, final decree is dependent and subordinate to the preliminary decree, and gives effect to it. The preliminary decree ascertains what is to be done while the final decree states the result achieved by means of the preliminary decree. If the preliminary decree is set aside the final decree is automatically superseded.

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

The Indian Evidence Act, 1872(the Act) recognises some rules as to presumptions. Rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances. A presumption is not in itself an evidence but only makes a prima facie case for the party in whose favour it exists. A presumption is a rule of law that courts or juries shall or may draw a particular inference from a particular fact or from particular evidence unless and until the truth of such inference is disproved.

Three categories of Presumptions are as under:

- (i) Presumptions of law- It is a rule of law that a particular inference shall be drawn by a court from particular circumstances.
- (ii) Presumptions of fact- It is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved.
- (iii) Mixed presumptions- They consider mainly certain inferences between the presumptions of law and presumptions of fact.

The terms presumption of law and presumption of fact are not defined by the Act. Section 4 of the Act only refers to the terms “conclusive proof”, “shall presume” and “may presume”. The term “conclusive proof” specifies those presumptions which in English Law are called irrebuttable presumptions of law. The term shall presume indicates rebuttable presumptions of law; and the term “may presume” indicates presumptions of fact.

In the given situation, a man was stabbed at the back by a knife and was lying on the floor in a

pool of blood. Another person was running away from the scene with his hands full of blood. One can easily say that there is a presumption of fact that the man was stabbed at the back by the person running away.

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

**Answer 2A(i)**

According to Section 9 of the Limitation Act, 1963, where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover debt shall be suspended while the administration continues. The rule of this Section is based on the English dictum. "Time when once it has commenced to run in any case will not cease to be so by reason of any subsequent event". Thus, when any of the statutes of limitation is begun to run, no subsequent disability or inability will stop this running.

The applicability of this Section is limited to suits and applications only and does not apply to appeals unless the case fell within any of the exceptions provided in the Act itself.

For the applicability of Section 9, it is essential that the cause of action or the right to move the application must continue to exist and subsisting on the date on which a particular application is made. If a right itself had been taken away by some subsequent event, no question of bar of limitation will arise as the starting point of limitation for that particular application will be deemed not to have been commenced.

Thus, time runs when the cause of action accrues. True test to determine when a cause of action has accrued is to ascertain the time, when plaintiff could have maintained his action to a successful result first if there is an infringement of a right at a particular time, the whole cause of action will be said to have arisen then and there.

**Answer 2A(ii)**

The basic function of criminal law is to punish the offender and to deter the incidence of crime in the society. A criminal act must contain the following elements:

Elements of Crime (a) Human Being (2) *Mens rea* (3) *Actus reus*

1. **Human Being** - The first requirement for commission of crime is that the act must be committed by a human being. The human being must be under legal obligation to act in particular manner and be physically and mentally fit for conviction in case he has not acted in accordance with the legal obligation. Only a human being under legal obligation and capable of being punished can be the proper subject of criminal law.
2. **Mens rea**: The basic principle of criminal liability is embodied in the legal maxim *actus non facit reum, nisi mens sit rea*". It means 'the act alone does not amount to guilt; the act must be accompanied by a guilty mind. The intention and the act must both concur to constitute the crime. *Mens rea* is defined as the mental element necessary to constitute criminal liability. It is the attitude of mind which accompanies and directs the conduct which results in the 'actus reus'. The act is judged not from the mind of the wrong-doer, but the mind of the wrong-doer is judged from the act. 'Mens rea' is judged from the external conduct of the wrong-doer by applying objective standards. Intention, Negligence and recklessness can be taken as important forms of *mens rea*.
3. **Actus reus** (act or omission): The third essential element of crime is *actus reus*. A human being

and an evil intent are not enough to constitute a crime for one cannot know the intentions of a man. *Actus reus* means overt act or unlawful commission must be done in carrying out a plan with the guilty intention. *Actus reus* is defined as a result of voluntary human conduct which law prohibits. It is the doing of some act by the person to be held liable. An 'act' is a willed movement of body.

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

The essentials of presentation of petition or appeal before the National Company Law Tribunal (NCLT) are that every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

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

Administrative discretion means the freedom of an administrative authority to choose from amongst various alternatives but with reference to rules of reason and justice and not according to personal whims. The exercise of discretion should not be arbitrary, vague and fanciful, but legal and regular. No law can clothe administrative action with a complete finality even if the law says so, for the courts always examine the ambit and even the mode of its exercise to check its conformity with fundamental rights. The conditions where the authority has not exercised its discretion properly or is charged with abuse of discretion and judicial review may be exercised which are as follows:

**(a) Mala fides:** If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the court. Malafide exercise of discretionary power is always bad and taken as abuse of discretion. Malafide (bad faith) may be taken to mean dishonest intention or corrupt motive. In relation to the exercise of statutory powers, it may be said to comprise dishonesty (or fraud) and malice.

A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. The intention may be to promote another public interest or private interest.

**(b) Irrelevant considerations:** If a statute confers power for one purpose, its use for a different purpose is not regarded as a valid exercise of power and is likely to be quashed by the courts. If the administrative authority takes into account factors, circumstances or events wholly irrelevant or extraneous to the purpose mentioned in the statute, then the administrative action is vitiated.

**(c) Leaving out relevant considerations:** The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out relevant consideration, its action will be invalid.

**(d) Arbitrary orders:** The order made should be based on facts and cogent reasoning and not on the whims and fancies of the adjudicatory authority.

**(e) Improper purpose:** The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose, it will amount to abuse of power.

**(f) Colourable exercise of power:** Where the discretionary power is exercised by the authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as colourable exercise of the discretionary power and it is declared invalid.

- (g) Non-compliance with procedural requirements and principles of natural justice:** If the procedural requirement laid down in the statute is mandatory and it is not complied, the exercise of power will be bad. Whether the procedural requirement is mandatory or directory is decided by the court. Principles of natural justice are also required to be observed.
- (h) Exceeding jurisdiction:** The authority is required to exercise the power within the limits of the statute. Consequently, if the authority exceeds this limit, its action will be held to be ultra vires and, therefore, void.

### Question 3

- (a) State the provisions applicable to making of rules or bye-laws after previous publication under Section 23 of the General Clauses Act, 1897.
- (b) Discuss as to who is liable in the following cases under the law relating to Torts :
- (i) R was working as an accountant in a firm of solicitors. While acting in the ordinary course of business he committed fraud against a lady client B by fraudulently inducing her to sign documents transferring her property to him. He did so without the knowledge of the principal partner Q.
  - (ii) M, while transferring petrol from a lorry to an underground tank at a garage, struck a match stick in order to light a cigarette and then threw it still alight on the floor. An explosion occurred and fire ensued.
- (c) State the objectives of the Right to Information Act, 2005.
- (d) Section 470 of Criminal Procedure Code, 1973 is an exception to Section 469 regarding commencement of the period of limitation. Discuss the exceptions.

(4 marks each)

### Answer 3(a)

According to Section 23 of the General Clauses Act, 1897 where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:

- (1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the government concerned prescribes;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) the authority having power to make the rules or bye-laws, and, where the rules, or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- (5) the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or byelaw has been duly made.

### Answer 3(b)

(i) Normally the tortfeasor is liable for his tort. But in some cases a person may be held liable for the tort committed by another. One such exception is when there exist a relationship of Principal and Agent [Specific authority], According to the Law of Torts the principle applicable in the cases of specific authority between principal and agent is *qui facit per alium facit per se* which means he who acts through another is acting himself, so that the act of the agent is the act of the principal. When an agent commits a tort in the ordinary course of his duties as an agent, the principal is liable for the same. A master is vicariously liable for the tort of his servant, principal for the tort of his agent and partners for the tort of a partner. This is known as vicarious liability in tort.

In the case of *Lloyd v. Grace, Smith & Co. (1912) A.C. 716*, the managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently inducing her to sign documents transferring her property to him. He had done so without the knowledge of his principal who was liable because the fraud was committed in the course of employment.

In the given situation, where R was working as an accountant in a firm of solicitors, committed fraud against B by fraudulently inducing her to sign documents transferring her property to him. He did so while acting in the ordinary course of business without the knowledge of the principal Q. Therefore, the principal Q would be held liable as the fraud was committed in the course of employment.

(ii) The situation in the given situation is relating to Liability for the acts of Servants. Here, an employer is liable whenever his servant commits a tort in the course of his employment. An act is deemed to be done in the course of employment if it is either:

- (a) a wrongful act authorized by the employer, or
- (b) a wrongful and unauthorized mode of doing some act authorized by the employer.

As per the case of *Century Insurance Co Vs Northern Ireland Road Transport Board*, if a servant acts negligently in the performance of his duties or displays reckless behaviour, thereby causing loss to the plaintiff, the master would be liable for the same.

In the given situation, M while transferring petrol from lorry to an underground tank at a garage, struck a match stick in order to light a cigarette and then threw it still alight on the floor causing an explosion and a fire. Therefore, in this case employers are liable for the damage caused as M did the act in the course of carrying out his task of delivering petrol.

### Answer 3(c)

The Right to Information Act, 2005 (Act/RTI Act), confers on all citizens the right to information. The Act provides for setting out the practical regime of right to information for citizens to secure access to information held by public authorities to promote transparency and accountability in the working of every public authority.

In the case of *Anjali Bhardwaj and Others vs. Union of India and Others in Writ Petition (Civil) No. 436 of 2018* Judgement dated February 15, 2019, the Hon'ble Supreme Court of India in Paragraph 18, 19 and 68 observed that there is a definite link between right to information and good governance. In fact, the RTI Act itself lays emphasis on good governance and recognises that it is one of the objectives which the said Act seeks to achieve.

The RTI Act would reveal that four major elements/objectives required to ensure good governance are:

- (i) greater transparency in functioning of public authorities;;

- (ii) informed citizenry for promotion of partnership between citizens and the Government in decision making process;
- (iii) improvement in accountability and performance of the Government; and
- (iv) reduction in corruption in the Government departments.

The right to information, therefore, is not only a constitutional right of the citizens but there is now a legislation in the form of RTI Act which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very preamble of the Act captures the importance of this democratic right which reads as “democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.

This Act is enacted not only to sub-serve and ensure freedom of speech. On proper implementation, it has the potential to bring about good governance which is an integral part of any vibrant democracy. Attaining good governance is also one of the visions of the Constitution.

### Answer 3(d)

Section 469 of the Criminal Procedure Code, 1973 fixes the day from which the period of limitation should begin to run. However, section 470 provides provisions for exclusion of time in certain cases. These are as under:

- (a) the period during which another prosecution was diligently prosecuted (the prosecution should relate to the same facts and is prosecuted in good faith);
- (b) the period of the continuance of the stay order or injunction (from the date of grant to the date of withdrawal) granted against the institution of prosecution;
- (c) where notice of prosecution has been given, the period of notice;
- (d) where previous sanction or consent for the institution of any prosecution is necessary, the period required for obtaining such consent or sanction including the date of application for obtaining the sanction and the date of the receipt of the order;
- (e) the period during which the offender is absent from India or from territory outside India under the Central Govt. administration; and
- (f) period when the offender is absconding or concealing himself.

### Question 4

- (a) What do you mean by conciliation ? Discuss the provisions related to the appointment of a conciliator.
- (b) Mohan has a letter of credit upon Sohan for rupee 50,000, written by Sunil. Mohan, in order to defraud Sohan, manipulated the letter of credit by adding one zero and made the sum Rs. 5,00,000 intending that it may be believed by Sohan that Sunil wrote that amount on the letter.  
  
Discuss the offence committed by Mohan and the punishment for such offence.
- (c) What is e-stamping under the Indian Stamp Act, 1899 and what are its benefits ? How can an e-stamp be verified ?
- (d) Name the documents of which registration is optional under the Registration Act, 1908 ?

(4 marks each)

### **Answer 4(a)**

Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement. He does this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement.

Section 64(1) of the Arbitration and Conciliation Act, 1996 provides that subject to section 64(2):

- a. in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator;
- b. in conciliation proceedings with two conciliators, each party may appoint one conciliator;
- c. in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

Further section 64(2) provides that parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,

- a. a party may respect such an institution or person to recommend the names of suitable individuals to act as conciliator, or
- b. the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

However, in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

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

Forgery is defined under section 463 of the Indian Penal Code, 1860 and the punishment for it is prescribed under section 465.

According to Section 463 of the Indian Penal Code, 1860, whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

As per Section 465 of Indian Penal Code, 1860, whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In the given situation, Mohan has a letter of credit upon Sohan for rupees 50,000, written by Sunil. Mohan in order to defraud Sohan manipulated the letter of credit by adding one zero and made the sum Rs. 5,00,000 intending that it may be believed by Sohan that Sunil so wrote the letter. Mohan has committed forgery under Section 463 of the Indian Penal Code, 1860 and is liable to be punished according to section 465 of the Indian Penal Code, 1860.

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

E-Stamping under the Indian Stamp Act, 1899 is a computer-based application and a secured way of paying non-judicial stamp duty to the Government. The prevailing system of physical stamp paper/franking is being replaced by E-Stamping system.

**Benefits of e-Stamping**

1. E-Stamp Certificate can be generated within minutes;
2. E-Stamp Certificate generated is tamper proof;
3. E-Stamp Certificate generated has a Unique Identification Number;
4. Easy accessibility and faster processing;
5. Security;
6. Cost savings and User friendly.

**Verification of e-stamping**

Government of India, Ministry of Finance, Department of Economic Affairs appointed SHCIL to act as Central Record Keeping Agency (CRA).

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

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

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

**Answer 4(d)**

Section 17 of the Registration Act, 1908(the Act) has made registration of certain documents compulsory. However, section 18 of Act specifies documents, registration of which is optional. It provides that any of the following documents may be registered under this Act, namely:

- (a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of value less than one hundred rupees, to or in immovable property;
- (b) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment; limitation or extinction of any such right, title or interest;
- (c) leases of immovable property for any term not exceeding one year and leases exempted under Section 17;
- (d) Instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of a value less than one hundred rupees, to or in immovable property;
- (e) Instruments (other than wills) which purport or operate to create declare, assign, limit or extinguish any right, title or interest to or in movable property;
- (f) Wills; and
- (g) all Other documents not required by Section 17 to be registered.

### Question 5

- (a) Section 41 of the Criminal Procedure Code, 1973 enumerates different categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. Explain.
- (b) Discuss the provisions related to the constitution and terms of office and conditions of the service of the Central Information Officer under the Right to Information Act, 2005.

(8 marks each)

### Answer 5(a)

Section 41 of the Criminal Procedure Code, 1973 enumerates different categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

- (a) who commits, in the presence of a police officer, a cognizable offence;
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:
  - (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
  - (ii) the police officer is satisfied that such arrest is necessary—
    - (a) to prevent such person from committing any further offence; or
    - (b) for proper investigation of the offence; or
    - (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
    - (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
    - (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Further provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

- (ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence.
- (c) who has been proclaimed as an offender either under the Code of Criminal Procedure, 1973 or by order of the State Government; or
- (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

- (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- (h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or
- (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

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

#### **Constitution of Central Information Commission (Section 12 of Right to Information Act, 2005)**

- (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under the Right to Information Act, 2005.
- (2) The Central Information Commission shall consist of—
  - (a) the Chief Information Commissioner; and
  - (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.
- (3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—
  - (i) the Prime Minister, who shall be the Chairperson of the committee;
  - (ii) the Leader of Opposition in the Lok Sabha; and
  - (iii) a Union Cabinet Minister to be nominated by the Prime Minister.
- (4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.
- (5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- (6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.
- (7) The headquarters of the Central Information Commission shall be at Delhi and the Central

Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

**Term of office and conditions of service (Section 13 of Right to Information Act, 2005)**

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

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

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

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:

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

- (3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

- (4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

- (5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government:

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

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

**Question 6**

- (a) Mention the documents or transactions on which the provisions of the Information Technology Act, 2000 does not apply.
- (b) Discuss the maxim *contemporanea expositio est optima et fortissima in lege*.
- (c) What evidences are considered to be secondary evidence under the Indian Evidence Act, 1872.
- (d) What are the essentials of arbitral process ?

(4 marks each)

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

- (i) What is a statutory corporation and what are the main features of a statutory corporation ?
- (ii) Discuss the extent of liability of instruments to duty under the Indian Stamp Act, 1899 in the following cases :
  - (a) B conveyed whole of his property to three persons who undertook to provide for him and to perform his obsequies. By another document, the three donees agreed to provide for B. This was mentioned in the deed executed by B also.
  - (b) A document containing both an agreement for the dissolution of a partnership and a bond.
- (iii) Discuss the procedure to be followed on documents admitted to registration under the Registration Act, 1908.
- (iv) Discuss Roscoe Pounds classification of social interest.

(4 marks each)

**Answer 6(a)**

The provisions in Information Technology Act, 2000, does not apply to documents or transactions specified in the First Schedule. The documents or transactions mentioned in the First Schedule are as under:

- (i) A negotiable instrument (other than a cheque) as defined in Section 13 of the Negotiable Instruments Act, 1881.
- (ii) A power-of-attorney as defined in Section 1A of the Powers-of-Attorney Act, 1882.
- (iii) A trust as defined in Section 3 of the Indian Trust Act, 1882.
- (iv) A will as defined in clause (h) of Section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.
- (v) Any contract for the sale or conveyance of immovable property or any interest in such property.

**Alternate Answer 6(a)**

The provisions in Information Technology Act, 2000, does not apply to documents or transactions specified in the First Schedule. The documents or transactions mentioned in the First Schedule are as under:

1. A negotiable instrument (other than a cheque, a Demand Promissory Note or a Bill of Exchange issued in favour of or endorsed by an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority) as defined in Section 13 of the Negotiable Instrument Act, 1881.
2. A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882 but excluding those power-of-attorney that empower an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority to act for, on behalf of, and in the name of the person executing them.

3. A trust as defined in section 3 of the Indian Trust Act, 1882.
4. A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.

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

The maxim *contemporanea expositio est optima et fortissima in lege* means that a contemporaneous exposition is the best and strongest in law. Where the words used in a statute have undergone alteration in meaning in course of time, the words will be construed to bear the same meaning as they had when the statute was passed on the principle expressed in the maxim. In simple words, old statutes should be interpreted as they would have been at the date when they were passed and prior usage and interpretation by those who have an interest or duty in enforcing the Act, and the legal profession of the time, are presumptive evidence of their meaning when the meaning is doubtful.

But if the statute appears to be capable of only interpretation, the fact that a wrong meaning had been attached to it for many years, will be immaterial and the correct meaning will be given by the Courts except when title to property may be affected or when every day transactions have been entered into on such wrong interpretation.

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

According to Section 63 of the Indian Evidence Act 1872(the Act) secondary evidence means and includes:

- (1) certified copies given under the provisions hereinafter contained as per the Act;
- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

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

Essentials of arbitral process are:

1. **Seat of Arbitration** - The parties are free to select any location as the arbitration's seat.
2. **Venue of Arbitration** - The Venue or location, for the sessions of the arbitral proceedings may be decided by the parties.
3. **Arbitral Institution** - The parties may select the arbitral institution for conducting the proceedings. The rules of such arbitration institution will apply to proceedings.
4. **Law** - The parties may by agreement choose any law.
5. **Language** - The parties may also agree on the language of the arbitration proceedings.
6. **Number of arbitrators** - The parties are free to determine the number of arbitrators, provided that such number shall not be an even number. However, failing the determination, the arbitral tribunal shall consist of a sole arbitrator.
7. **Cost** - The Court or arbitral tribunal have the discretion to determine the cost which includes the decision as to:
  - (a) whether costs are payable by one party to another;

- (b) the amount of such costs; and
- (c) when such costs are to be paid.

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

**Answer 6A(i)**

The term 'statutory corporation' (or public corporation) refers to such organisations which are incorporated under the special acts of the Parliament/state legislative assemblies. Its management pattern, its powers and functions, the area of activity, rules and regulations for its employees and its relationship with government departments, etc. are specified in the concerned Act. It may be noted that more than one corporation can also be established under the same Act. State Electricity Boards and State Financial Corporation fall in this category.

The main features of statutory corporations are as follows:

- (a) It is incorporated under a special act of Parliament or state legislative assembly.
- (b) It has a separate legal existence.
- (c) It is an autonomous body and is free from government control in respect of its internal management. However, it is accountable to the Parliament or the state legislature.
- (d) It is managed by board of directors, which is composed of individuals who are trained and experienced in business management. The members of board of directors are nominated by the Government.
- (e) It is supposed to be self-sufficient in financial matters. However, in case of necessity it may take loan and/or seek assistance from the government
- (f) The employees of the enterprises are recruited as per their own requirements by following the terms and conditions of recruitment decided by the Board.

**Answer 6A(ii)**

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

B conveyed whole of his property to three persons who undertook to provide for him and to perform his obsequies. By another document, the three donees agreed to provide for B which was mentioned in the deed executed by A also. The two documents will be construed as part of the same act. The first is liable to duty as a conveyance while the second is liable to a duty of Rupee 1 only (*Dadoba v. Krishna, ILR 7 Bom. 34*).

The liability in the situations given will be in accordance with the above mentioned provision and case laws.

- (b) Under Section 5 of the Indian Stamp Act, 1899 (the Act) an instrument comprising or relating to several distinct matters is chargeable with the aggregate amount of the duties with which each separate instrument, relating to one of such matters, would be chargeable under the Act. This section deals with multifarious instruments. The expression "distinct matter" means distinct transactions. It applies even where the two (or more) matters are of the same description.

A document containing both an agreement for the dissolution of a partnership and a bond is chargeable with the aggregate of the duties with which two such separate instruments would be chargeable. The two are "distinct matters." (*Chinmoyee Basu v. Sankare Prasad Singh*, AIR 1955 Cal. 561)

The liability in the situations given will be in accordance with the above mentioned provision and case laws.

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

#### **Procedure to be followed on documents admitted to registration under Registration Act, 1908**

Section 58 of the Registration Act, 1908 provides the provisions relating to particulars to be endorsed on documents admitted to registration. It states that:

- (1) On every document admitted to registration, other than a copy of a decree or order, or a copy sent to a registering officer under Section 89, there shall be endorsed from time to time the following particulars, namely:
  - (a) the signature and addition of every person admitting the execution of the document and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;
  - (b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
  - (c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document and any admission of receipt of consideration, whole or in part, made in his presence in reference to such execution.
- (2) If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

#### **Certificate of Registration**

- (a) After the provisions of Sections 34, 35, 58 and 59 as applicable to the document are complied with, the registering officer shall endorse thereon a certificate containing the word "registered" along with the number, and page of the book in which the document has been copied. The certificate shall be signed, sealed and dated by the registering officer.
- (b) The certificate of registration in respect of a document is prima facie an evidence that the document has been legally registered and raises a presumption that the registering officer proceeded in accordance with the law.

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

According to Roscoe Pound social interests are claims or demands thought of in terms of social life and generalized as claims of the social group. It is from the point of view of protecting the general interest of all members of the society. Social interests include-

- (i) Social interest in the general security: This includes general safety, peace and order, general health, security of acquisition and transaction.
- (ii) Social interest in the security of social institutions such as domestic, religious, political and economic institutions.
- (iii) Social interest in general morals like laws dealing with prostitution, gambling, bigamy, drunkenness.

- (iv) Social interest in the conservation of social resources like the natural and human resource. This social interest clashes to some extent with the individual interest in dealing with one's own property as on pleases.
- (v) Social interest in general progress. It has three aspects- economic, political and cultural.
- (vi) Social interest in individual life. It involves self-assertion, opportunity and conditions of life. Society is interested in individual life because individuals are its building blocks.

# COMPANY LAW

## MODULE 1 PAPER 2

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

- (a) Board of directors of Mega Ltd. an unlisted company has decided to move ahead for preferential offer of equity shares. In this connection the Managing Director wants to know :
- (i) What is the time limit for completion of allotment of shares on preferential basis ?
  - (ii) What will happen if the allotment is not completed within the time limit above ?
  - (iii) In a situation where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted how will the price for resultant shares pursuant to conversion be determined ?

(5 marks)

- (b) Strong Ltd. was incorporated on 10th March, 2015 as an Indian company having registered office at Indore with six directors. It deals in manufacture of fertilizers. It has a foreign subsidiary incorporated in Korea since 1st April, 2023. A, accountant of the foreign subsidiary has informed Sumana, Manager (Accounts) of Strong Ltd. that audit is not necessary as per their local laws in Korea. Strong Ltd. decides to get the accounts of the subsidiary company audited by its own auditor, Star & Co., Chartered Accountants and then file the consolidated accounts with the Registrar of Companies for year ended 31st March, 2024. Discuss the validity of action of Strong Ltd with reference to the provisions of Companies Act, 2013.

(5 marks)

- (c) Comment on the following :

“Every company is mandated to obtain annual secretarial audit report and annual secretarial compliance report from its statutory auditor.”

(5 marks)

- (d) Referring to the provisions of Companies Act, 2013 (ACT), comment on the following :

- (i) Any public company can accept deposit from the public by passing a Board Resolution.
- (ii) Just like the provisions of the Act on debentures, appointment of Deposit Trustee is not mandatory for all companies when the number of depositors does not exceed five hundred.
- (iii) The amount lying in Deposit Repayment Reserve can be used to issue bonus share.

(5 marks)

**Answer No. 1(a)**

Rule 13 of Companies (Share Capital and Debenture) Rules, 2014 deals with provisions on preferential offer by unlisted companies. Accordingly,

- (i) Allotment of shares on a preferential basis shall be completed within a period of twelve months of the date of passing of the special resolution.
- (ii) If the allotment of shares is not completed within twelve months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete such allotment thereafter.
- (iii) Where convertible securities are offered on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares pursuant to conversion shall be determined-
  - a. either upfront at the time when the offer of convertible securities is made, on the basis of the valuation report of the registered valuer given at the stage of such offer; or
  - b. at the time, which shall not be earlier than thirty days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of the valuation report of the registered valuer given not earlier than sixty days of the date when the holder of convertible security becomes entitled to apply for shares.

The company should take a decision on basis of above (a) or (b) at the time of the offer of convertible securities itself and make such disclosure in an explanatory statement.

**Answer No. 1(b)**

Fourth proviso to section 137(1) of the Companies Act, 2013 requires that a company shall attach along with its financial statements to be filed with the Registrar, the accounts of its subsidiary(ies) which have been incorporated outside India and which have not established their place of business in India.

Ministry of Corporate Affairs vide its General circular 11/2015 dated 21 July, 2015 has clarified the issue raised in question.

Clarification has been sought on: Whether a company covered under above provisions can place/file unaudited accounts of a foreign subsidiary if the audit of such foreign subsidiary is not a mandatory legal requirement in the country where such foreign subsidiary has been incorporated and such audit has not been conducted. and:

The matter has been examined in the Ministry and it is clarified that in case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation and which does not get such accounts audited, the holding / parent Indian company may place / file such unaudited accounts to comply with requirements of Section 136(1) and 137(1) as applicable. These, however, would need to be translated in English if the original accounts are not in English Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed / filed along with such accounts.

In view of the above, if Strong Ltd. decides to get the accounts of the subsidiary company incorporated in Korea audited by its own auditor, it can do so provided:

- a) The accounts of the subsidiary company abroad are translated in English, if the original accounts are not in English; and

- b) the format of accounts of foreign subsidiary should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed / filed along with such accounts of Strong Ltd.

**Answer No. 1(c)**

According to Section 204(1) of Companies Act, 2013 (the Act), read with Rule 9 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following companies are required to annex with its Board's Report under section 134 of the Act, a Secretarial Audit Report given by a company secretary in practice in Form MR-3:

- a) Every listed company; or
- b) Every public company with a paid-up equity share capital of Rs. 50 crore or more
- c) Every public company with a turnover of Rs. 250 crore or more or
- d) Every company having outstanding loan from banks or public financial institutions of Rs.100 crore or more.

According to Regulation 24A of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), every listed entity and its material unlisted subsidiary(ies) incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice in Form MR-3 along with the annual report of the listed entity as per Schedule V of LODR.

According to Regulation 24A of LODR, every listed company shall also submit secretarial compliance report to the stock exchanges within 60 days from end of financial year.

The annual secretarial compliance report, apart from the coverage on compliance of laws applicable to the listed company, also requires the practicing company secretary to report on compliance of all applicable SEBI regulations, circulars and guidelines to the stock exchanges.

Thus, the given statement that every Company is mandated to obtain annual secretarial audit report and annual secretarial compliance report is not correct.

The statutory auditor of the company is a practicing-chartered accountant. Under Section 143 of the Companies Act, 2013, the statutory auditor is required to audit the financial accounts of the company and give his opinion whether the financial statements give a true and fair view of the state of affairs of the company.

The statutory auditor has no role in certifying the annual secretarial audit report or annual secretarial compliance report. Thus, the second part of the statement is also incorrect.

Annual secretarial audit report is different from annual secretarial compliance report. Both Annual secretarial audit report and Annual secretarial compliance reports are given by a practicing company secretary and not by the statutory auditor.

Thus, the second part of the statement is also incorrect.

**Answer No. 1(d)**

- (i) The statement given is not true. Only eligible public companies as referred in sub section (1) of Section 76 of the Companies Act, 2013 read with The Companies (Acceptance of Deposits) Rules, 2014 having net worth of Rs. 100 crore or more or having an annual turnover of Rs. 500 crore or more and which has obtained prior consent of its members by a special resolution and filed the special resolution with the Registrar of Companies (ROC) at least 30 days before issue of circular to the depositor in Form DPT-1 can accept deposits from the public.

Thus, only passing a Board resolution for accepting deposits is not sufficient. Approval of members in general meeting by special resolution is mandatory for accepting deposits by the company.

- (ii) The statement is not true. Appointment of independent deposit trustees is to safeguard the interests of the depositors. Appointment of deposit trustee is mandatory for companies accepting deposits from its members under section 73(2) of the Companies Act, 2013 (the Act) and also for eligible companies accepting deposits from the public under section 76(1) of the Act.

According to Rule 7(1) of Companies (Acceptance of Deposit) Rules, 2014, no company referred to in sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.

Whereas According to Section 71(5) of the Act read with Rule 18(2) of Companies (Share Capital and debentures) Rules, 2014, appointment of debenture trustee for a company is mandatory for a company issuing debentures when the number of debenture holders exceeds five hundred.

Hence, the appointment of deposit trustee is mandatory for companies accepting deposits irrespective of the number of deposit holders.

- (iii) As per Section 73 (5), the amount deposited in the deposit repayment reserve account shall not be utilized for any purpose other than for the purpose of repayment of deposits. Thus, the amount lying in Deposit Repayment Reserve cannot be used to issue bonus share.

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

**Question 2**

- (a) With reference to the provisions of Companies Act, 2013 and the applicable Rules, explain the procedure for transfer and refund of dividend remaining unpaid/unclaimed for less than seven years.

(3 marks)

- (b) Jubilant Technologies Private Ltd. has commenced maintaining its books of account in electronic mode as per its Board's resolution dated 1st October, 2023. There is a query from the Accounts department to you, Company Secretary in employment regarding requirement of intimation of any specific information to the Registrar annually at the time of filing of financial statements on this aspect. Advise with reference to the provisions of Companies Act, 2013.

(3 marks)

- (c) After a lot of discussion, negotiation, submission of information and explanations. Enkebee Ltd was sanctioned term loan of ₹ 200 lakh by the corporate office of Unity Bank on 10th March, 2023. Charge was created on 12th March, 2023. Sayani, Senior Manager (Accounts) of the company, made entry in the register of charges on 19th March, 2023.

Sayani believes that the register above shall have to be maintained for at least five years and the instrument creating the charge preserved for twelve years. Offer your comments referring to the provisions of the Companies Act, 2013.

(3 marks)

- (d) Vibgyor Ltd. had closed its register of members in May 2023 and July 2023 for fourteen days and sixteen days respectively. Prakash, HOD (Finance) of the company has informed Pritam,

Company Secretary to consider closing the register in November for another twenty days for some corporate restructuring events. You are informed that Vibgyor Ltd. is a listed company. Decide the validity of such a proposition under Companies Act, 2013.

(3 marks)

- (e) Six hundred equity shares of Aastha Ltd. are presently held jointly by Aman, Raman and Shraman—their names appearing in the share certificates in this order. The joint shareholders want a transposition of the names in the order Raman, Shraman and Aman only in respect of two hundred shares. State the procedure under Companies Act, 2013.

(3 marks)

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

**Question 2A**

- (i) Gracious Housing Finance Company Ltd. is a subsidiary of listed company in India.

The following information is extracted from the audited accounts of the company as on 31st March, 2024 :

(₹ in crore)

Particulars	Amount
Paid up capital	10
Reserves and surplus	1
Secured loan	0.20
Turnover	200

You have recently joined the company as General Manager (Secretarial) and Subir, Junior Officer (Accounts) has approached you if accounts are to be submitted under XBRL mode. Advise Subir.

- (ii) Examine whether Joy will fall under the purview of Significant Beneficial Owner with respect to Zed Ltd. in the following circumstances :
- Joy holds 7% of equity in Zed Ltd. directly. He is also the trustee of a discretionary trust that holds 4% equity in Zed Ltd.
  - Joy holds 6% of equity while Mahek holds 7% of equity in Zed Ltd. and they are deemed to act together.
  - Joy holds 9% of equity in Zed Ltd. directly. He is also the Karta of a HUF that holds 7% equity in Zed Ltd.

(3 marks)

- (iii) Chirag Ltd. has achieved a turnover ₹ 30 crore for the year ended 31st March, 2024. The Chief Operating Officer (COO) of the company is in a dilemma of cost audit would be applicable on the basis of turnover. You are a corporate consultant. Please advise the company about applicability of Cost Audit with reference to provisions of Companies Act, 2013.

(3 marks)

- (iv) The Assistant Registrar of Companies examined e-form AOC-4 filed by Northern Private Ltd. and found it to be incomplete, defective. Therefore, he intimated the company to furnish further information/rectification of defects by allowing fourteen days' time. Is the action

of Assistant Registrar acceptable ? Specify the e-form in which the additional information will be furnished by the company. What will happen, if even after furnishing the required information, the Registrar rejects the e-form or treats the same as invalid ?

- (v) Madhuri, famous singer, was a rich woman in her late twenties. She enjoyed huge dividend and interest income from various sources. She formed three private companies and agreed with each to hold a block of investment as an agent for it. Income received was credited in the accounts of the company. The company handed back the amount to her as a loan in disguise. Consequently, she divided her income in three parts and discharged tax liability accordingly. Comment if there is any illegality in the above in reference to fundamental concepts of company formation.

(3 marks)

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

**Answer No. 2(a)**

According to Section 124 of Companies Act, 2013 (the Act), when dividend, has been declared by company but has not been paid by the company or not claimed by the shareholder within 30 days of the date of declaration of dividend, the company shall, within 7 days from the expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened in a scheduled bank called unpaid dividend account.

Any member entitled to any money transferred u/s 124(1) of the Act as unpaid dividend may apply to the company u/s 124(4) for the payment of unpaid dividend up to a period of 7 years from the date of transfer to the unpaid dividend account.

*Effects of non-transfer of the dividend:*

As per section 124(3) of the Companies Act, 2013 if any default is made in transferring the total amount referred in section 124(1) of the Act or any part thereof to the unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much amount as has not been transferred to the said account, at the rate of 12% per annum and interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

Section 124(5) of the Companies Act 2013 states that any money transferred to the unpaid dividend account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued if any thereon to the Investor Education and Protection fund.

**Answer No. 2(b)**

Pursuant to Rule 3(6) of the Companies (Accounts) Rules, 2014 the company shall, where books of account are maintained in electronic mode, intimate to the Registrar on an annual basis at the time of filing of financial statement —

- a) the name of the service provider;
- b) the internet protocol address of service provider;
- c) the location of the service provider (wherever applicable);
- d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.
- e) where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.

**Answer No. 2(c)**

In accordance with Section 85(1) of the Companies Act, 2013 read with Rule 10(2) of Companies (Registration of Charges) Rules, 2014 the entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case maybe.

Therefore, Sayani — Senior Manager (Accounts) ought to make entry in the Register of Charges maintained by the company in Form No CHG - 7 forthwith after creation of the same on 12<sup>th</sup> March, 2023.

In accordance with Section 85(1) read with Rule 10(2) of Companies (Registration of Charges) Rules, 2014, the register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of eight years from the date of satisfaction of charge by the company.

Thus, views of Sayani Senior Manager (Accounts) are not in order.

**Answer No. 2(d)**

According to section 91(1) of Companies Act, 2013 a company may close the register of members or register of debenture holders or register of other security holders for any period or periods not exceeding in the aggregate forty-five days in each year, but not exceeding thirty days at any one time. A previous notice of at least seven days or such lesser period as may be specified by SEBI is to be given by a listed company.

In the case given in question Vibgyor Ltd. has closed its register of members for 14 and 16 days in May and July 2023 respectively. Therefore, the closure is within the time limits prescribed in section 91(1) as each closure has not exceeded 30 days.

If the company closes the register again in November 2023 for another 20 days, the aggregate closure during the year would be 50 (14+16+20) days which will exceed the prescribed time limit of 45 days.

Hence, the proposal of Prakash, HOD (Finance) of the company, is not valid under the Companies Act, 2013.

**Answer No. 2(e)**

In the case of joint-shareholders, one or more of them may require the company to alter or rearrange order of their names in the register of members of the company. In this process, there will be need for effecting consequential changes in the share certificates issued to them. If the company provides in its articles that the senior-most among the joint- holders will be recognised for all purposes like service of notice, a copy of balance sheet, profit and loss account, voting at a meeting etc., the request of transposition may be duly considered and approved by the Board or other authorised officer of the company. Since no transfer of any interest in the shares take place on such transposition, the question of insisting on filling transfer deed with the company, may not arise. Transposition also does not require stamp duty.

Transposition of names of shareholders in the register of members do not require the execution through instrument of transfer in Form SH-4.

The Stock Exchange Division of the Department of Economic Affairs has clarified that there is no need of execution of transfer deed for transposition of names if the request for change in the order of names was made in writing, by all the joint-holders. If transposition is required in respect of a part of the holding, execution of transfer deed will be required.

**OR (Alternate Question to Q. No. 2)****Answer No. 2A(i)**

In terms of Rule 3 of Companies (Filing of Documents & Forms in XBRL) Rules, 2015 the Government has mandated certain classes of companies to file financial statements in XBRL mode using XBRL taxonomies. The following classes of companies have to file financial statements in XBRL form:

- (i) all companies listed with any Stock exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having a paid-up capital of ₹5 crore and above; or
- (iii) all companies having a turnover more than ₹100 crores and above; or
- (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015

However, banking companies, insurance companies, housing finance and non-banking financial companies have been exempted from XBRL filing.

The company is not required to file its financial statements for the year ended 31<sup>st</sup> March, 2024 through XBRL mode as it is a housing finance company and is exempted from application of the provisions. The Junior Officer (Accounts) has to be advised accordingly.

**Answer No. 2A(ii)**

As per Rule 2(h) of the Companies (Significant Beneficial Owners) Rules 2018, Significant Beneficial Owner in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

- (i) holds indirectly, or together with any direct holdings, not less than 10% of the shares;
- (ii) holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
- (iii) has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holding alone, or together with any direct holdings
- (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.
  - a) Joy holds 7% of equity in Zed Ltd. directly. He is also the trustee of a discretionary trust that holds 4% equity in Zed Ltd. He is a Significant Beneficial Owner since he holds total 11% equity in Zed Ltd. through indirect and direct holdings. Holding by way of being a trustee of a discretionary trust is considered to be indirect holding.
  - b) Joy holds 6% of equity while Mahek holds 7% of equity in Zed Ltd. and they are deemed to act together — Joy and Mahek are not Significant Beneficial Owner as there is no indirect holding and their acting together is irrelevant.
  - c) Joy holds 9% of equity in Zed Ltd. directly. He is also the Karta of a HUF that holds 7% of equity in Zed Ltd. - He is a Significant Beneficial Owner since he holds total 16% equity through indirect and direct holdings.

**Answer No. 2A(iii)**

Rule 4 of Companies (Cost Records and Audit) Rules, 2014 provides for applicability of cost audit. Accordingly,

- 1) Every company specified in item (A) of rule 3 of Companies (Cost Records and Audit) Rules, 2014 i.e. regulated sectors shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees fifty crore or more and the aggregate turnover of the individual product or products or services for which cost records are required to be made under rule 3 is rupees twenty five crore or more.
- 2) Every company specified in item (B) of rule 3 of Companies (Cost Records and Audit) Rules, 2014 i.e. non-regulated sectors shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees one hundred crore or more and the aggregate turnover of the individual product or products or service or services for which cost records are required to be made under rule 3 is rupees thirty five crore or more.
- 3) The requirement of cost audit under these rules shall not apply to a company which is covered in rule 3, and
  - i) whose revenue from exports in foreign exchange exceeds seventy five percent of its total revenue; or
  - ii) which is operating from a SEZ.
  - iii) which is engaged in generation of electricity for captive consumption through captive generating plant.

In the given case, the turnover of Chirag Ltd. is Rs. 30 Crore. The company is advised that if the company operates in regulated sector, and the aggregate turnover of the individual product(s) / service(s) is Rs. 25 crores or more, then, cost audit will be applicable.

If it operates in non-regulated sector, cost audit is not applicable, as the turnover of the company does not meet the criteria prescribed in the Rules.

#### **Answer No. 2A(iv)**

As per Rule 10 (3) of Companies (Registration Offices and Fees) Rules, 2014 Except as otherwise provided in the Act the Registrar shall allow fifteen days' time to the person or company which has filed the application or e-form or document for furnishing further information or for rectification of the defects or incompleteness or for re-submission of such application or e-form or document.

In line with the above, the action of Assistant Registrar of Companies by giving fourteen days' time for furnishing further information or rectification of defects is not acceptable.

The e-form in which additional information is to be furnished by the company is GNL- 4.

In the case, where further information called for has not been provided or has been furnished partially or defects or incompleteness is not rectified or rectified partially within the period allowed, the Registrar shall either reject or treat the application or e-form or document as invalid. Consequently, the document may be rectified by the person or company only by fresh filing along with payment of fee and additional fee as applicable at the time of fresh filing without prejudice to any other liability under the Act.

#### **Answer No. 2A(v)**

The issue in question relates to the lifting of the corporate veil under judicial interpretations. Normally Courts are reluctant or very cautious about the lifting of the veil of corporate personality to see the real persons behind it.

The facts of the case are that Madhuri, a famous singer, was a rich woman enjoying large dividends

and interest income. She formed three private companies and agreed with each to hold a block of investment as an agent for it. The Income received was credited in the accounts of the company but the company handed back the amount to her as a loan in disguise. This way she divided her income in three parts in a bid to reduce her tax liability.

It was held the company was formed by the person purely and simply as a means of avoiding tax and the company was nothing more than the person/assessee herself. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans. The Court decided to disregard the corporate entity and ascertain the real persons behind as it was being used for tax evasion (*Re. Sir Dinshaw Maneckjee Petit, A.I.R. 1927 Bombay 371*).

Thus, on the basis of the above, it can be concluded that formation of Company to reduce tax liability is illegal in reference to fundamental concepts of company formation.

### Question 3

(a) Modest Ltd. has fallen within the purview of Corporate Social Responsibility norms recently. The Chief Executive Officer of the company wants to know from you, practising Company Secretary, how the following be dealt with in respect thereof :

- (i) Surplus arising out of the CSR activities :
- (ii) Set off of excess CSR spends
- (iii) Can CSR be made not applicable to any company ? Discuss with reference to the provisions of Companies Act, 2013.

(5 marks)

(b) (i) Prashant has joined the Board of Pragati Manufacturers Ltd. as a Nominee director on 15th March, 2024. You are the Secretary of the company and Prashant has connected with you to advise him the disclosures pertaining to credit rating of securities in Board's Report for year ended 31st March, 2024 as a good governance practice. Prepare a note to the Nominee director on the disclosures.

(ii) Comment who will certify the annual return of Bright Ltd., an unlisted company having a turnover of ₹ 60 crore with four directors, Chief Executive Officer, President (Finance) and Company Secretary.

(5 marks)

(c) Prepare a checklist to be submitted to your Executive Director containing disclosure(s) to stock exchange after conclusion of board meeting and notice of book closure as a procedural step for declaration and payment of final dividend of Silence Ltd., a quoted company.

(5 marks)

### Answer No. 3(a)

#### (i) Surplus arising out of the CSR activities

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the unspent CSR account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII of the Companies Act, 2013 (the Act) within a period of six months of the expiry of the financial year.

**(ii) Excess CSR spends may be set off**

Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135 of the Companies Act, 2013 read with rule 7 of Companies (Corporate Social Responsibility Policy) Rules, 2014, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that:

- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
- (ii) the Board of the company shall pass a resolution to that effect.
- (iii) In case of specified IFSC public / private company — section 135 shall not apply for a period of five years from the commencement of business as per notification dated 4<sup>th</sup> January, 2017. Thus, CSR can be made not applicable to these Companies.

**Answer No. 3(b)**

- (i) Secretarial Standard 4 (SS-4) pertaining to Report of the board of directors indicates that as a good governance practice the disclosure on credit rating should also be included in the Board's Report. The disclosure shall include the following:
  - (a) credit rating obtained in respect of various securities;
  - (b) name of the credit rating agency;
  - (c) date on which the credit rating was obtained;
  - (d) revision in the credit rating;
  - (e) reason provided by the rating agency for a downward revision, if any.
- (ii) Under section 92(2) of the Companies Act, 2013 read with Rule 11(2) of the Companies (Management and Administration) Rules, 2014 the annual return of a listed company or of a company having a paid-up share capital of ₹10 crore or more or turnover of ₹50 crore or more shall be certified by a Company Secretary in practice in Form MGT-8. Accordingly, annual return of Bright Ltd., an unlisted company having a turnover of ₹60 crore shall be certified by none of the persons given in question but by a practicing Company Secretary.

**Answer No. 3(c)**

Disclosure(s) to stock exchange after the conclusion of a board meeting by Silence Ltd. a listed company -

In the case of a listed company, not later than 30 minutes of the closure of the Board meeting, intimate the stock exchanges with regard to the Board's decision about the declaration and payment of dividends [Regulations 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 read with Schedule III].

**Notice of book closure:**

Rule 10 of Companies (Management and Administration) Rules, 2014 mentions to publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and publish the notice on the website as may be notified by the Central Government and on the website, if any, of the Company at least seven days before the date of commencement of book closure and in such manner as may be specified by Securities and Exchange Board of India

**In case of listed companies:**

- (i) To give notice in advance of at least 7 working days (excluding the date of intimation and the record date) or as many days as the stock exchange may prescribe, before the closure of transfer books or record date, specifying the purpose of Record Date [Regulation 42 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].

The company shall recommend or declare all dividend at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose.

- (ii) Time gap between two book closures would be at least 30 days [Regulation 42(4) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].

**PART-II****Question 4**

- (a) (i) Meeting of Board of directors of Kasturi Hospitality Private Ltd. was adjourned. D could not attend the original meeting due to preoccupation. He had sought leave of absence on this ground which was granted. There was no extraordinary item of business to be discussed in the original meeting. Notice of adjourned meeting was not sent to D. Comment.
- (ii) Saptarshi, a small shareholder director, has specified to the Company Secretary that agenda and notes on agenda for forthcoming board meeting on approval of accounts be sent to him by e-mail. Due to urgency the company had to convene the board meeting at a shorter notice suddenly. The secretary arranged to deliver the agenda and notes thereon by hand at his residence. Saptarshi opposed to this mode of delivery and threatened to resign from the office. Discuss if the objection is tenable in the light of secretarial standards.

(2+3=5 marks)

- (b) Happy Travels Private Limited received a letter of resignation by post on 01-April-2023 purportedly signed by Shyamal Das, Director of the company.

The Company Secretary of the company Rohit Biswas, on the directions of the Managing Director, promptly intimated the ROC by filing Form DIR-12 and also placed the information of the resignation of Das on its website.

Few days later, the Police came knocking on the doors of the Company Secretary on a complaint given by Das u/s 468 of IPC, 1860 that he never signed such resignation letter and that the letter of resignation purportedly signed by him was a forgery. Referring to the provisions of Companies Act, 2013, decide on the further course of action.

(5 marks)

- (c) You are the General Manager (Secretarial) of Susrut Industries Ltd. With respect to ensuing annual general meeting to be held by video conferencing. The Executive Director wants to know from you the following :
- (i) Can the company mention in the notice that it holds the right to restrict the number of speaker shareholders depending on time availability ?
- (ii) As the company has neither maintained registers in electronic form nor has scanned the same, how can it keep registers open for inspection at the meeting held by video conferencing ? Advise.

(5 marks)

- (d) Manoj is the youngest member of CSR committee of Puzzle Garments Ltd. He understands that the CSR Committee shall formulate and recommend to the Board an annual action plan pursuant to its CSR policy and the policy shall include certain matters. Manoj discussed the issue with the chairman of the CSR committee and they have approached you, practising Company Secretary for your advice. Draft a suitable note for them.

**Answer No. 4(a)**

- (i) In line with para 1.3.6 of Secretarial Standard 1(SS-1) notice of an adjourned board meeting shall be given to all directors including those who did not attend the meeting on the originally convened date. Therefore, though D could not attend the original meeting due to preoccupation by seeking leave of absence which was granted, notice of adjourned board meeting should be sent to him whether or not there is any extraordinary business to be transacted in the adjourned meeting.
- (ii) Para 1.3.7 of SS-1 provides that where a director specifies a particular means or delivery of agenda and notes thereon these papers shall be sent to him by such means. But in case of a meeting conducted at a shorter notice the company may choose an expedient mode of sending agenda and notes on agenda.

Applying the provisions in the given situation, delivery of agenda and notes thereon by hand at residence of small shareholder director Saptarshi when board meeting is convened at a shorter notice suddenly is valid though he had specified the delivery of same to him by email earlier. The objection raised by Saptarshi is not tenable.

**Answer No. 4(b)**

- i) A director of a company may resign from office under section 168 of Companies Act, 2013 (Act) read with Rule (15) of Companies (Appointment and Qualifications of Directors) Rules, 2014 (Rules), by giving a Notice along with reasons for resignation to the company.
- The Board of Directors (BOD) shall, on receipt of such Notice of resignation from a director, shall take note of the same.
- ii) The company shall, within 30 days from the date of receipt of notice of resignation from a director, intimate the Registrar of Companies (ROC) in Form DIR-12 and may also post the information on its website as per Rule (15).
- The BOD shall also mention the fact of such resignation of director in the Report of the Board of Directors under section 134 of the Act laid in the immediately following Annual General Meeting of the company.
- iii) The director may, within 30 days from the date of resignation, forward to the ROC a copy of his letter of resignation along with reasons for resignation in Form DIR-11 along with the requisite registration fees as provided under Companies (Registration Offices and fees) Rules, 2014.
- iv) The resignation shall be effective from the date on which the notice of resignation was received by the company or the date specified by the director in the Notice of resignation, whichever is later.
- In this case, the director has filed a criminal complaint stating that the resignation letter was not signed by him, not genuine and also that his signature was forged.
- v) However, as decided by NCLAT in a case *Harish Jain v Haveli Restaurant and Resorts Limited dated 26/02/2020, (Company Appeal (AT) No. 390 of 2018)* when a director alleges that his signature on the resignation letter was forged, it is for the director to prove that the resignation

letter was a forged document. In other words, onus of proof falls on the complainant.

Thus, besides initiating measures to obtain anticipatory bail for all the KMPs of the company, the company secretary Rohit Biswas and the company can also contest the case on merits in the appropriate legal forum.

#### **Answer No. 4(c)**

- (i) Yes, Companies can restrict the speakers depending on the availability of time. The notice calling for meeting should require the speaker shareholders to register themselves in advance and depending on the time availability, it shall be at the discretion of the Chairman to allow the speakers. In addition, the companies may allow recordings to be sent in advance with the permission of the Chairman and shareholders in order to avoid scenarios where a speaker shareholder may get disconnected or have an audio/visual connection issue thus saving time and effectively maintaining the decorum of the meeting.
- (ii) In case the registers are not maintained in an electronic form, the physical registers/documents should be scanned for uploading in a virtual data room established for the purpose. Login ID and password can be provided for inspection and it is to be ensured that only view rights are given for inspection and the registers/documents cannot be deleted, copied or downloaded or the register/documents may be made available for inspection on a virtual platform (e.g., Zoom, Microsoft teams, etc.), and displayed in a presentation form. The registers/documents which shall be made available for inspection in connection with the AGM, shall be made available from the time notice is given till the conclusion of the meeting.

Therefore, the physical registers should be scanned to keep them open for inspection at the meeting to be held by video conferencing.

#### **Answer No. 4(d)**

As per Rule 5(2) of the Corporate Social Responsibility Policy Rules, 2014 the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely: -

- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company.

However, the Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

#### **Attempt all parts of either Q. No. 5 or Q. No. 5A**

#### **Question 5**

- (a) On receipt of the notice and agenda notes from MNO Ltd., Kamal, Director has requested for participation through video conferencing on the scheduled date of the meeting. As a Company Secretary, what should be your advice to the Chairperson of the Board ? Also, can the Chairperson attend the Board meeting through video conferencing ? Advise the Company in the matter.

(4 marks)

- (b) Four Board Meetings were held during July to December in calendar year 2023. Thunder, a director, attended none of them. For first three meetings he sought leave of absence from the Board but did not inform the Board regarding last meeting as he was hospitalised. In the light of provisions of Companies Act, 2013 examine if he is disqualified to act as a director or otherwise.

(4 marks)

- (c) Out of nine directors in Moon Ltd. five are Indians and four are foreign nationals based in Indonesia. The Articles of the Company prescribe that quorum for a Board meeting will be at least 5 directors of which at two be foreign nationals. Comment if such a clause in articles is valid under provisions of Companies Act, 2013 ?

(4 marks)

- (d) Sukanya is director in nine public limited companies, one dormant public limited company and ten private limited companies. She has vast experience in business management and is invited by Green Ltd. to join as director. Discuss the relevant provisions of the Companies Act, 2013 and advise Sukanya.

(4 marks)

- (e) You are a freshly qualified Company Secretary. During an interview for the position of Company Secretary in a listed company the Managing Director has asked you :

- (i) Functions of a Secretary in a listed company as compliance officer;
- (ii) Can a secretary be punished in respect of offences under Companies Act, 2013 ?

Answer to the Managing Director.

(4 marks)

**OR (Alternate question to Q. No. 5)**

**Question 5A**

- (i) Examine the validity of the following :

- (a) Sudarshan Chakraborty, aged 20, is appointed as independent director on the Board of BVS Scooters Limited, a listed company, by passing an ordinary resolution in the annual general meeting.
- (b) Karna Kumar Baag, nominee director appointed by BICCI Bank Ltd. is removed from directorship at the annual general meeting of Reliable Capacitors Limited, a listed company, by passing an ordinary resolution.

(4 marks)

- (ii) Alpha Numeric Control Systems is a listed public company with Registered Office at Mumbai. The company has 5500 shareholders, examine the validity in the following :

- (a) To conduct the next Annual General Meeting (AGM) of the company at Kolkata where the majority of directors reside.

The Board of Directors (BOD) have already passed a resolution to conduct the AGM at Kolkata.

- (b) Due to non-finalization of annual accounts, the AGM was adjourned for two months.

The Company Secretary wants to post the Notice calling for the adjourned AGM 3 days before the adjourned AGM on the company website.

- (iii) The paid-up capital of Srishti Ltd is rupees ten crore. The Board consists of twelve directors. Out of twelve, three positions are vacant. A resolution for calling a general meeting urgently was sent by circulation for approval. There are three interested directors in the resolution. Two directors out of these three interested directors and one other director require the resolution under circulation to be decided at a meeting and have communicated this to the company. Discuss and advise the Board if the resolution can be passed by circulation.

(4 marks)

- (iv) Metal Ltd. created a mortgage over its heavy machineries in respect of a loan given by the sister of Krish, a director of the company. This fact was known to all the directors but the interested director neither disclosed his interest nor abstained from voting when the loan transaction was approved at the Board meeting. Decide the validity of the said transaction under provisions of ' Companies Act, 2013.

(4 marks)

- (v) Jupiter Ltd. appointed Ashok as an Independent director for a term of three years. Upon completion of his first term, he was re-appointed for another term for the same period. Now upon completion of the second term, company again wants to re-appoint him as the independent director of the company considering the fact that he has not completed the consecutive term of ten years. Advise the Company on the feasibility of his re-appointment.

(4 marks)

**Attempt all parts of either Q. No. 5 or Q. No. 5A**

**Answer No. 5(a)**

Yes. It is mandatory under section 173(2) of the Companies Act, 2013 for the company to allow the participation of directors in a meeting through video conferencing, unless the Companies Act, 2013 or any other law specifically prohibits such participation through electronic mode in respect of any item of business.

Accordingly, subject to the prior intimation to that effect received from the director sufficiently in advance so that the company is able to make suitable arrangements on this behalf, the Chairman shall make arrangements to allow the participation of the said Director in the meeting through video conferencing in accordance with the said Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014. However, if the request is received too late so as not to allow reasonable time to make the necessary arrangements, then the Chairman is not bound to provide the video conferencing facility to the Director.

Yes. It is permitted under Section 173(2) of the Companies Act, 2013 read with Rules made thereunder, for even the Chairman of the meeting to join the meeting through video conferencing. Guidance Note on Secretarial Standards – 1 issued by the ICSI mentions that, in case the Chairman of the Board Meeting is participating through electronic mode, he should, while transacting any interested items of business in which he is interested, vacate the Chair and entrust the conduct of the proceedings in respect of such items to any other non-interested director attending the meeting and should not participate in the meeting in respect of such items.

**Answer No. 5(b)**

Section 167(1) of the Companies Act, 2013 provides for the cases where the office of a director

shall become vacant. Section 167(1)(b) states that the office of a director shall be vacated if he absents himself from all the meetings of the Board of directors held during a period of twelve months with or without seeking leave of absence of the Board.

Examining the given case, Thunder, the director absented from all the four meetings of the board held from July to December 2023 by seeking leave of absence in first three and not seeking leave of absence in the last one. It is not that he did not attend all the meetings for a period of twelve months. Thus, his office does not become vacant and he can continue to be a director in the Board.

Disqualification of directors is dealt with under section 164 of the Companies Act, 2013 and is different from vacation of office of directors under section 167. Section 167(1)(a) provides that the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164, which does not include non-attendance of board meetings as a reason for disqualification.

### **Answer No. 5(c)**

Section 174 of the Companies Act, 2013 deals with quorum for a Board meeting.

The section states that quorum for a meeting of Board of directors of a company shall be one third of its total strength or two directors, whichever is higher. Any fraction of a number shall be rounded off as one. Thus, where a company has nine directors quorum for Board meeting shall be higher of three ( $1/3$  of 9) or two, i.e., three directors. Accordingly, three directors shall be quorum in case of Moon Ltd.

However, articles of a company can provide for a higher quorum. The quorum provided under section 174 is the minimum quorum. It is open to the company, by its articles, to indicate a higher, but not a lower number or proportion as constituting a valid quorum. *Amrit Kaur Puri vs Kapurthala Flour Oil & General Mills Co. Pvt Ltd (1984) 56 Com. Cases 194 (P&H)*.

Hence, the clause in Articles of Moon Ltd. stipulating that quorum for a Board meeting will be at least 5 directors of which two are foreign nationals is valid.

### **Answer No. 5(d)**

The following provisions are contained in Section 165 of the Companies Act, 2013 (the Act) for number of directorships a person can hold in companies.

- (1) As per Section 165 (1) of the Companies Act, 2013, after commencement of the Act, no person shall hold office of a director, including any alternate directorship in more than twenty companies at the same time, provided that maximum number of public companies in which a person can be appointed shall not exceed ten.
- (2) As per the explanations provided in Section 165(1) of the Companies Act, 2013:
  - (i) for reckoning the limit of public limited companies in which a person can be appointed as director, the directorship in private companies that are either holding or subsidiary company of a public company shall be included.
  - (ii) for reckoning the limit of directorships in twenty companies, the directorship in a dormant company shall not be included.

In view of the above provisions for calculating the directorships held by Sukanya, the directorship held in 1 dormant public limited company shall be excluded.

Therefore, she can accept the invitation of Green Ltd. for directorship and after appointment in Green Ltd., the directorships held by her will be within the overall prescribed limit of 20 companies (including not more than 10 Public companies) as indicated under:

- 1) 10 public limited companies
- 2) 1 dormant public limited company (excluded from the limit as above)
- 3) 10 private companies

**Answer No. 5(e)**

- i) As per clause (1) of Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company is required to appoint the company secretary to act as 'Compliance Officer', who will be responsible for the following –
  - (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.
  - (b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities.
  - (c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity.
  - (d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.
- ii) Company Secretary has been defined as 'Officer who is in default' under Section 2(60) of the Companies Act, 2013 along with Managing Director, Manager and Whole time Director etc. Thus, he can be punished in respect of offences under Companies Act, 2013. He may be held liable as Key Managerial Personnel also under various provisions of the Act.

**OR (Alternate Question to Q. No. 5)**

**Answer No. 5A(i)**

- (a) According to Sec 149(6) of Companies Act, 2013 read with Regulation 25(2A) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), an independent director of a listed company shall be appointed by passing a special resolution in the general meeting.

According to Regulation 16(1)(b) of LODR the independent director shall not be less than 21 years of age.

Hence, the appointment of Sudarshan Chakraborty, aged 20 is invalid on both counts.

- (b) Section 161(3) of the Companies Act, 2013, provides that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government company.

However, there is an exception to this sub section in case of specified IFSC public company and specified IFSC private company. Companies, which secure financial assistance from financial institutions, banks, major shareholders, debenture holders, etc. usually confer on their lenders, power to appoint and terminate the appointments of their nominees on their Boards. Such power is conferred by incorporating appropriate provisions in the financial assistance agreements.

These institutions/banks etc. also insist on borrowing companies to alter their articles of association so as to empower them to appoint and terminate the services of their nominee directors on the

Board of the company as and when they like. These directors are known as nominee directors. They are not liable to retire by rotation and hold office at the pleasure of their nominating agencies. They cannot be removed by the company.

Procedure to appoint a nominee director is same as appointment as additional director by the Board or appointment of director other than retiring director by the company in general meeting. Depending upon the term and condition of agreement with the appointing bank/institution/Government, the company may choose any of these two methods.

Thus, in view of above, Karna Kumar Baag, a nominee director appointed by BICCI Bank Ltd. Cannot be removed by Reliable Capacitors limited, a listed Company, by passing an ordinary resolution.

### **Answer No. 5A(ii)**

- (a) According to Section 96 read with Secretarial Standard-2(SS-2), the Annual General Meeting (AGM) of the listed company needs to be conducted at the village/town/city where the Registered Office of the company is located.

However, the Central Government may exempt any company from the provisions of section 96(2) subject to such conditions as it may impose.

Unless the company has obtained exemption from the Central Government, the action of the company of holding the AGM in Kolkata is not valid.

- (b) As per Para 15.2 of SS-2, if a general meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned meeting shall be given at least 21 clear days before the adjourned meeting to comply with provisions of Section 101 of the Companies Act, 2013 relating to Notice.

Since, the AGM has been adjourned for more than 2 months, three days' Notice and posting of Notice on the website of the company is not valid. The company needs to send Notice of the adjourned meeting at least 21 clear days before the meeting by permitted mode of communication like, electronic means.

### **Answer No. 5A(iii)**

As per para 6.1.2 of Secretarial Standard on Board Meeting (SS-1), where not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting, the Chairman shall put the resolution for consideration at a Meeting of the Board.

“Total number of Directors” above means the “total strength of the Board” which does not include Directors whose places are vacant. Interested Directors shall not be excluded for the purpose of determining the above one-third of the total number of Directors.

In the case under consideration, total number of directors is nine i.e., twelve less three. For the purpose of reckoning 1/3<sup>rd</sup> stipulation as above, total number of directors be taken as 9 and not six (nine less three interested directors).

Thus, if three directors (1/3<sup>rd</sup> of 9 which may include interested directors) require resolution under circulation to be decided at a Meeting, the resolution by circulation should not be proceeded with.

### **Answer No. 5A(iv)**

Section 184 of the Companies Act, 2013 requires the disclosure of interest by a director and prohibits an interested director to participate or vote in respect of that particular transaction at the Board

meeting subject to certain exceptions for private limited companies. Further, his presence will not be counted for quorum too. But where the whole body of directors is aware of the fact relating to interest of a director, formal disclosure is not necessary. (*Ramakrishna Rao vs Bangalore Race Club*).

The mere voting by an interested director will not render the contract void or voidable unless in the absence of that vote, there would have been no quorum. The mere fact that voting in such situation the director shall be liable to a penalty of one lakh rupees under section 184 (4) of the Act does not ipso facto render the contract void or voidable. In this case, there is no allegation of earning secret profits.

Under section 184 of the Act, there does not exist any ban on contract in which directors are interested. The only requirement is that interest should be disclosed. Even where the interest is not disclosed, the transaction is only voidable against the interested director and not void as decided in *Narayan Das Shreeram Somani vs Sangli Bank*.

Under section 184(3) of the Act, a contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company.

### **Answer No. 5A(v)**

Section 149(10) of the Companies Act, 2013 prescribes that subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Section 149(11) states that no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

General Circular No. 14/2014 issued by MCA dated 9<sup>th</sup> June, 2014 clarifies that though an independent director is to be appointed for a term up to 5 years, there is no bar on appointment for a term of less than 5 years. However, such appointment for less than 5 years is to be counted as one term and at the end of two such consecutive terms, the director should demit his office, even if the total number of years of his appointment in such two consecutive terms is less than 10 years. In such a case, at the end of the 2 consecutive terms, he cannot be reappointed again as independent director and the cooling period of 3 years shall start.

In view of the above, Jupiter Ltd. cannot reappoint Ashok as independent director of the company at the end of second consecutive term.

## **PART-III**

### **Question 6**

- (a) CS Nitesh, a Company Secretary in practice gave an advertisement for staff for his office in newspaper as follows – ‘‘A reputed firm of Company Secretaries at West Mumbai requires Executive passed candidates on an urgent basis..... remuneration commensurate with the best in the industry ..... only local candidates are preferred ....’’. He also outlined the number of trainees who have completed training from his office and number of appearances made before NCLT in the advertisement. With reference to the provisions of Company Secretaries

Act, 1980 read with Schedules thereto comment if there is any professional misconduct in the following circumstances.

(5 marks)

- (b) (i) Write a brief note on revenue sharing models for a Mega Firm.]
- (ii) In the light of provisions of relevant Secretarial Standard state if the minute book can be in the custody of a senior officer of the company where there is no Company Secretary in the company.

(5 marks)

### **Answer No. 6(a)**

Clause 7 of Part I of the First Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he— “Advertises his professional attainments or services, or uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or signboards, unless it be a degree of a university established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council.

In line with the above, advertisement by a Practising member for staff for his office in the press should in no way savour of any advertisement of professional attainments or services. The use of certain adjectives like “a reputed firm”, “a well-known firm”, etc. may be treated as inconsistent with the spirit of this clause. A practicing Company Secretary cannot include in his advertisement following particulars like the infrastructure available in his own office, details of Associate practicing Company Secretaries, details of his networking in other places within & outside India, infrastructure at such networked offices, number of trainees who have completed training from his office, certain landmark achievements like number of companies incorporated since he started his practice, number of appearances made before NCLT, CBDT, Tribunals, Regulatory Authorities, Commissions, number of Foreign Collaborations handled, number of Merger & Acquisitions handled, number of due diligence carried out etc.

Thus, in the given case CS Nitesh can be held guilty of professional misconduct under clause 7 of Part I of First Schedule to Company Secretaries Act, 1980.

### **Answer No. 6(b)**

- (i) The revenue sharing model of a Mega Firm could be the following:
1. Partner bringing new client shall be given referral or induction share, say, @ 15% of the fees settled and received; it can be for the first year or for given number of years;
  2. Certain percentage of fees, say 15% shall be retained in business in common pool for meeting expenses;
  3. 70% of the fees shall be given to the partner or partners who actually work on the assignment (assignment share). When more than one partners are involved in an assignment their share can be determined based on respective role;
  4. At the year-end after meeting expenses resultant profit shall be shared in proportion of contribution of individual in the gross earnings/ net profit of the firm;
  5. Internally, different verticals can be created and surplus generated by each one can be assessed as an independent cost centre.

- (ii) As per para 8.3 of Secretarial Standard – 2 on General Meetings minutes book shall be kept in the custody of any director duly authorised for the purpose by Board where there is no Company Secretary in the company.

Therefore, the minute book can be kept in the custody of any authorized director and not in the custody of the senior officer.

# SETTING UP OF BUSINESS ENTITIES AND CLOSURE

## MODULE 1 PAPER 3

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-A

#### Question 1

(a) Ravi and Suraj are two friends residing at Chandni Chowk, Delhi. They wish to start the business of readymade garments by incorporating a private limited company. They approach you to seek your advice on the contents of Memorandum of Association (MOA) of a limited company under the Companies Act, 2013. Advise them the contents of MOA of a limited company under the Companies Act, 2013.

(5 marks)

(b) Vijay has completed his B.Tech. from IIT, Kanpur. He is interested in setting up a startup for developing products used in the pharmaceutical industry. He seeks your advice on the benefits that are given by the Government of India to entrepreneurs establishing startups. Advise Vijay.

(5 marks)

(c) Komoto Corporation is a foreign company registered in Japan. The company is supplying high quality machines and tools used in paper manufacturing to various countries across the globe. Considering the pro-business policies of Government of India, the company intends to start a Special Purpose Vehicle (SPV) in India. The company approaches you to seek your advice on key advantages of using a Limited Liability Partnership (LLP) firm as SPV as compared to a company. As a Practicing Company Secretary, advise Komoto Corporation.

(5 marks)

(d) Technocom Ltd. is a company engaged in the business of communication and networking. The company specializes in providing solutions for virtual meetings, e-offices, digitization of records, etc. After getting good response from potential clients outside India, the company intends to set up and expand its business outside India. Describe the aspects that need to be considered by Technocom Ltd. in choosing locations for its business outside India.

(5 marks)

#### Answer 1(a)

As per Section 4(1) of the Companies Act, 2013, the memorandum of a limited company must state the following:

(a) the name of the company with "Limited" as its last word in the case of a public company; and "Private Limited" as its last words in the case of a private company(*Name Clause*)

This shall not apply in case of companies registered under section 8 Similarly, in case of

government companies the name of the company need not be ended with the words "Limited" or "Private Limited". This is as per the exemptions to Government Companies under Section 462 of the Companies Act, 2013 vide MCA notification dated June 5, 2015

- (b) the State in which the registered office of the company is to be situated (*Situation Clause*);
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (*Objects Clause*);
- (d) the liability of members of the company, whether limited or unlimited, and also state, - (*Liability Clause*):
  - i. in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
  - ii. in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute -
    - (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
    - (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves.
- (e) in the case of a company having a share capital (*Capital Clause*) - the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount;

*Subscription Clause:*

- i. the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
  - ii. the number of shares each subscriber to the memorandum intends to take, indicated opposite his name.
- (f) in the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

As per section 4(6) of the Companies Act, 2013, the memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company

According to section 4(7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void. The above clauses are compulsory and are designated as "conditions" prescribed by the Companies Act, 2013 on the basis of which a company is incorporated.

Accordingly, Ravi and Suraj are advised.

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

To promote growth and help Indian economy, many benefits are being given to entrepreneurs establishing start-ups.

#### **1. Simple process**

Government of India has launched a mobile app and a website for easy registration for startups. Anyone interested in setting up a startup can fill up a simple form on the website and upload certain documents. The entire process is completely online.

**2. Reduction in cost**

The government also provides lists of facilitators of patents and trademarks. They will provide high quality Intellectual Property Right Services including fast examination of patents at lower fees. The government will bear all facilitator fees and the startup will bear only the statutory fees. They will enjoy 80% reduction in cost of filing patents.

**3. Easy access to Funds**

A 10,000 crore rupees fund is set-up by government to provide funds to the startups as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital.

**4. Tax holiday for 3 Years**

Startups will be exempted from income tax for 3 years provided they get a certification from Inter-Ministerial Board (IMB). Post getting clearance for Tax exemption, the Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation.

**5. Apply for tenders**

Startups can apply for government tenders. They are exempted from the "prior experience/turnover" criteria applicable for normal companies answering to government tenders.

**6. R&D facilities**

Seven new Research Parks will be set up to provide facilities to startups in the R&D sector.

**7. No time-consuming compliances**

Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance (through the Startup mobile app) with 9 labour and 3 environment laws.

**8. Tax saving for investors**

People investing their capital gains in the venture funds setup by government will get exemption from capital gains. This will help startups to attract more investors.

**9. Choose your investor**

The startups will have an option to choose between the VCs, giving them the liberty to choose their investors.

**10. Easy exit**

In case of exit, a startup can close its business within 90 days from the date of application of winding up

**11. Meet other entrepreneurs**

Government has proposed to hold 2 startup tests annually both nationally and internationally to enable the various stakeholders of a startup to meet. This will provide huge networking opportunities.

Accordingly, Vijay is advised.

**Answer 1(c)**

Key advantages of using an Limited Liability Partnership (LLP) firm as an Special Purpose Vehicle (SPV) as compared to a company are as follows:

- i. Low cost of incorporation of an LLP;
- ii. Flexibility of rules of management and governance based on Agreement between the contracting Partners;
- iii. Partners can be companies while management is run by Designated Partners who are individuals. By this, there is separation between ownership and management;
- iv. Low annual maintenance cost;
- v. There may not be any necessity of getting the accounts audited before the project takes off;
- vi. An LLP firm does not have to pay Dividend Distribution Tax (DDT) on share of profits transferred to the Partners, which makes it tax efficient;
- vii. Voluntary winding of an LLP firm which has no creditors is very easy and can be done without intervention of any court or tribunal;
- viii. Investment in LLP Firms is permitted only in sectors in which 100% FDI is permitted through automatic route without any performance linked conditions.

Accordingly, Komoto Corporation is advised.

**Answer 1(d)**

Choosing business location is depends on the entry barriers in the governing law as some of the countries provide easy access to the businesses such as Property transfer, Reliability of electricity, Labor market regulation, Trade regulation and costs, Court efficiency, Creditors' rights, Credit information, Shareholders' rights, Tax regulation, Foreign direct investment, Overall business regulatory environment. However, the same can be categorised as under:

**A. Geographical Location of the Business**

- Infrastructure (ports, airports, storage, specific storage types - such as cold-storage, secure storage);
- Access (transportation of goods, materials and personnel);
- Relevance to supply-chain: raw material sourcing, processing, despatch of finished produce);
- Availability of talent pool for productions (labour), services and management.

**B. Economic Aspects**

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability;
- Cost of doing business: return on investment computations vis a-vis comparable locations;
- Laws relating to labour;
- Laws relating to taxation: investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double-taxation avoidance agreements, information sharing requirements such as Foreign Account Tax Compliance Act (FATCA), Tax Residency Certificate (TRC), etc.

C. *Political Aspects*

- Friendly country, Most Favoured Nation (MFN) status;
- Long-standing and established legislative precedents with companies going through regulatory recourse;
- Their relations with neighbouring countries and neighbours and your country.

D. *Social Aspects*

- Trade bodies, interaction between commercial entities of both nations;
- Expatriate-friendliness of the nation for relocating key employee personnel.

E. *Technological Aspects*

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

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

**Question 2**

- What do you mean by Micro Finance Institution? State the Characteristics of a Micro Finance Institution.
- Explain the provisions of the Companies Act, 2013 regarding the Annual Report of a Government Company.
- What are the key issues to be noted in preparation of a Hindu Undivided Family (HUF) Deed?
- Explain the Doctrine of *Ultra Vires*.
- Explain the conditions required to be fulfilled by a company to obtain Certificate of Registration from the National Housing Bank.

(4 marks each)

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

**Question 2A**

- KBC Money Ltd. intends to obtain the license from the Reserve Bank of India for operating as a Payment Bank. The company approaches you to seek your advice on the key issues requiring compliance by an applicant company. Advise KBC Money Ltd.  
(4 marks)
- The articles of XYZ Ltd. contained a clause that on the bankruptcy of a member his shares

would be sold to other persons and at a price fixed by the directors. Kush, a shareholder was adjudicated bankrupt. His trustee in bankruptcy claimed that he was not bound by these provisions and should be at liberty to sell the shares at their true value. In the light of a decided case law, examine the validity of the claim of trustee of Kush.

(4 marks)

(iii) ABC Solutions LLP is registered under the Limited Liability Partnership Act, 2008. The LLP has engaged you as its adviser to advise on various matters. As a Practicing Company Secretary, advise ABC Solutions LLP on the following matters :

- (a) Can all the partners of LLP be the bodies corporate ?
- (b) Can all the designated partners of LLP be the foreign nationals ?
- (c) Minimum number of designated partners required in LLP.
- (d) Form for intimation of changes in LLP agreement.

(4 marks)

(iv) PMC foundation is a society registered under the Societies Registration Act, 1860. The society intends to register itself as a company limited by guarantee under section 8 of the Companies Act, 2013. List out the documents required for registration of society as a company limited by guarantee under section 8 of the Companies Act, 2013.

(4 marks)

(v) RCL, a government company has entered into a contract with BVCL, another government company for supply of chemicals and fertilizers. The 4 directors of RCL are also directors on the Board of BVCL. Whether RCL and BVCL are required to comply with the provisions of Related Party Transaction under section 188 of the Companies Act, 2013.

(4 marks)

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

**Answer 2(a)**

*Meaning of Micro Finance Institutions (MFI)*

A micro finance institution is an organization that offers financial services to low-income populations. Almost all give loans to their members, and many offer insurance, deposit and other services. Organizations which finance on a larger scale are regarded as microfinance institutes. They are those that offer credits and other financial services to the representatives of poor strata of population (except for extremely poor strata). An increasing number of microfinance institutions (MFIs) are seeking non-banking finance company (NBFC) status from RBI to get wide access to funding, including bank finance.

NABARD has defined microfinance as "provision of thrift, credit and other financial services and products of very small amounts to the poor in rural, semi-urban and urban areas provided to customers to meet their financial needs with only qualification that (1) transactions value is small and (2) customers are poor."

*Characteristics of a Micro Finance Institution:*

- (1) Micro finance provides financial services to those whose income is small and unstable. These people are in need of credit facilities for several reasons. To name a few:
  - (a) their needs are small and arise suddenly.

- (b) the institutional providers of finance, namely, the banks, demand collateral security which they cannot provide.
  - (c) most of the time, they are in urgent need of funds to meet their consumption demands, for example, to meet expenses related to education, illness, funerals, weddings for which it is difficult to obtain institution finance
  - (d) for purpose of investment in income generating activities.
- (2) Concept of Self-Help Group (SHGs) is the most exciting discovery In the context of microfinance. The Indian microfinance scene is dominated by SHGs and their linkage with banks. This has helped in empowerment of women and eradication of poverty among people with low income.
- (3) Microfinance provides a greater menu of options whereby the small loan can be garnered not just from the external sources but also through self-mobilization, by way of saving and sale of assets.
- (4) The biggest flexibility in the case of microfinance is the lack of any physical collateral, even in case of loan from the bank.

The characteristics of MFIs may be summarized as under:

- i. The size of the loan given by the MFI is small.
- ii. The repayment period is short.
- iii. MFI can mobilize resources both from internal and external sources.
- iv. No collateral for loan is required.
- v. the purpose of end use of loan is flexible.
- vi. loans given are mostly group loans, trickling down to individuals.
- vii. Transaction cost is low, due to group lending.

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

In terms of Section 394 of the Companies Act, 2013, where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be-

- (a) prepared within three months of its annual general meeting before which the comments given by the Comptroller and Auditor-General of India and the audit report is placed under the proviso to sub-section (6) of section 143; and
- (b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and comments upon or supplement to the audit report, made by the Comptroller and Auditor General of India.

Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred above.

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

The deed should be prepared on stamp paper declaring the formation of the Hindu Undivided Family (HUF). It should have all the details, including the name of Karta, co-parceners, address

and source of funds in the corpus. Creating a HUF Deed is not mandatory. However, it is always beneficial to have a HUF Deed.

Following are the key issues to be noted in preparation of a HUF Deed:

- i. A HUF deed is a written formal document on a stamp paper (as applicable in the respective State) specifying the name of Karta and Coparceners of HUF.
- ii. The eldest male member of HUF becomes Karta of HUF.
- iii. The name of members of HUF and the name of the HUF is also required to be stated in the HUF Deed at the time of creating of HUF.
- iv. The name of HUF is usually the name of the Karta followed by the word HUF e.g., Ram Kumar HUF.
- v. HUF Deed also states the capital with which the HUF has been initiated. There are various sources through which capital can be introduced.
- vi. A declaration is also provided by each member of family where they declare the name of Karta and also state that -
  - i. Karta has the authority of the accounts vested in his hand;
  - ii. Karta holds the right to govern all the transactions of the HUF accounts on behalf of the members.
- vii. Further, a rubber stamp of HUF will also be prepared. Rubber stamp should be Rectangular. Rubber Stamp will be affixed on all the documents pertaining of HUF to authorize the transaction.
- viii. It is recommended that the Deed should be notarized.
  - i. Register the Deed.
  - ii. Obtain PAN.
  - iii. Once the declaration deed is made, the karta should apply for a permanent account number (PAN) for the HUF. This is mandatory because all financial transactions must carry PAN.
  - iv. Open bank account.

After the PAN is allotted, open a bank account in the name of the HUF. It is also advisable to get some stationery printed for official communication. The HUF is now functional. The Karta will have to invest in tax saving instruments and file tax returns on behalf of the HUF.

## Answer 2(d)

The word 'ultra' means beyond and the word 'vires' means powers. In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the contracting party can sue on it.

Also, as stated earlier, the company cannot make it valid, even if every member assents to it.

The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form [*Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982)*].

The doctrine of ultra vires was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) L.R. 7 H.L. 653*.

The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors."

The rule is meant to protect shareholders and the creditors of the company. If the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it. If it is ultra vires the articles of association, the company can alter its articles in the proper way and thereby such acts can be duly ratified.

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

National Housing Bank (NHB) after satisfying itself on the fulfilment of following conditions provided under of Section 29A (4) of the National Housing Bank Act, 1987 may grant a Certificate of Registration:

1. Housing Finance institution is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;
2. Affairs of the Housing Finance institution are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;
3. General character of the management or the proposed management of the housing finance institution shall not be prejudicial to the public interest or to the interests of its depositors;
4. Housing finance institution has adequate capital structure and earning prospects;
5. Public interest shall be served by the grant of certificate of registration to the housing finance institution to commence or carry on the business in India;
6. Grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country; and
7. Any other condition, fulfilment of which in the opinion of the Reserve Bank, shall be necessary to ensure that the commencement of or carrying on the business in India by a Housing finance institution shall not be prejudicial to the public interest or in the interests of the depositors.

The Reserve Bank may, wherever it considers necessary so to do, require the National Housing Bank to inspect the books of such housing finance institution and submit a report to the Reserve Bank for the purpose of considering the application.

The Reserve Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

Housing finance institution are categorized in terms of the type of liabilities, by NHB, into Deposit and Non-Deposit accepting Housing finance institution and are issued Certificate of Registration accordingly.

### **OR (Alternate Question to Q. No. 2)**

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

Payment Banks are regulated by the Reserve Bank of India (RBI). It released Guidelines for Licensing of Payment Banks on November 27, 2014 and Operating Guidelines for Payment Banks on October 6, 2016.

An application has to be filed with Reserve Bank of India in Form III under Section 22 of the Banking Regulation Act, 1949 for a licence to commence banking business by a company incorporated in India and desiring to commence banking business.

Key issues which require compliance by an applicant company are summarized below:

1. Compliance with the minimum capital requirement
2. Foreign shareholding will be allowed in these banks as per the Rules/Regulations for Foreign Direct Investment in private banks in India.
3. Compliance with the voting rights as per the Banking Regulation Act, 1949.
4. The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
5. The bank should be fully networked from the beginning. The bank can accept utility bills. It cannot form subsidiaries to undertake non-banking activities.
6. Initially, the deposits will be capped at Rs. 200,000 per customer, but it may be raised by the RBI based on the performance of the bank.
7. The bank cannot undertake lending activities 25% of its branches must be in the unbanked rural area.
8. The bank must use the term "payments bank" in its name to differentiate it from other types of bank.
9. The banks will be licensed as payments banks under Section 22 of the Banking Regulation Act, 1949.
10. It will be registered as public limited company under the Companies Act, 2013.

Accordingly, KBC Money Ltd. is advised.

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

The memorandum and articles constitute a contract binding on the members of the company. The members, as members, are bound to the company. Each member must, therefore, observe the provisions of the memorandum and articles.

Each member is bound by the covenants of the Memorandum as originally made and as altered from time to time [*Malleson v. National Insurance Co.*]. In another case, the shareholders could not enter into an agreement which was contrary to or inconsistent with the articles of association of the company [*V.B. Rangaraj v. V.B. Gopalkrishnan (1992)*]

In *Boreland's Trustee v. Steel Brother and Co. Ltd. (1901)*, the articles of a company contained a clause that on the bankruptcy of a member his shares would be sold to other persons and at a price fixed by the directors. B, a shareholder was adjudicated bankrupt. His trustee in bankruptcy claimed that he was not bound by these provisions and should be at liberty to sell the shares at their true value. It was held that the trustee was bound by the articles, as the shares were purchased by B in terms of the articles.

In view of the above, the claim of trustee of Kush is not valid.

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

- (a) As per Section 7(1) of the LLP Act, 2008 Limited liability partnership may have all the partners as bodies corporate. However, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.
- (b) As per Section 7(1) of the LLP Act, 2008, every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. The term "resident in India" means a person who has stayed in India for a period

of not less than one hundred and twenty days during the financial year. Therefore, all the designated partners of LLP cannot be the foreign nationals.

- (c) As per Section 7(1) of the LLP Act, 2008 every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
- (d) As per Rule 21(1) of the LLP Rules, 2009 indicates that that any change made in the limited liability partnership agreement shall be filed in Form 3 within thirty days of such change along with the fee as provided in Annexure 'A'.

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

PMC foundation would require the following documents for registration of society as a company limited by guarantee under section 8:

In case of an application by a society for registration as a company limited by guarantee under section 8-

- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were members of the society with proof of membership;
- (ii) a list showing the particulars of persons proposed as the first directors of the company, along with DIN, passport number, if any, with expiry date, residential addresses and their interests in other firms or bodies corporate along with their consent to act as directors of the company;
- (iii) a list containing the names and addresses of the members of the governing body of the society;
- (iv) a certified copy of the certificate of registration of the society;
- (v) written consent or No Objection Certificate from all the secured creditors of the applicant;
- (vi) written consent from the majority of members whether present in person or by proxy at a general meeting agreeing for such registration, and the resolution shall also provide for declaration of the amount of guarantee;
- (vii) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 as applicable;
- (viii) a copy of the latest income tax return of the society;
- (ix) details of the objects of the company along with a declaration from all the members that the restrictions and prohibitions as mentioned in clause (b) and clause (c) of sub-section (1) of section 8 of the Act shall be complied.

### **Answer 2A(v)**

The Ministry of Corporate Affairs (MCA) under Section 462 of the Companies Act, 2013 vide notification no: G.S.R. 151(E), dated 02<sup>nd</sup> March, 2020, has exempted the Government Companies with respect to the related party transactions.

First and Second proviso to sub-section (1) of section 188 shall not apply to -

- a. Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;

- b. Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

Before this amendment the contracts or arrangements with any other Government Company was only exempted, with this amendment the exemption is also extended to the contracts or arrangements with the Central Government or any State Government or any combination thereof.

In view of the above, as the contract is between two Government Companies, RCL and BVCL are not required to comply with the provisions of Related Party Transaction under section 188 of the Companies Act, 2013.

## PART-B

### Question 3

- (a) MNC Ltd. intends to commence the business of manufacturing cigarettes and tobacco products. The company approaches you to seek your advice on the requirement of industrial license for manufacturing cigarettes and tobacco products. Advise MNC Ltd. the industries covered under mandatory licensing requirement as well as industries attracting locational restrictions.

(5 marks)

- (b) S is the occupier of a factory manufacturing two-wheeler locks and auto parts in Aligarh (U.P.). During the inspection of the factory, the Chief Inspector found that there was accumulated dirt and refuse on floors, staircases and passages in the factory. The Inspector directed S to ensure cleanliness in the factory. Describe the cleanliness measures to be taken by S under the Factories Act, 1948.

(5 marks)

- (c) Describe the rights and entitlements for persons with disabilities under the Rights of Persons with Disabilities Act, 2016.

(5 marks)

- (d) What are the salient features of Geographical Indication of Goods (Registration and Protection) Act, 1999 ?

(5 marks)

### Answer 3(a)

1. Industries retained under compulsory licensing: The following industries require compulsory license:

- Alcoholics drinks
- Cigarettes and tobacco products
- Electronic aerospace and defense equipment
- Explosives
- Hazardous chemicals such as hydrocyanic acid, phosgene, isocyanates and di-isocyanates of hydro-carbon and derivatives.

2. Manufacture of items reserved for small scale sector by larger units large or medium industries undertaking manufacture of items reserved for SSI units. The Government has reserved certain items for exclusive manufacture in the small-scale sector. Non-small-scale units can undertake the manufacture of items reserved for small scale sector, only after obtaining an industrial licence. In such cases, the non-small-scale unit is required to undertake an obligation to export 50% of the production of SSI reserved items.
3. When the proposed location attracts locational restriction.

*Locational restrictions:*

Industrial undertakings to be located within 25 kms of the standard urban area limit of 23 cities having a population of 1 million as per 1991 census require an industrial license. Industrial license even in these cases is not required if:

- (i) a unit is located in an area designated as an industrial area before 1991 or
- (ii) it is non-polluting industries such as electronics, computer software, printing and other specified industries.
  - The DPIIT has established the Department for Promotion of Industry and Internal Trade G2B Portal - a single window portal to obtain clearance from various governments and government agencies. The portal is an integrated platform that provides access to government to business (G2B) services, such as filing of Industrial Entrepreneurs Memorandum (IEM) and Industrial License (IL) applications online. The online portal has the required authentication mechanisms for submitting IEM and IL applications.
  - Previously, the application for registration was made to the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy & Promotion (DIPP) along with a fee.
  - Once the license is obtained, an industrial undertaking is eligible for the allotment of controlled commodities and for the issuance of an import license for goods required for its construction and operation.

Accordingly, MNC Ltd. is advised.

**Answer 3(b)**

Section 11 of the Factories Act, 1948 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance. The Act has laid down following provisions in this respect:

- (a) accumulation of dirt and refuse shall be removed daily by sweeping or by any other effective method from the floors and benches of workrooms and from staircases and passages, and disposed of in a suitable manner;
- (b) the floor of every workroom shall be cleaned at least once in every week by washing, using disinfectant, where necessary, or by some other effective method;
- (c) where a floor is liable to become wet in the course of any manufacturing process to such extent as is capable of being drained, effective means of drainage shall be provided and maintained;
- (d) all inside walls and partitions, all ceilings or tops of rooms and all walls, sides and tops of passages and staircases shall

- (i) where they are painted otherwise than with washable water-paint or varnished, be repainted or revarnished at least once in every period of five years;
- (ia) where they are painted with washable water-paint, be repainted with at least one coat of such paint at least once in every period of three years and washed at least once in every period of six months
- (ii) where they are painted or varnished or where they have smooth impervious surfaces, be cleaned at least once in every period of fourteen months by such method as may be prescribed;
- (iii) in any other case, be kept whitewashed, or colour washed, and the whitewashing or colour washing shall be carried out at least once in every period of fourteen months;
- (dd) all doors and window frames and other wooden or metallic framework and shutters shall be kept painted or varnished and the painting or varnishing shall be carried out at least once in every period of five years;
- (e) the dates on which the processes required by clause (d) are carried out shall be entered in the prescribed register.

(2) If, in view of the nature of the operations carried on in a factory or class or description of factories or any part of a factory or class or description of factories, it is not possible for the occupier to comply with all or any of the provisions of subsection (1), the State Government may by order exempt such factory or class or description of factories or part from any of the provisions of that sub-section and specify alternative methods for keeping the factory in a clean state

S should take aforesaid cleanliness measures under the Factories Act, 1948.

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

Chapter II of the Rights of Persons with Disabilities Act, 2016 deals with the rights and entitlements for persons with disabilities.

Section 3 speaks about Equality and Non-Discrimination. It states that it is the duty of the appropriate Government to ensure that persons with disabilities enjoy right to equality, a life with dignity and respect or his or her integrity equally with others.

It mandates the Government to take appropriate steps to utilise the capacity of persons with disabilities by providing appropriate environment.

The appropriate Government shall take necessary steps to ensure reasonable accommodation for persons with disabilities.

Section 4 states that the appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others and also shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability.

Section 5 allows such persons with disability to the right to live in the community.

Section 6 of the Act states that the appropriate Government shall take measures to protect persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment.

Section 7 instructs the Government to take measure in order to protect persons with disability from any sort of abuse, violence or exploitation.

It also speaks about the duties of a police officer when cases of cruelty against persons with disability

are reported. It shall be his duty to let the victim know about his rights to approach the Executive Magistrate for maintenance or the particulars about the nearest organisation that works for the rehabilitation of person with disabilities or even his right to free legal aid.

Section 8 ensures the protection and safety of persons with disability in cases of any risk, armed conflict, humanitarian emergencies or natural disasters.

Sections 9 and 10 majorly deal with home and family rights. Section 9 prevents the separation of any child with disability, from his parents except by an order of the court and necessary relocation to any family member, community member or any governmental or private run home.

Section 10, deals with the providing of information to persons with disability, relating to reproduction and family planning.

Section 11 states that it is the duty of the Election Commissions to ensure that the electoral process is understandable and accessible to them.

Section 12 reflects the duty of the appropriate Government to make the legal process accessible for such persons with disability and to ensure suitable measure to render justice to such persons especially the ones requiring high support.

Section 13 deals with legal capacity of such persons with disability. It states that the appropriate Government shall have the duty to ensure that the persons with disabilities enjoy legal capacity equally like any other person and has the right to equal recognition.

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

The salient features of Geographical indication of Goods (Registration and Protection) Act, 1999 are as under:

- a. Provision of definition of several important terms like "geographical indication", "goods", "producers", "packages", "registered proprietor", "authorized user" etc.
- b. Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B use of computers etc. for maintenance of such Register. While Part A will contain all registered geographical indications, Part B will contain particulars of registered authorized users.
- c. Registration of geographical indications of goods in specified classes.
- d. Prohibition of registration of certain geographical indications.
- e. Provisions for framing of rules by Central Government for filing of application, its contents and matters relating to substantive examination of geographical indication applications.
- f. Compulsory advertisement of all accepted geographical indication applications and for inviting objections.
- g. Registration of authorized users of registered geographical indications and providing provisions for taking infringement action either by a registered proprietor or an authorized user.
- h. Provisions for higher level of protection for notified goods.
  - i. Prohibition of assignment etc. of a geographical indication as it is public property.
  - j. Prohibition of registration of geographical indication as a trademark.
- k. Appeal against Registrar's decision would be to the Intellectual Property Board established under the Trade Mark legislation.

- l. Provision relating to offences and penalties.
- m. Provision detailing the effects of registration and the rights conferred by registration.
- n. Provision for reciprocity powers of the registrar, maintenance of Index, protection of homonymous geographical indications etc.

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

**Question 4**

- (a) What do you mean by ‘‘Invention’’ under the Patents Act, 1970 ?
- (b) Describe the deductions from the wages of an employee under the Payment of Wages Act, 1936.
- (c) What do you mean by ‘Non-resident Taxable persons’ under Central Goods and Service Tax Act, 2017 ?
- (d) Discuss the rights of authors protected under the Copyright Act, 1957.
- (e) Write down the objectives of National Green Tribunal (NGT).

(3 marks each)

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

**Question 4A**

- (i) The registered office of RMC Ltd. is situated at Mumbai. There are 70 shareholders in the company. Out of them, 10 shareholders residing at Noida have requested to keep the statutory records and registers at the branch office of the company at Noida. Examine the validity of request of shareholders under the Companies Act, 2013.  
(3 marks)
- (ii) Raj intends to commence the pharmacy business in Delhi. He approaches you to seek your advice on the documents required for obtaining drug license in India. Advise Raj.  
(3 marks)
- (iii) Varsha is working as an office assistant in KMP Ltd. K is one of the directors of the company. K start making sexually coloured remark to Varsha and promises her to promote her to the position of Manager if she meets him after the office hours. Advise Varsha whether the act or behavior of K amounts to sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.  
(3 marks)
- (iv) Ramesh is carrying on the business of trading of leather items at Johri Bazar, Agra. He is making inter-state supplies to the traders based at Jaipur, Delhi and Panipat. One of his friends advised him to obtain registration under the Goods and Services Tax Act, 2017. Advise Ramesh the requirement of registration of his business under the Goods and Services Tax Act, 2017.
- (v) Sunita intends to start the business of selling fast-food items at Chawri Bazar, Delhi. She approaches you to seek your advice on the requirement of registration with the appropriate authority before starting petty food business. Advise Sunita.  
(3 marks)

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

**Answer 4(a)**

The definition of the word “Invention” as per Section 2(1)(j) of the Patents Act, 1970 includes a new product or process involving an inventive step and capable of industrial application. Inventive step means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

Therefore, a patent can be applied for the “Product” as well as “Process” which is new, involving inventive step and capable of industrial application can be patented in India.

The invention will not be considered new if it has been disclosed to the public in India or anywhere else in the world by a written or oral description or by use or in any other way before the filing date of the patent application. The information appearing in magazines, technical journals, books etc., will also constitute the prior knowledge. If the invention is already a part of the state of the art, a patent cannot be granted. Examples of such disclosure are displaying of products in exhibitions, trade fairs, etc. explaining its working, and similar disclosures in an article or a publication.

It is important to note that any invention which falls under section 3 and Section 4 of the Patents Act, 1970 are not patentable.

**Answer 4(b)**

Section 7(2) of the Payment of Wages Act, 1936 allows deductions from the wages of an employee on the account of the following: -

- (a) fines;
- (b) for absence from duty;
- (c) damage to or loss of goods expressly entrusted to the employed for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his neglect or default
- (d) house-accommodation supplied by the employer or by Government or any housing board set up under any law for the time being in force (whether the Government or the board is the employer or not) or any other authority engaged in the business of subsidizing house-accommodation which may be specified in this behalf by appropriate Government by notification in the Official Gazette;
- (e) such amenities and services supplied by the employer as the appropriate Government or any officer specified by it in this behalf may, by general or special order, authorise;
- (f) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the appropriate Government, and the interest due in respect thereof;
- (g) subscriptions to and for repayment of advances from any provident fund;
- (h) income-tax;
- (i) payments to co-operative societies approved by the appropriate Government or to a scheme of insurance maintained by the Indian Post Office;
- (j) deductions made with the written authorization of the employee for payment of any premium on his life insurance policy or purchase of securities.

**Answer 4(c)**

- Section 2(77) of the Central Goods & Services Tax Act, 2017 defines "non-resident taxable person" as any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.
- Hence, a non-resident taxable person is someone who has a business outside India, but comes to a different state for a business purpose temporarily. For example, a person from Paris, comes to participate in an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a non-resident taxable person at Mumbai and he will be granted registration for a maximum period of 90 days.
- As per Section 24 of Central Goods & Services Tax Act, 2017 a non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in FORM GST REG-09, at least five days prior to the commencement of business at the common portal.

**Answer 4(d)**

Copyright Act, 1957 protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings. The following rights are protected:

- reproduce the work.
- issue copies of the work to the public.
- perform the work in public.
- communicate the work to the public.
- make cinematograph film or sound recording in respect of the work.
- make any translation of the work.
- make any adaptation of the work (conversion of dramatic work into non dramatic work, literary work into dramatic work, re arrangement of literary or dramatic work, depiction in comic form or through pictures of a literary or dramatic work, transcription of musical work or any act involving rearrangement or alteration of an existing work and the making of a cinematograph film of literary or dramatic or musical work).

In addition to all the rights applicable to a literary work, owner of the copyright in a computer programme enjoys the rights to sell or give on hire or offer for sale or hire, regardless of whether such a copy has been sold or given on hire on earlier occasion.

**Answer 4(e)**

The objective of the National Green Tribunal can be derived from Preamble of the National Green Tribunal Act, 2010 are as under:

- Establishment of a National Green Tribunal (NGT) for the effective and speedy disposal of the cases relating to environment protection and conservation of forests and other natural resources. All the previous pending cases will also be heard by the Tribunal.
- It aims at enforcing all the legal rights relating to the environment.
- It also accounts for providing compensation and relief to effected people for damage of property.

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

**Answer 4A(i)**

Section 94 of the Companies Act, 2013 prescribed that the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the Company. Such registers may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

In the given case, the RMC Ltd. is having 70 shareholders and 10 shareholders residing at Noida which is as more than one-tenth of the total number of members (one-tenth of 70 i.e. 7). Therefore, the records and registers may be kept at Noida provided special resolution passed at a general meeting of the company for this purpose.

**Answer 4A(ii)**

The documents required for starting a pharmacy business varies from State to State. However, the following is an indicative list of documents required for obtaining drug license in India:

- a. Application form in the prescribed format
- b. Covering Letter with the intent of the application signed with name and designation of the applicant
- c. Challan of fee deposited for obtaining drug license
- d. Declaration form in the format prescribed
- e. Key plan (Blue print) for the premises
- f. Site plan (Blue print) for the premises
- g. Basis of possession of the premises
- h. Proof of ownership of the premises, if rented
- i. Proof of constitution of the business (Incorporation Certificate/ MOA / AOA / Partnership Deed)
- j. Affidavit of non-conviction of proprietor / partners/ directors under Drugs and Cosmetics Act, 1940
- k. Affidavit of registered pharmacist or competent person working full time
- l. Appointment letter of registered pharmacist/competent person, if employed person.

Accordingly, Raj is advised.

**Answer 4A(iii)**

As per Section 2 (n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the term "Sexual Harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely: (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

As per Section 3 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the following circumstances, among other circumstances, if it occurs, or is

present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

In view of the above, the act or behavior of K by making sexually coloured remark and by promising the promotion amounts to sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

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

Section 24 of the Central Goods and Services Tax, 2017 stipulates the requirement of Compulsory Registration. Section 24 prescribed the instances when compulsory registration is mandatory irrespective of the aggregate turnover which inter alia includes for a supplier who makes inter-state supplies.

Since Ramesh is making inter-state supplies, he is mandatorily required to obtain registration of his business under the Goods and Services Tax Act, 2017.

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

Food Safety and Standards Act, 2006 regulates Food Safety and Standards Authority of India (FSSAI) registration in India.

FSSAI registration is required for all petty food business operators. Petty food business operator is any person or entity who:

- (a) Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- (b) Distributes foods including in any religious or social gathering except a caterer; or
- (c) Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs.

Petty food business operators are required to obtain a FSSAI registration by submitting an application for registration in Form A or by applying online on the FoSCoS portal. On submission of a FSSAI registration application, the registration should be provided or application rejected in writing within 7 days of receipt of an application by authority.

FSSAI registration certificate contains the details of registration and a photo of the applicant. The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business.

In view of the above, Sunita is required to obtain FSSAI registration before starting petty food business at Chawri Bazar, Delhi.

## PART-C

### Question 5

- (a) List out the MSMEs which cannot opt for Pre-Packaged Insolvency Resolution Process (PPIRP).  
(3 marks)
- (b) Fresh Water Ltd. has not been carrying on any business during the last two financial years. The company wants to get the status of dormant company. After obtaining the approval of the shareholders by way of ordinary resolution in the general meeting, the Company makes an application to the jurisdictional Registrar of Companies for obtaining the status of a dormant company. However, the Registrar of Companies rejects the application of the company. Examine the validity of rejection of the application of Fresh Water Ltd. by the Registrar of Companies.  
(3 marks)
- (c) Differentiate between 'Winding Up' and 'Dissolution'.  
(3 marks)
- (d) Rath Sahay LLP, a limited liability partnership is not carrying on any business or operation for a period of one year. The LLP wants to make an application for the purpose of suo moto striking off its name. The solicitor informed the LLP that an affidavit signed by the designated partners is required to be submitted to the Registrar of Companies for striking off the name of the LLP. Describe the contents of affidavit to be submitted by the designated partners of LLP for striking off the name of LLP.  
(3 marks)
- (e) Discuss the compliance requirements to retain the status of a dormant company.  
(3 marks)

### Answer 5(a)

In terms of the Insolvency and Bankruptcy Code, 2016 when a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, commits minimum default of Rs 10 lakhs, it can opt for Pre-Packaged Insolvency Resolution Process (PPIRP).

The Central Government can increase minimum default limit to Rs 1 crore.

The following MSMEs cannot opt for Pre-packaged Insolvency Resolution Process (PPIRP):

- (a) MSME which has completed PPIRP or completed Corporate Insolvency Resolution Process (CIRP), as the case may be, during the period of three years preceding the initiation date;
- (b) MSME which is undergoing a CIRP;
- (c) MSME which is undergoing a liquidation under section 33; and
- (d) MSME not eligible to submit a resolution plan under section 29A.

### Answer 5(b)

Section 455 of the Companies Act 2013 contains provisions with regards to dormant Company. As per the provisions of rule 3 of the Companies (Miscellaneous) Rule, 2014, shareholders' approval

in any of the following two manners is required to be obtained before making an application for dormant status, to the Registrar of Companies:

- Special resolution to this effect in the general meeting of the company or;
- after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least  $\frac{3}{4}$ <sup>th</sup> shareholders (in value).

After passing the special resolution, the company shall file Form MGT-14 with ROC for filing special resolution within 30 days from passing of the said special resolution.

Since in the given case, Fresh Water Ltd. has obtained the approval of shareholders by way of Ordinary Resolution and not Special Resolution, the rejection of the application by the Registrar of Companies is valid.

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

Many times, the terms 'winding up' and 'dissolution' are used interchangeably. This is not correct. There are very important differences in these two terms which are given below:

- (1) Winding up is the first stage of ending the legal existence of the entity. In this stage, the assets of the entity are realized, its liabilities paid off and surplus, if any, is distributed amongst the contributories. Whereas dissolution is the final stage after completion of winding up process and by act of law, the legal existence of the entity comes to an end.
- (2) The winding up process is handled by a liquidator / insolvency professional. The dissolution can happen only by way of an order passed by the adjudicating authority.
- (3) Creditors can prove their claims during winding up but not on dissolution since the entity no longer exists on dissolution.
- (4) Winding up need not result in dissolution in all cases. A company which is in winding up can be taken over/ amalgamated by any other entity / company which will result in the company coming out of winding up process and being handed over to the shareholders. This is not possible in case of dissolution.

### **Answer 5(d)**

All the Designated Partners of the LLP must execute an affidavit, either jointly or severally, along with the application for striking of the name of the LLP, to the effect, -

- i. that the Limited Liability Partnership has not commenced business or where it commenced business, it ceased to carry on such business from (dd/mm/yyyy);
- ii. that the limited liability partnership has no liabilities and indemnifying any liability that may arise even after striking off its name from the Register;
- iii. that the Limited Liability Partnership has not opened any Bank Account and where it had opened, the said bank account has since been closed together with certificate(s) or statement from the respective bank demonstrating closure of Bank Account;
- iv. that the Limited Liability Partnership has not filed any Income tax return where it has not carried on any business since its incorporation, if applicable.

The above are the contents of affidavit to be submitted by the designated partners of Rath Sahay LLP for striking off the name of LLP.

### **Answer 5(e)**

The Compliance requirements for the dormant Company are governed by the provisions of

### Companies Act, 2013

The ROC maintains the Register of dormant companies. The compliance requirements to retain the status of a dormant company are as follows:

- a. A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.
- b. A dormant company is required to file a "Return of Dormant Company" in form MSC-3 annually, inter-alia, indicating financial position duly audited by a chartered accountant in practice along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year.
- c. A Dormant Company need not enclose cash flow statements in its annual accounts.
- d. A Dormant Company is required to convene at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings is not less than ninety days. [Section 173(5) of the Companies Act, 2013]
- e. The provisions of the Companies Act, 2013 in relation to the rotation of auditors are not applicable to dormant companies.
- f. A Dormant Company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Companies Act, 2013, whenever the company allots any security to any person or there is any change in the directors of the company.

### Question 6

- (a) PP Constructions Ltd. (PPCL) is a supplier of building material to MN Builders Ltd. (MNBL). MNBL owes ₹ 1.50 crore to PPCL. Due to slowdown in the economy, MNBL fails to recover its dues from the customers as per the payment schedule resulting into default in payment by MNBL to PPCL. PPCL wants to initiate Corporate Insolvency Resolution Process (CIRP) against MNBL under the Insolvency and Bankruptcy Code, 2016. Advise PPCL the procedure to be followed reframe it for initiating.
- (b) CIRP against MNBL. You have been appointed as liquidator by the National Company Law Tribunal (NCLT) in the matter of winding up of ABC Ltd. State the contents of the report required to be submitted by you, as a liquidator, to the NCLT.

(5 marks each)

### Answer 6(a)

As per Section 9 of Insolvency and Bankruptcy Code, 2016, PP Constructions Ltd. (PPCL) being the Operational Creditor may follow the following procedure to initiate Corporate Insolvency Resolution Process against MNBL.

1. An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.
2. The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice bring to the notice of the operational creditor-
  - (a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

- (b) the payment of unpaid operational debt-
- (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
  - (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

A “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

3. After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.
4. The operational creditor shall, along with the application furnish-
  - a. a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;
  - b. an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;
  - c. a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;
  - d. a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and
  - e. any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

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

The liquidator is required to submit to the National Company Law Tribunal (NCLT), a report containing the following particulars, within sixty days from the order of winding up or appointment of liquidator:

- (a) the nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company;
- (b) valuation Report of the assets obtained from registered valuers;
- (c) amount of capital issued, subscribed and paid-up;
- (d) the existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;
- (e) the debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
- (f) guarantees, if any, extended by the company;
- (g) list of contributories and dues, if any, payable by them and details of any unpaid call;
- (h) details of trademarks and intellectual properties, if any, owned by the company;

- (i) details of subsisting contracts, joint ventures and collaborations, if any;
- (j) details of holding and subsidiary companies, if any;
- (k) details of legal cases filed by or against the company; and
- (l) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.

The Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal. He shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company. The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company. In such form and manner as may be prescribed. He may make any further reports as he thinks fit.

When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company. The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

The Tribunal shall on an application filed by the Company Liquidator or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly. A copy of the order shall be forwarded by the Company Liquidator to the Registrar, within thirty days from the date thereof, who shall record the dissolution of the company in the Register of Companies.

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# TAX LAWS

## MODULE 1 PAPER 4

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** (i) Answer All Questions.

(ii) All the references to sections in Part I of the Question Paper relate to the Income tax Act, 1961 and the relevant Assessment Year 2045-25 unless stated otherwise.

### PART-I

#### Question 1

For A.Y. 2024-25, Mr. H, a resident Indian, earns income of ₹ 10 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in India and ₹ 15 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in Indonesia. What would be his business income chargeable to tax in India, assuming he has no other business ?

- (A) ₹ 3,50,000
- (B) ₹ 4,00,000
- (C) ₹ 8,75,000
- (D) ₹ 18,50,000

#### Question 2

Ms. S has three farm buildings situated in the immediate vicinity of a rural agricultural land. In the P.Y. 2023-24, she earned ₹ 3 lakh from letting out her farm building 1 for storage of food grains, ₹ 10 lakh from letting out her farm building 2 for storage of dairy products and ₹ 15 lakh from letting out her farm building 3 for residential purposes of Mr. H, whose food grain produce is stored in farm building 1. What is the amount of agricultural income exempt from income tax ?

- (A) Nil
- (B) ₹ 3,00,000
- (C) ₹ 13,00,000
- (D) ₹ 18,00,000

#### Question 3

Mr. Ramesh, a citizen of India, is employed in the Indian embassy in Australia. He is a non-resident for A.Y. 2024-25. He received salary and allowances in Australia from the Government of India for the year ended 31-3-24 for services rendered by him in Australia. In addition, he was allowed perquisites by the Government. Which of the following statements is correct ?

- (A) Salary, allowances and perquisites received outside India are not taxable in the hands of Mr. Ramesh, since he is non-resident.
- (B) Salary, allowances and perquisites received outside India by Mr. Ramesh are taxable in India since they are deemed to accrue or arise in India
- (C) Salary received by Mr. Ramesh is taxable in India but allowances and perquisites are exempt.
- (D) Salary received by Mr. Ramesh is exempt in India but allowances and perquisites are taxable

#### Question 4

Mr. A stays in New Delhi. His basic salary is ₹ 20,000 p.m., D.A. (60% of which forms part of pay) is ₹ 12,000 p.m., HRA is ₹ 10,000 p.m. and he is entitled to a commission of 1% on the turnover achieved

by him. Mr. A pays a rent of ₹ 11,000 p.m. The turnover achieved by him during the current year is ₹ 24 lakhs. The amount of HRA exempt under section 10(13A) is .....

- (A) ₹ 96,960
- (B) ₹ 91,200
- (C) ₹ 99,360
- (D) ₹ 93,600

### Question 5

Mr. J is an employee in accounts department of Bharat Ltd., a cellular company operating in the regions of eastern India. It is engaged in manufacturing of cellular devices. During F.Y. 2023-24, following transactions were undertaken by Mr. J :

- (i) He attended a seminar on "Perquisite Valuation" Seminar fees of ₹ 25,000 was paid by Bharat Ltd.
- (ii) Tuition fees of Mr. H (son of Mr. J) paid to private coaching classes (not having any tie-up with Bharat Ltd.) was reimbursed by Bharat Ltd. Amount of fees was ₹ 50,000.
- (iii) Ms. S (daughter of Mr. J) studies in MPS Public School (owned and maintained by Bharat Ltd.). Tuition fees paid for Ms. S was ₹ 1,500 per month by Mr. J. Cost of education in similar institution is ₹ 10,500 per month.

What shall be the amount which is chargeable to tax under the head "salaries" in hands of Mr. J for A.Y. 2024-25 ?

- (A) ₹ 50,000
- (B) ₹ 75,000
- (C) ₹ 1,33,000
- (D) ₹ 1,58,000

### Question 6

V received ₹ 1,80,000 in May, 2023 towards recovery of unrealized rent, which was deducted from actual rent during the P.Y. 2021-22 for determining annual value. Legal expense incurred in relation to unrealized rent is ₹ 40,000. The amount taxable under section 25A for A.Y. 2024-25 would be :

- (A) ₹ 1,40,000
- (B) ₹ 1,26,000
- (C) ₹ 1,80,000
- (D) ₹ 98,000

### Question 7

Mr. S a wholesale supplier of dyes, provides you with the details of the following cash payments made throughout the year :

- 15-06-2023 : Loan repayment of ₹ 27,000 taken for business purpose from his friend Kunal. The repayment also includes interest of ₹ 5,000.
- 22-08-2023 : Portable dye machinery purchased for ₹ 15,000. The payment was made in cash in three weekly instalments.
- 29-01-2024 : Payment of ₹ 10,000 made to electrician due to unforeseen electric circuit at shop.
- 28-02-2024 : Purchases made from unregistered dealer for ₹ 13,500.

What will be disallowance under 40A(3), if any, if Mr. S opts to declare his income as per the provisions of section 44AD ?

- (A) ₹ 18,500
- (B) ₹ 28,500
- (C) ₹ 13,500
- (D) Nil

### Question 8

A building was acquired on 1-4-1995 for ₹ 20,00,000 and sold for ₹ 80,00,000 on 1-6-23. The fair market value of the building on 1-4-2001 was ₹ 25,00,000. Its stamp duty value on the same date was ₹ 22,00,000. Determine the capital gains on sale of such building for the A.Y. 2024-25 ?

CII for F.Y. 2001-02 : 100; F.Y. 2023-24 : 348

- (A) ₹ 3,44,000
- (B) ₹ 13,80,000
- (C) ₹ 60,00,000
- (D) ₹ 2,75,000

### Question 9

Mr. V received a gold ring worth ₹ 1,20,000 on the occasion of his daughter's wedding from his best friend Mr. S. Mr. S also gifted a gold chain to K, daughter of Mr. V, worth ₹ 1,60,000 on the said occasion. Would such gifts be taxable in the hands of Mr. V and Ms. K ?

- (A) Yes, the gift of gold ring and gold chain is taxable in the hands of Mr. V and Ms. K. respectively
- (B) Such gifts are not taxable in the hands of Mr. V nor in the hands of Ms. K
- (C) Value of gold ring is taxable in the hands of Mr. V but value of gold chain is not taxable in the hands of Ms. K
- (D) Value of gold chain is taxable in the hands of Ms. K but value of gold ring is not taxable in the hands of Mr. V

### Question 10

According to section 80, no loss which has not been determined in pursuance of a return filed in accordance with the provisions of section 139(3), shall be carried forward. The exceptions to this are :

- (A) Loss from specified business under section 73A
- (B) Loss under the head "Capital Gains" and unabsorbed depreciation carried forward under section 32(2)
- (C) Loss from house property and unabsorbed depreciation carried forward under section 32(2)
- (D) Loss from speculation business under section 73

### Question 11

Brought forward loss from house property of ₹ 3,25,000 of A.Y. 2023-24 is allowed to be set off against income from house property of A.Y. 2024-25 of ₹ 5,00,000 to the extent of :

- (A) ₹ 2,00,000
- (B) ₹ 3,25,000

- (C) ₹2,50,000
- (D) ₹1,00,000

### Question 12

Mr. S made a donation of ₹ 50,000 to PM Cares Fund and ₹ 20,000 to Rajiv Gandhi Foundation by cheque. He made a cash donation of ₹ 10,000 to a public charitable trust registered under section 80G. The maximum deduction allowable to him under section 80G for A.Y. 2024-25 is :

- (A) ₹ 80,000
- (B) ₹ 70,000
- (C) ₹ 60,000
- (D) ₹ 35,000

### Question 13

Mr. R (a non-resident and aged 65 years) is a retired person, earning rental income of ₹ 40,000 per month from a property located in Delhi. He is residing in Canada. Apart from rental income, he does not have any other source of income. Is he liable to pay advance tax in India ?

- (A) Yes, he is liable to pay advance tax in India as he is a non-resident and his tax liability in India exceeds ₹ 10,000.
- (B) No, he is not liable to pay advance tax in India as his tax liability in India is less than ₹ 10,000.
- (C) No, he is not liable to pay advance tax in India as he has no income chargeable under the head "profits and gains of business or profession" and he is of the age of 65 years.
- (D) Both (B) and (C)

### Question 14

Mr. D, a resident in India, has gross total income of ₹ 2,30,000 comprising of interest on saving A/c and rental income during the previous year 2023-24. He incurred expenditure of ₹ 2,00,000 for his son for a study tour to Europe. Whether he is required to file return of income for the assessment year 2024-25 ? If yes, what is the due date ?

- (A) Yes, 31st July of A.Y.
- (B) Yes, 30th September of A.Y.
- (C) Yes, 31st October of A.Y.
- (D) No, he is not required to file return of income

### Question 15

Income of an assessee engaged in the business of growing and manufacturing tea in India is taxable to the extent of :

- (A) 40% of such income
- (B) 60% of such income
- (C) 70% of such income
- (D) 30% of such income

**Question 16**

The rate of depreciation specified for intangible assets is :

- (A) 25%
- (B) 30%
- (C) 40%
- (D) 15%

**Question 17**

Capital assets excludes all except :

- (A) Stock-in-trade
- (B) Personal effects
- (C) Jewellery
- (D) Agricultural land in India

**Question 18**

In terms of section 2 (42A), listed securities are treated as long-term capital asset, if they are held for a period of more than :

- (A) 12 months
- (B) 36 months
- (C) 24 months
- (D) 48 months

**Question 19**

If X Ltd. amalgamates with Y Ltd. then the accumulated business losses and unabsorbed depreciation of X Ltd. :

- (A) Cannot be carried forward by Y Ltd.
- (B) Can be carried forward by Y Ltd.
- (C) Cannot be carried forward by X Ltd.
- (D) Can be carried forward by X Ltd.

**Question 20**

Income of a minor child from a Fixed deposit with a bank, made out of income earned from scholarship, is to be :

- (A) Assessed in the hands of the minor child
- (B) Clubbed with the income of the parent whose total income before such clubbing is higher
- (C) Exempted from tax
- (D) Clubbed with father's income

**Question 21**

A new business was established on 1-7-2023 but its operation will start from 01-09-2023, receives its 1st payment on 01-10-2023 the previous year would be the period :

- (A) 01-04-2023 to 31-03-2024
- (B) 01-07-2023 to 31-03-2024
- (C) 01-09-2023 to 31-03-2024
- (D) 01-10-2023 to 31-03-2024

**Question 22**

A Local Authority means :

- (A) Municipality
- (B) Cantonment Board
- (C) Panchayat
- (D) All of the above

**Question 23**

Which of the following persons can be ordinary resident or not ordinary resident ?

- (A) Individual & HUF Only
- (B) Individual & Firm Only
- (C) Individual & Company Only
- (D) Firm & Company Only

**Question 24**

Mr. A received an educational scholarship from Government of India of ₹ 25,000. Mr. A spent ₹ 18,000 and saved ₹ 7,000. The amount of exemption under section 10(16) of the Income Tax Act, 1961 will be :

- (A) ₹ 25,000
- (B) ₹ 18,000
- (C) ₹ 7,000
- (D) Fully Taxable

**Question 25**

Pension and family pension of notified gallantry award winners is :

- (A) Exempted up to ₹ 15,000
- (B) Exempted up to 1/3rd of the amount received
- (C) Fully taxable
- (D) Fully Exempted.

**Question 26**

Mr. Coco received cash Gift of ₹ 2,00,000 on the occasion of his marriage, out of which ₹ 70,000 received from non-relative also. During the year he got prizes in the lottery for ₹ 3,00,000. Calculate the tax liability (ignoring TDS) :

- (A) ₹ 93,600
- (B) Nil
- (C) ₹ 30,000
- (D) ₹ 46,800

**Question 27**

For claiming relief under section 89(1) of Income Tax Act, 1961, it is mandatory to submit which of the following Forms :

- (A) Form 10A
- (B) Form 10C
- (C) Form 10E
- (D) Form 10F

**Question 28**

Who will be deemed Owner in the case of a House Property when the Husband has transferred the House Property to his wife which is necessitated owing to a separation between Husband and Wife and for inadequate consideration ?

- (A) Husband
- (B) Wife
- (C) Either (A) or (B)
- (D) None of the above

**Question 29**

A person has a long-term capital gain from the sale of long-Term Capital Asset for ₹ 80 Lakhs during the financial year 2023-24. He would like to invest all the full amount in the bonds redeemable after three years issued by NHAI under Section 54EC of the Income Tax Act, 1961. The Amount of capital Gain Exempted under Section 54EC will be :

- (A) ₹ 80 Lakhs
- (B) ₹ 50 Lakhs
- (C) ₹ 30 Lakhs
- (D) ₹ 40 Lakhs

**Question 30**

A Ltd. started its production in the year 2014 in fertilisers in India which will be used for agricultural purposes. It incurred capital expenditure in the year 2014-15 for ₹ 150 Lakhs out of which ₹ 70 Lakhs was used for acquisition of Land. How much amount it can claimed as a deduction under section 35AD of the Income Tax Act, 1961 for the Assessment Year 2024-25 ?

- (A) ₹ 150 Lakhs
- (B) ₹ 70 Lakhs
- (C) ₹ 80 Lakhs
- (D) ₹ Nil

**Question 31**

Industrial company means an Indian Company where business mainly consists in the :

- (A) Construction of ships
- (B) Manufacture or processing of goods
- (C) Mining or in the generation of electricity or any other Form of Power
- (D) All of the above

**Question 32**

Which of the following is the reason for inclusion of other person's Income in assessee's total Income ?

- (A) To facilitate the Government to collect more taxes
- (B) To prevent excess payment of tax
- (C) To prevent diversion of Income from Higher slab individuals to low slab Income
- (D) To keep a person away from tax liability

**Question 33**

Clubbing of Income of a minor child is applicable to a :

- (A) Minor Step Child
- (B) Minor Married Daughter
- (C) Minor Adopted Child
- (D) All of the Above

**Question 34**

The benefit of carry forward and set off of losses under section 79 of the Income Tax Act, 1961 by a closely held Indian Company which is a subsidiary of a foreign company as a result of amalgamation or demerger is subject to the condition that ..... per cent age of s h are hold ers of t he amalgamating foreign company continue to be shareholders of the amalgamated foreign company.

- (A) 10%
- (B) 26%
- (c) 51%
- (D) 100%

**Question 35**

Mr. P received a Salary of ₹ 3,00,000 for the year ended 31-03-2024. He contributed ₹ 45,000 to employees recognised provident fund account and equal contribution is also done by his employer. Taxable Income of Mr. P will be (considering the fact that Mr. P did not opt 115BAC of the Income Tax Act, 1961).

- (A) ₹ 2,14,000
- (B) ₹ 2,50,000

- (C) ₹ 3,00,000
- (D) ₹ 2,95,000

**Question 36**

Mr. H aged 65 years of age earned the following Interest during Financial Year 2023-24.

- Interest on Savings Bank ₹ 25,000
- Interest on FD ₹ 20,000
- Interest on Time Deposit ₹ 9,000

What will be the amount of Deduction Under Section 80TTB for the Assessment Year 2024-25 :

- (A) ₹ 45,000
- (B) ₹ 49,000
- (C) ₹ 29,000
- (D) ₹ 50,000

**Question 37**

Deduction under Section 80PA is available to producer company whose turnover is less than 100 crores commencing its business after 01-04-2019, 100 percent deduction will be available up to which Assessment Year ?

- (A) Assessment Year 2024-25
- (B) Assessment Year 2025-26
- (C) Assessment Year 2026-27
- (D) None of the above

**Question 38**

The deduction under section 80IAC shall be available to eligible start up (incorporated between 01-04-2016 to 01-04-2021) for a period of three consecutive assessment years out of ..... beginning from the year in which it was incorporated.

- (A) 5 years
- (B) 7 years
- (C) 8 years
- (D) 10 years

**Question 39**

Hindu Undivided Families are governed by two schools namely Mitakshara and Dayabhaga. Mitakshara school applies to whole of India except the state of :

- (A) West Bengal
- (B) West Bengal and Assam
- (C) Assam & Bihar
- (D) Assam & Tripura

**Question 40**

The Provisions of AMT (Alternate Minimum Tax) is under chapter XII-BA shall apply to an Individual or HUF or an association of persons if the adjusted total income of such persons exceeds :

- (A) ₹ 10,00,000
- (B) ₹ 15,00,000
- (C) ₹ 20,00,000
- (D) ₹ 25,00,000

**Question 41**

A political party have the following Income during the Financial Year 2023-24 is as follows :

- Banks Interest ₹ 4,50,000
- Rent from Letting the Building ₹ 2,50,000
- Voluntary contribution by cheque ₹ 6,00,000

The total Income of the political party for the Assessment Year will be :

- (A) ₹ 13,00,000
- (B) ₹ 10,50,000
- (C) ₹ 8,50,000
- (D) ₹ Nil

**Question 42**

Which of the following income of Registered Trade Union is liable to tax under the Income Tax Act, 1961 ?

- (A) Income From Capital Gains
- (b) Income From House Property
- (C) Income from other sources
- (D) All of the above

**Question 43**

Which of the following is a company under the Income Tax Act, 1961 ?

- (A) An Indian Company
- (B) Domestic & Foreign Company
- (C) Widely Held & Closely Held Company
- (D) All of the above

**Question 44**

What will be the TDS deduction rate under Section 194C for a deductee (Individual) having inoperative PAN for non-linking with AADHAR ?

- (A) 1%
- (B) 2%

(C) 10%

(D) 20%

**Question 45**

Where a commissioner passes a revision order u/s 263 the taxpayer may appeal against the order to :

(A) ITAT

(B) High Court

(C) Supreme Court

(D) Commissioner (Appeal)

**Question 46**

The assessee who is not satisfied with the order of the assessing officer can :

(A) Apply to the Commissioner u/s 264 of the Act for revision

(B) Prefer an appeal to the Commissioner (Appeal)

(C) Apply directly to the Supreme Court

(D) Both (A) or (B)

**Question 47**

The amount specified in the notice of demand under the Income Tax Act is required to be paid within ..... days, otherwise the assessee will be an assessee in default.

(A) 15 days

(B) 30 days

(C) 60 days

(D) 90 days

**Question 48**

Political parties are required to submit their Income Tax Return under which Form ?

(A) ITR-5

(B) ITR-6

(C) ITR-7

(D) ITR-8

**Question 49**

During the Financial Year 2023-24 Mr. K won a lottery for ₹ 5,00,000, from this lottery income he deposited ₹ 1,50,000 in PPF. He does not have any other Income. How much tax is to be paid during the assessment year 2024-25 ?

(A) ₹ 1,56,000

(B) ₹ 1,50,000

- (C) ₹ 1,00,000
- (D) ₹ Nil

**Question 50**

What is the base financial year for calculation for Cost Inflation Index under Income Tax Act 1961 ?

- (A) 1999-2000
- (B) 2000-2001
- (C) 2001-2002
- (D) 1980-1981

**PART-II**

**Question 51**

Which of the following is not kept outside the ambit of GST ?

- (A) High speed diesel and petrol
- (B) Alcoholic liquor for human consumption
- (C) Petroleum crude
- (D) Computers

**Question 52**

Mr. P is travelling from Kolkata to Andaman through flight. He watches a movie on demand on payment basis. The place of supply under GST Law will be :

- (A) Point of termination of journey
- (B) First schedule point of departure
- (C) Registered address of Airlines
- (D) None of the above

**Question 53**

Mr. P supplies raw cotton (under Reverse Charge of GST) to Mr. Q who manufactures cotton shirts. Which will be the time of supply from the below mentioned dates ?

- (A) 01-04-2024 Mr. Q approaches Mr. P and places an order
- (B) 10-05-2024 Mr. Q receives the Goods
- (C) 15-05-2024 Mr. P issues invoices
- (D) Mr. Q makes a payment by cheque on 20-05-2024 which was debited from Mr. Q's Bank Account on 25-05-2024.

**Question 54**

What is the maximum number of characters that can be used in Invoice Number under GST for accepting in GST Portal for filing Return ?

- (A) 10
- (B) 11

- (C) 14
- (D) 16

**Question 55**

The ITC of IGST shall first be utilised towards payment of IGST on Outward Supply. The amount remaining may be utilised towards the payment of :

- (A) CGST only
- (B) SGST only
- (C) First CGST, then SGST/UTGST
- (D) First SGST, then CGST/UTGST

**Question 56**

All the GST returns are to be filed online by using :

- (A) GST portal
- (B) Offline utilities provided by GSTN
- (C) GST Suvidha providers
- (D) Any of the above

**Question 57**

What is the minimum monetary limit below which refund cannot be granted under the Customs Act, 1962 ?

- (A) ₹ 50
- (B) ₹ 100
- (C) ₹ 500
- (D) ₹ 1000

**Question 58**

The time limit under Customs Law under section 74 for duty drawback is :

- (A) Within 1 year from the date of payment of duty on importation
- (B) Within 2 years from the date of payment of duty on importation
- (C) Within 1 year from the date of filing of bill of entry
- (D) Within 2 years from the date of filing of bill of entry

**Question 59**

What is the rate of interest under GST Law as per rule 37(3) in case of reversal of ITC for non-payment of consideration within 180 days ?

- (A) 10% pa
- (B) 12% pa
- (C) 18% pa
- (D) 24% pa

**Question 60**

RCM under GST Law is applicable in respect of :

- (A) Cross border supplies only
- (B) Interstate supplies only
- (C) Intrastate supplies only
- (D) Both (B) and (C)

**Question 61**

Which of the following is not a source of indirect taxes in India ?

- (A) Custom duty
- (B) Goods and Service Tax
- (C) Corporation Tax
- (D) All of the above

**Question 62**

A private limited company made certain gifts to its employees as under :

- (i) Mr. P ₹ 60,000
- (ii) Mr. Q ₹ 50,000
- (iii) Mr. R ₹ 40,000

Which of the above gifts shall be liable to GST ?

- (A) (i), (ii) and (iii)
- (B) (i) and (ii) only
- (C) Nothing is taxable
- (D) (i) only

**Question 63**

The supplier registered under GST as a composition dealer cannot :

- (A) Claim Input Tax Credit
- (B) Collect Tax on Supply
- (C) Raise Tax Invoice
- (D) All of the above

**Question 64**

Mr. Y purchases a machine from Mr. Z (both are from Delhi) the machine however needs to be installed in Haryana, the place of supply under GST in this case shall be :

- (A) Delhi
- (B) Haryana

- (C) Any place at the option of the supplier
- (D) Any place at the option of recipient

**Question 65**

Mr. K has supplied goods to Mr. L on 24-12-2023. The invoice had already been raised on 22-12-2023. Mr. L has paid the due amount on 29-12-2023. The receipt was entered in the books of accounts by Mr. K on 30-12-2023. But the amount was credited in his bank on 02-01-2024. What is the time of supply in this case ?

- (A) 24-12-2023
- (B) 29-12-2023
- (C) 22-12-2023
- (D) 02-01-2024

**Question 66**

If a taxpayer wants to transfer CGST from the cash ledger of one GSTIN to another GSTIN under the same PAN as CGST/ IGST the form required to be submitted in GST Portal is :

- (A) PMT-06
- (B) PMT-08
- (C) PMT-09
- (D) PMT-10

**Question 67**

A manufacturer manufacturing three different products A, B and C (GST Rates are 12%, 18% and 28% respectively) to be sold in a combined package. The price per package is ₹ 1,000 (exclusive of tax). Total sales made during a particular month is ₹ 4,00,000. What is the nature of supply and amount of GST Per Package ?

- (A) Composite, ₹ 48,000
- (B) Composite ₹ 1,12,000
- (C) Mixed ₹ 48,000
- (D) Mixed ₹ 1,12,000

**Question 68**

In case of Zero-Rated Supplies ITC is allowed and refund in respect of such supplies may be claimed by which of the following options :

- (A) Supply made without the payment of IGST under Bond/LUT and claim refund of unutilised ITC
- (B) Supply made on payment of IGST and claim refund of the same
- (C) Either (A) or (B)
- (D) Both (A) and (B)

**Question 69**

A registered person who is a party to any appeal or any proceedings under GST before any authority

shall have to maintain the accounts pertaining to that matter for a minimum period of ..... after disposal of such appeal/revision.

- (A) 1 month
- (B) 6 months
- (C) 9 months
- (D) 12 months

**Question 70**

An amount of ₹ ..... is required to be paid along with the application for Advance Ruling under Customs Act, 1962.

- (A) ₹ 1,000
- (B) ₹ 10,000
- (C) ₹ 5,000
- (D) ₹ 3,000

**Question 71**

When the Goods are sent by one job worker to another job worker, the challan may be issued by :

- (A) Principal or job worker sending the goods to another job worker
- (B) Principal or job worker receiving the goods from another job worker
- (C) Principal only
- (D) Either of the job worker only

**Question 72**

Transport of passengers by ..... are exempt from GST.

- (A) Railway in First Class
- (B) Metro Rail
- (C) Railway in AC Coach
- (D) None of the above

**Question 73**

Which of the following way demand of Interest under GST can be paid ?

- (A) By utilising Credit Ledger Balance
- (B) By Utilising Cash Ledger Balance
- (C) By Directly paid in cash through Challan
- (D) By both (B) and (C) above

**Question 74**

As per section 10(3) of the GST (Compensation to States) Act, 2017 ..... of the amount remaining unutilised in the fund at the end of the transition period shall be transferred to the consolidated fund of India as the share of centre.

- (A) 50%
- (B) 40%

- (C) 30%
- (D) 20%

**Question 75**

Which section of CGST Act, 2017 deals with Composition Levy ?

- (A) Section 9
- (B) Section 10
- (C) Section 11
- (D) Section 12

**Question 76**

Which of the following is an Inter-State Supply ?

- (A) Supplier of goods located in West Bengal and place of supply of goods is to an SEZ located in West Bengal
- (B) Supplier of goods located in West Bengal and place of supply of goods in Bihar
- (C) Supplier of goods located in West Bengal and place of supply is to an SEZ in Jharkhand
- (D) All of the above

**Question 77**

The compensation to state as per section 7(2) of GST (Compensation to States) Act 2017 shall be provisionally calculated and released at the end of every ..... period.

- (A) Four Months
- (B) Three Months
- (C) Two Months
- (D) One Month

**Question 78**

Taxes paid under Reverse Charge mechanism are :

- (A) Part of Input Tax
- (B) Part of Output Tax
- (C) Either (A) or (B) depending on the payment
- (D) None of the above

**Question 79**

Input Tax Credit (ITC) can be availed on the basis of :

- (A) Debit Note Issued by the Supplier
- (B) Bill of Entry or similar document prescribed under the Customs Act, 1962
- (C) Invoice/Revised Invoice issued by the supplier
- (D) All of the above

**Question 80**

L & Co., a supplier registered under GST in Meghalaya, wants to opt for composition levy. The aggregate turnover limit for composition levy is :

- (A) ₹ 50 lakhs
- (B) ₹ 75 lakhs
- (C) ₹ 1.5 crore
- (D) None of the above

**Question 81**

The person making inter-State supply of goods from Madhya Pradesh is compulsorily required to get registered under GST, ..... provided such goods are not notified handicraft goods nor predominantly hand-made notified products.

- (A) if his aggregate turnover exceeds ₹ 20 lakhs in a financial year
- (B) if his aggregate turnover exceeds ₹ 10 lakhs in a financial year
- (C) if his aggregate turnover exceeds ₹ 40 lakhs in a financial year
- (D) irrespective of the amount of aggregate turnover in a financial year since he is making inter-State supply of taxable goods

**Question 82**

The registration certificate granted to non- resident taxable person is valid for ..... days from the effective date of registration or period specified in registration application, whichever is earlier.

- (A) 30
- (B) 60
- (C) 90
- (D) 120

**Question 83**

Which of the following activities shall be treated neither as supply of goods nor as supply of services ?

- (i) Permanent transfer of business assets where input tax credit has been availed on such assets
  - (ii) Temporary transfer of intellectual property right
  - (iii) Transportation of the deceased
  - (iv) Services provided by an employee to the employer in the course of employment
- (A) (i) and (iii)
  - (B) (ii) and (iv)
  - (C) (i) and (ii)
  - (D) (iii) and (iv)

**Question 84**

How is the aggregate turnover calculated for determining threshold limit for registration ?

- (A) Aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis and inter-State supplies), exempt supplies and export of goods/services

- (B) Aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, export of goods/services and inter-State supplies of a person computed for each State separately
- (C) Aggregate value of all taxable intra- State supplies, export of goods/services and exempt supplies of a person having same PAN computed for each State separately
- (D) Aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, export of goods/services and inter-State supplies of a person having same PAN computed on all India basis and excluding taxes if any charged under CGST Act, SGST Act and IGST Act

**Question 85**

Within how many days a person should apply for registration under GST, apart from provisions of voluntary registration ?

- (A) Within 60 days from the date, he becomes liable for registration
- (B) Within 30 days from the date, he becomes liable for registration
- (C) No time limits
- (D) Within 90 days from the date, he becomes liable for registration

**Question 86**

What is the validity of the registration certificate granted under GST for a normal tax payer ?

- (A) One year
- (B) Two years
- (C) Valid till it is cancelled
- (D) Five years

**Question 87**

Within how many days an application for revocation of cancellation of registration can be made provided no extension to said time- limit has been granted ?

- (A) Within 7 days from the date of service of the cancellation order
- (B) Within 15 days from the date of the cancellation order
- (C) Within 45 days from the date of the cancellation order
- (D) Within 30 days from the date of service of the cancellation order

**Question 88**

Can a registered person under composition scheme collect GST on his outward supplies from recipients ?

- (A) Yes, in all cases
- (B) Yes, only on such goods as may be notified by the Central Government
- (C) Yes, only on such services as may be notified by the Central Government
- (D) No

**Question 89**

'Q' Ltd. has its registered office, under the Companies Act, 2013, in the State of Maharashtra from where it ordinarily carries on its business of taxable goods. It also has a warehouse in the State of Telangana for storing said goods. What will be the place of business of 'Q' Ltd. under the GST law ?

- (A) Telangana
- (B) Maharashtra
- (C) Both (A) and (B)
- (D) Neither (A) nor (B)

**Question 90**

An exempt supply includes :

- (i) Supply of goods or services or both which attracts Nil rate of tax
  - (ii) Non-taxable supply
  - (iii) Supply of goods or services or both which are wholly exempt from tax under section 11 of the CGST Act or under section 6 of IGST Act
- (A) (i)
  - (B) (i) and (ii)
  - (C) (ii) and (iii)
  - (D) (i), (ii) and (iii)

**Question 91**

If the goods are received in lots/instalment,

..... .

- (A) 50% ITC can be taken on receipt of 1st lot and balance 50% on receipt of last lot
- (B) ITC can be availed upon receipt of last lot
- (C) 100% ITC can be taken on receipt of 1st lot
- (D) Proportionate ITC can be availed on receipt of each lot/instalment

**Question 92**

A supplier takes deduction of depreciation on the GST component of the cost of capital goods as per Income-Tax Act, 1961. The supplier can :

- (A) avail only 50% of the said tax component as ITC
- (B) not avail ITC on the said tax component
- (C) avail 100% ITC of the said tax component
- (D) avail only 25% of the said tax component as ITC

**Question 93**

The time of supply of service in case of reverse charge mechanism is :

- (A) Date on which payment is entered in the books of account of the recipient
- (B) Date immediately following 60 days from the date of issue of invoice

- (C) Date on which the payment is debited in the bank account of recipient
- (D) Earlier of (A), (B) or (C)

**Question 94**

ITC on purchase of motor vehicles used for making ..... is allowed.

- (i) Transportation of goods
  - (ii) Taxable supplies of transportation of passengers
  - (iii) Taxable supplies of imparting training on driving
- (A) (i)
  - (B) (i) and (ii)
  - (C) (ii) and (iii)
  - (D) (i), (ii) and (iii)

**Question 95**

A non-resident taxable person is required to apply for registration :

- (A) within 30 days from the date on which he becomes liable to registration
- (B) within 60 days from the date on which he becomes liable to registration
- (C) at least 5 days prior to the commencement of business
- (D) within 180 days from the date on which he becomes liable to registration

**Question 96**

Registration certificate granted to casual taxable person or non-resident person will be valid for :

- (A) Period specified in the registration application
- (B) 90 days from the effective date of registration
- (C) Earlier of (A) or (B)
- (D) Later of (A) or (B)

**Question 97**

Which of the following shall be discharged first under GST Law, while discharging liability of a taxable person ?

- (A) All dues related to previous tax period
- (B) All dues related to current tax period
- (C) Demand raised under section 73 and 74
- (D) No such condition is mandatory

**Question 98**

Alcoholic liquor for human consumption is subjected to :

- (A) State excise duty
- (B) Central Sales Tax/Value Added Tax
- (C) Both (A) and (B)
- (D) GST

**Question 99**

Mr. R, a jeweller registered under GST in Mumbai, wants to sell his jewellery in a Trade Expo held in Delhi. Which of the following statements is false in his case ?

- (A) He needs to get registration in Delhi as casual taxable person.
- (B) He needs to pay advance tax on estimated tax liability.
- (C) He needs to mandatorily have a place of business in Delhi.
- (D) He needs to file GSTR-1/IFF and GSTR-3B for Delhi GSTIN for the month or quarter, as the case may be, when he gets registered in Delhi.

**Question 100**

In case of supply of goods for ₹ 5,00,000, following information is provided :

Advance received on 1st April, Invoice issued on 15th April, Goods removed on 25th April,

What is the time of supply of goods, where tax is payable under forward charge ?

- (A) 1st April
- (B) 15th April
- (C) 25th April
- (D) 30th April

Set A	
Question	Answer
<b>Part I</b>	
Q1	D
Q2	B/D
Q3	C
Q4	A
Q5	D
Q6	B
Q7	D
Q8	A
Q9	C
Q10	C
Q11	B
Q12	*
Q13	B
Q14	D
Q15	A
Q16	A
Q17	C
Q18	A
Q19	B
Q20	B
Q21	B
Q22	D
Q23	A
Q24	A
Q25	D
Q26	A
Q27	C
Q28	D
Q29	*
Q30	D
Q31	D
Q32	C
Q33	D
Q34	C
Q35	A

Q36	D
Q37	A
Q38	D
Q39	B
Q40	C
Q41	D
Q42	A/B/C/D
Q43	D
Q44	D
Q45	A
Q46	D
Q47	B
Q48	C
Q49	A
Q50	C
<b>Part II</b>	
Q51	D
Q52	B
Q53	B
Q54	D
Q55	*
Q56	D
Q57	B
Q58	B
Q59	C
Q60	*
Q61	C
Q62	D
Q63	D
Q64	B
Q65	C
Q66	C
Q67	D
Q68	C
Q69	D
Q70	B
Q71	A
Q72	B

Q73	D
Q74	A
Q75	B
Q76	D
Q77	C
Q78	A
Q79	D
Q80	B
Q81	D
Q82	C
Q83	D
Q84	D
Q85	B
Q86	C
Q87	*
Q88	D
Q89	C
Q90	D
Q91	B
Q92	B
Q93	D
Q94	D
Q95	C
Q96	C
Q97	A
Q98	C
Q99	C
Q100	B

<b>(SET A)</b>	
Q. No. 2	Farm Building 1 Rs. 3 Lakh exempt as considered as agriculture income being used for storage of food grains. Farm Building 2 Rs. 10 Lakh taxable as not considered as agriculture income being used for storage of dairy product. Farm Building 3 Rs. 15 Lakh taxable as not considered as agriculture income being used for residential purpose whose food grain store in farm 1 and not in farm 3 considering all farm building are independent and not on the same land. Therefore, the amount of agriculture income exempt is Rs. 3 Lakh. Correct option is B. Further Farm Building 3 Rs. 15 Lakh can be considered as exempt considering agriculture income being used for residential purpose whose food grain store in farm 1 assuming all farm building are on the same land. Therefore, the amount of agriculture income exempt is Rs. 18 Lakh. Correct option is D.
Q. No. 12	None of the given options are correct. Correct answer is Rs. 50000 donation to PM cares fund. Donation made in Cash is not allowed as deduction u/s 80G. Further, Finance Act, 2023 has amended the section 80G omitted the donation made to Rajiv Gandhi Foundation out of the purview of u/s 80G.
Q. No. 29	None of the given options are correct. Since, in the question, the bonds are redeemable after 3 years period and not after 5 years period. Therefore. Not eligible for deduction under section 54EC.
Q. No. 42	A/B/C/D i.e. All options may be considered as correct. Since, All incomes of Registered Trade Union are chargeable to Tax though an exemption is available u/s 10(24) with respect to income under the head House Property and Income from Other Sources. The question asked about liable to tax may be inferred as chargeable to tax.
Q. No. 55	None of the given options are correct. ITC on account of IGST shall first be utilised towards payment of IGST, and the amount remaining, if any, may be utilised towards the payment of CGST and SGST or UTGST, as the case may be, in any order.
Q. No. 60	RCM is applicable in respect of cross border supplies, interstate supply, interstate supplies. In the question, the word uses is "only". Therefore, none of the options are correct.
Q. No. 87	None of the given options are correct. As per the recent CBIC Notification No. 38/2023 CT dated 04.08.2023, the time limit for making an application for revocation of cancellation of registration has been raised from 30 days to 90 days.