

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

JUNE 2022

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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

CS Examinations	Applicability of Amendments to Laws
December Session	upto 31 May of that Calender year
June Session	upto 30 November of previous Calender Year

C O N T E N T S

Page

MODULE 1

1. Governance, Risk Management, Compliances and Ethics	1
2. Advanced Tax Laws	22
3. Drafting, Pleadings and Appearances	50

PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2022

**GOVERNANCE, RISK MANAGEMENT, COMPLIANCES
AND ETHICS**

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

PART I

Question 1

Arham Logistics Limited, a listed company, has duly constituted an Audit Committee. One of the matters considered by the Audit Committee, was quarterly internal audit report. Board was informed by Chairman of the Audit Committee that there was no adverse remark reported in the internal audit report. An independent Director requested a copy of internal audit report, which was denied by CFO stating that it is only the prerogative of Audit Committee to consider internal audit report and hence copy of the same need not be placed in the Board meeting or circulated.

Based on the above facts, answer the following questions :

- (a) Whether this stand taken by CFO will amount to undermining the authority of the Board of Directors ?*
- (b) What is the role of Chairman of the Audit Committee ?*
- (c) What is the role of Chairman of the Board of Directors ?*
- (d) Not providing the copy will not make other directors liable for any unusual observation in internal audit report.*
- (e) Is the principle of transparency flouted ?* *(4 marks each)*

Answer 1(a)

Audit Committee is formed by the Board of Directors and all actions of Audit Committee are subject to approval/noting by the Board of Directors. Committees are formed to aid the Board in discharge of its functions and a committee cannot undermine the authority of the Board. Hence, the Board of Directors is the highest authority in hierarchy under which Audit Committee functions. It is true that certain matters remain in domain of Audit Committee, but ultimately, it requires concurrence of Board of Directors. Internal Audit Report is an important report covering various aspects of the operations of the Company, important financial matters like ageing of creditors, debtors, inventory, ledger scrutiny etc. which directly relates to Financial Statements. In view of above, stand taken by CFO amounts to undermining the authority of the Board.

Answer 1(b)

The Chairman of the Audit Committee has an important role to play. As per the provisions of the SEBI (LODR) Regulations, 2015, the Chairman of the Audit Committee

shall be an Independent Director. The Chairman of the Audit Committee is a member of the Board himself. In the given situation, the Chairman of the Audit Committee should ensure that he is correctly educating the CFO about the role and responsibilities of the Audit Committee and the position of the Committee *vis-a-vis* the Board of Directors and the members of the Board. He can then immediately apprise the Chairman of the Board of Directors regarding the situation and so that necessary remedial measures can be taken before the matter aggravates.

Answer 1(c)

The Chairman is the executive leader of Board of Directors. The Chairman of the Board of Directors is like the Captain of a Ship who is responsible for steering the Board towards the correct path and taking decisions on important matters. In the case presented, on coming to know about the CFO's mistake, the Chairman should reprimand him and ensure that the CFO undergoes necessary training and educational programmes to apprise himself about the role / responsibilities and powers of the Board of Directors, various board committees and the individual directors. The Chairman should also instruct the CFO to check with the Company Secretary before taking any steps relating to compliance and those relating to terms of reference of various committees and the Board. Chairman should ensure that a copy of the Internal Audit Report is immediately served to the Director who requested for it along with a letter of apology and that the same is also placed before the Board for their noting – mere briefing by the Chairman of the Audit Committee may not suffice.

Answer 1(d)

As per the provisions of Section 149 (12) the Companies Act, 2013 –

Notwithstanding anything contained in this Act,—

- (i) an independent director &
- (ii) a Non-Executive Director not being promoter or Key Managerial Personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

Accordingly, while the non executive and independent directors may be able to take shelter under the above provisions, where the audit report is not placed before the Board, the executive and promoters directors cannot do so.

Directors other than members and Chairman of audit committee will be right in taking a stand by relying on the briefing by Chairman of Audit Committee that there was no adverse thing reported in the internal audit report. Directors may rightfully assert that if in future, anything turns out to be different or adverse, only audit committee and its members including its Chairman will be held responsibly and not the other Directors.

Answer 1(e)

Any document or report to be reviewed, noted or approved by the Board should be placed before it. Mere briefing by a person will not be sufficient. Each director has their own view point and may be able to perceive a reporting in a different manner. Further,

any action on the part of the Committee is subject to supervision and direction of the Board. Board cannot escape its responsibility by delegating to Committee. Hence the Company should ensure that the document as such is placed before the Board. The principle of transparency will be definitely flouted if the requisite documents are not placed before the Board or if any board member is denied access to it.

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

Question 2

- (a) *Surabhi Pharmaceutical Ltd. is a listed company. The Board of the Company comprises of following :*

Mr. AG, Chairman (Executive)

Mr. RS, Managing Director

Mr. AR, Whole-Time Director

Mr. DS, a Cost Accountant by profession, Nominee Director of XYZ Bank and Member of the Audit Committee

Mr. UB, Practising Advocate (Independent Director)

Mr. SP, retired Chairman of a Bank and Member of Audit Committee (Independent Director)

Ms. KV, a practising Chartered Accountant and Chairman of Audit Committee (Independent Director)

Due to certain personal issues, Ms. KV resigned from the directorship with effect from 01.04.2021. What immediate steps the Company should take to comply with the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with respect to composition of the Board and Audit Committee ? (5 marks)

- (b) *XYZ & Co, is an auditor of VPN Limited which is a listed company and the balance sheet of VPN Limited is being signed by X who is also a partner in other Audit firm PQR & Co. The original tenure of XYZ & Co. has expired on 31st March, 2021. Can PQR & Co. be appointed as an auditor of the company for Financial Year 2021-22 ? Explain with relevant provisions of the Companies Act, 2013.* (5 marks)
- (c) *Corporate Secretaries International Association Limited (CSIA), a body for Corporate Secretaries & Governance Professionals was established in the year 2017 as a company limited by guarantee in Hong Kong with certain objectives. Discuss the main objectives of CSIA.* (5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Describe the principles in respect of :*
- (1) *Audit, Risk and Internal Control*

*(2) Remuneration**Under the UK Corporate Governance Code, 2018.**(5 marks)*

- (ii) *ECHO Enterprises Ltd., a listed company has following subsidiaries. The details of income of ECHO Enterprises Ltd. and its subsidiaries are as under :*

Holding Company	Rs. in Crore
<i>ECHO Enterprises Ltd.</i>	<i>1,000.00</i>
Subsidiaries	Rs. in Crore
<i>ANCHOR Batteries Ltd.</i>	<i>200.00</i>
<i>EAZY Chemicals Ltd</i>	<i>250.00</i>
<i>REAL Power Ltd.</i>	<i>400.00</i>

Examine the above in terms of Regulation 24 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with respect to compliance relating to subsidiaries and advise the Boards of all companies regarding various compliances.

*(10 marks)***Answer 2(a)**

As per the SEBI (LODR) Regulations, 2015, if the Chairman of the Board of Directors is an Executive Director, then one-half of the Board should comprise of Independent Directors. Therefore, in the present case, 50% of the Board shall comprise of Independent Directors.

The Board of the Surabhi Pharmaceutical Ltd., consists of 3 Executive Directors, 3 Independent Directors and 1 Nominee Director

Ms. KV, an Independent Director, resigned from the Directorship of the Company. On her resignation, the Board will have to comply criteria of 50%-50% Independent and Non-Independent Directors. Therefore, there is requirement for appointment of a new Independent Director in place of Ms. KV or a Non-Executive Director should Chair the Board.

On resignation, Ms. KV will cease to be Chairman of the Audit Committee of the Company also. The Audit Committee of the Company will now have only one Independent Director and one Nominee Director. Therefore, the Company should take following steps to comply with SEBI (LODR) Regulations, 2015:

Immediately a new Independent Director, being financially literate and having accounting or related financial management expertise shall be appointed and the new director or Mr. SP can be appointed as Chairman of the Audit Committee in place of Ms. KV.

Answer 2(b)

Section 139(2) of the Companies Act, 2013 provides for mandatory rotation of auditor or audit firm by listed and certain class or classes of companies. The Section specifies

that no listed company or a company belonging to such class or classes of companies as specified shall appoint or reappoint.

1. An individual as auditor for a more than one term of five consecutive years; and
2. An audit firm as auditor for more than two terms of five consecutive years.

Therefore, rotation of auditor is applicable to all listed companies and such other class of companies as may be prescribed. Since M/S VPN limited is a listed company so provisions w.r.t. rotation of auditor applies to M/s VPN Limited.

Further as per Second Proviso to Section 139(2) of the Companies Act, 2013 if Audit Firm i.e. incoming audit firm and outgoing audit firm whose tenure has expired in a company immediately preceding the financial year, are having common partner or partners, then such incoming audit firm is not eligible to get appointed as auditor of the same company for a period of 5 years.

Keeping the above proviso in view, M/s PQR & Co. cannot be appointed as the auditor of the company as X is the common partner in the both firm i.e. M/s XYZ & Co. which is outgoing auditor and M/s PQR & Co.

Answer 2(c)

Corporate Secretaries International Association Limited (CSIA) was established on February 10, 2017 as a Company limited by Guarantee in Hong Kong. It is international federation of governance professional bodies for Corporate Secretaries & Governance Professional and represents those who work as frontline practitioners of governance throughout the world.

The main objectives of CSIA are as under:

- (i) To promote the professional status of suitably qualified Chartered Secretaries, Corporate Secretaries, Company Secretaries, board secretaries and other governance professionals.
- (ii) To establish and maintain good relations and exchanges between organisations dedicated to the promotion and practice of Secretaryship and/or the promotion of good governance.
- (iii) To develop and improve their services and professionalism of their members.
- (iv) To assist in the creation of such organisations in countries or regions in which they do not currently exist.
- (v) To promote the growth, development, study and practice of Secretaryship and assist their members develop and improve their services and professional standards.
- (vi) To advocate for good governance through carrying out research, developing standards and raising awareness.
- (vii) To promote the recognition and influence in respect of Secretaryship and its professional practitioners to national governments and their supplementary/ sponsored organisations, international organisations and the global business community.

Answer 2A(i)**(1) Audit, Risk, and Internal Control Principles**

1. The board should establish formal and transparent policies and procedures to ensure the independence and effectiveness of internal and external audit functions and satisfy itself on the integrity of financial and narrative statements.
2. The board should present a fair, balanced, and understandable assessment of the company's position and prospects.
3. The board should establish procedures to manage risk, oversee the internal control framework and determine the nature and extent of the principal risks the company is willing to take in order to achieve its long-term strategic objectives.

(2) Remuneration Principles

1. Remuneration policies and practices should be designed to support strategy and promote long term sustainable success.
2. Executive remuneration should be aligned to company purpose and values and be clearly linked to the successful delivery of the company's long term strategy.
3. A formal and transparent procedure for developing policy on executive remuneration and determining director and senior management remuneration should be established. No director should be involved in deciding their own remuneration outcome.
4. Directors should exercise independent judgement and discretion when authorizing remuneration outcomes, taking account of company and individual performance, and wider circumstances.

Answer 2A(ii)

The provisions of Regulation 24 of SEBI (LODR) Regulations states as under:

1. At least one independent director on the Board of Directors of the listed entity shall be a director on the Board of Directors of an unlisted material subsidiary, whether incorporated in India or not.

Explanation - For the purposes of this provision, notwithstanding anything to the contrary contained in Regulation 16, the term "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

2. The Audit Committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.
3. The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.

4. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

Explanation - For the purpose of this Regulation, the term "significant transaction or arrangement shall mean any individual transaction or arrangement that exceeds or is likely to exceed ten percent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted subsidiary for the immediately preceding accounting year.

5. A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than or equal to fifty percent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunals, or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved.
6. Selling, disposing and leasing of assets amounting to more than twenty percent of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunals, or under a resolution plan duly approved under section 31 of the Insolvency Code and such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved.
7. Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

ANCHOR Batteries Ltd. has income of Rs. 200.00 Crores which does not exceed 20% of consolidated income of ECHO Enterprises Ltd., the holding Company and all its subsidiaries. Therefore, ANCHOR Batteries Ltd. is not required to comply with the provisions which are specifically applicable with respect to material subsidiaries, other provisions which are applicable in general to all subsidiaries need to be complied.

EAZY Chemicals Ltd. has income of Rs. 250.00 Crores which does not exceeds 20% of consolidated income of ECHO Enterprises Ltd., and all its subsidiaries. Therefore, EAZY Chemicals Ltd. is not required to comply with the provisions which are specifically applicable with respect to material subsidiaries, other provisions which are applicable in general to all subsidiaries need to be complied.

REAL Power Ltd. has income of Rs. 400.00 Crores which exceeds 20% of consolidated income of ECHO Enterprises Ltd., and all its subsidiaries. Therefore, REAL Power Ltd. has to comply with all the requirements stipulated above.

ECHO Enterprises Ltd, holding Company, will also need to ensure compliance with all the provisions mentioned above with respect to its subsidiaries.

Question 3

- (a) *As per Ind AS 24, what are the parameters of considering a person or an entity as related party ?*
- (b) *“National Financial Reporting Authority (NFRA) has the powers to oversee the quality of service of Auditor as well as to suggest measures for improvement.” Discuss.*
- (c) *Explain the content of “Management Discussion and Analysis” section of the Annual Report.*
- (d) *Why do institutional investors rely on proxy advisors ?*
- (e) *Stakeholder engagement is the process by which an organisation involves people who may be affected by the decision it makes or can influence the implementation of its decisions. In reference to stakeholder’s engagement, explain the three key principles of stakeholder’s engagement. (3 marks each)*

Answer 3(a)

Ind AS 24 deals with Related Party Disclosure. As per Ind AS 24: A related party is a person or entity that is related to the entity that is preparing its financial statements (i.e. the 'reporting entity')

- (a) A person or a close member of that person's family is related to a reporting entity if that person:
- has control or joint control over the reporting entity;
 - has significant influence over the reporting entity; or
 - is a member of the key management personnel of the reporting entity or of a parent of the reporting entity
- (b) An entity is related to a reporting entity if any of the following conditions applies:
- The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
 - One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
 - Both entities are joint ventures of the same third party.
 - One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
 - The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.

The entity is controlled or jointly controlled by a person identified in (a).

- A person has control or joint control over the reporting entity has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity)
- The entity, or any member of a group of which it is a part, provides key

management personnel services to the reporting entity or to the parent of the reporting entity.

- A related party transaction is a transfer of resources, services or obligations between a reporting entity and a related party, regardless of whether a price is charged.

Answer 3(b)

Rule 9 of the National Financial Reporting Authority Rules, 2018 provides that:-

1. On the basis of its review, the Authority may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.
2. It shall be the duty of the auditor to make the required improvements and send a report to the Authority explaining how it has complied with the directions made by the Authority.
3. The Authority shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.
4. The Authority may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.
5. The Authority may take the assistance of experts for its oversight and monitoring activities.

Accordingly, the given statement looks right.

Answer 3(c)

As per SEBI (LODR) Regulations, 2015, Management Discussion and Analysis shall include discussion on the following matters within the limits set by the listed entity's competitive position:

- (a) Industry structure and developments.
- (b) Opportunities and Threats.
- (c) Segment-wise or product-wise performance.
- (d) Outlook.
- (e) Risks and concerns.
- (f) Internal control systems and their adequacy.
- (g) Discussion on financial performance with respect to operational performance.
- (h) Material developments in Human Resources / Industrial Relations front, including number of people employed.
- (i) Details of significant changes (i.e. change of 25% or more as compared to the immediately previous financial year) in key financial ratios, along with detailed explanations therefor, including:
 - (i) Debtors Turnover

- (ii) Inventory Turnover
 - (iii) Interest Coverage Ratio
 - (iv) Current Ratio
 - (v) Debt Equity Ratio
 - (vi) Operating Profit Margin (%)
 - (vii) Net Profit Margin (%) or sector-specific equivalent ratios, as applicable.
- (j) Details of any change in Return on Net Worth as compared to the immediately previous financial year along with a detailed explanation thereof.

Disclosure of Accounting Treatment : Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

Answer 3(d)

Following are few reasons why institutional investors engage proxy advisors:

- (i) Proxy advisors generally offer variety of services consisting of both, analysing the proposals at general meetings and recommending voting decisions.
- (ii) The recommendations of proxy advisors help the investors to obtain a more considered understanding of different agenda items and to arrive at an informed voting decision, allowing them to optimise their own limited resources and cast their votes in a timely and informed manner.
- (iii) The proxy advisors assist the institutional investors with informed knowledge of corporate governance, breaking the language barrier and providing a voting platform in a general meeting, wherever required, while investing across the globe.
- (iv) Proxy services firms play an important role in the proxy voting system. Such firms offer valuable services which includes analysing of the proposals for general meetings and providing voting recommendations, either based on the their own voting policy or on the investor's customised voting policy.
- (v) Proxy advisers also influence boards' decision making. They do a good job of policing the boards and governance records of the firms they track, and nudging institutional investors to take a stand on governance issues.

Answer 3(e)

Following are the key principles of stakeholder engagement:

Communicate : Interactions from the various stakeholders should be promoted.
Example : for customers there should be dedicated customer care center. The communication may be made through the print media elaborating about the progress of the company, which is also a part of the principle of transparency and disclosure. Ensure intended message is understood and the desired response achieved.

Consult, early and often: Always ask the right questions to get the useful information and ideas. To engage their support ask them for advice and listen how they feel.

Remember, they are human: Operate with an awareness of human feelings.

Plan it : Time investment and careful planning against it, has a significant payoff.

Relationship : Try to engender trust with the stakeholders. Seek out networking opportunity.

Simple but not easy : Show your care. Be empathetic. Listen to the stakeholders.

Managing risk : Stakeholders can be treated as risk and opportunities that have probabilities and impact.

Compromise : Compromise across a set of stakeholders' diverging priorities.

Understand what success is : Explore the value of the project to the stakeholder.

Take responsibility : Project governance is the key of project success. It's always the responsibility of everyone to maintain an ongoing dialogue with stakeholders.

PART II

Question 4

- (a) *As per COSO Framework of Enterprise Risk Management (ERM), there are certain components of Enterprises Risk Management. Explain different components of Enterprise Risk Management in brief.*
- (b) *Explain the term "Risk Register" and give a template of Risk Register in an organization.*
- (c) *Explain the Fraud Risk and the methodology to manage the Fraud Risk in an organisation.*
- (d) *Risk oversight is the responsibility of the entire Board and the same can be achieved through a structured review mechanism. In view of this statement, explain the review mechanism which may be followed by the Board for Risk Oversight. (5 marks each)*

Answer 4(a)

Enterprise Risk Management consists of eight interrelated components. These are derived from the way management runs an enterprise and are integrated with the management process. These components are:

- (a) *Internal Environment* - The internal environment encompasses the tone of an organization, and sets the basis for how risk is viewed and addressed by an entity's people, including risk management philosophy and risk appetite, integrity and ethical values, and the environment in which they operate.
- (b) *Objective Setting* - Objectives must exist before management can identify potential events affecting their achievement. Enterprise risk management ensures that management has in place a process to set objectives and that the chosen objectives support and align with the entity's mission and are consistent with its risk appetite.

- (c) *Event Identification* - Internal and external events affecting achievement of an entity's objectives must be identified, distinguishing between risks and Opportunities are channelled back to management's strategy or objective-setting processes.
- (d) *Risk Assessment* - Risks are analyzed, considering likelihood and impact, as a basis for determining how they should be managed. Risks are assessed on an inherent and a residual basis.
- (e) *Risk Response* - Management selects risk responses - avoiding, accepting, reducing, or sharing risk – developing a set of actions to align risks with the entity's risk tolerances and risk appetite.
- (f) *Control Activities* - Policies and procedures are established and implemented to help ensure the risk responses are effectively carried out.
- (g) *Information and Communication* - Relevant information is identified, captured, and communicated in a form and timeframe that enable people to carry out their responsibilities. Effective communication also occurs in a broader sense, flowing down, across, and up the entity.
- (h) *Monitoring* - The entirety of enterprise risk management is monitored and modifications made as necessary. Monitoring is accomplished through ongoing management activities, separate evaluations, or both.

Enterprise risk management is not strictly a serial process, where one component affects only the next. It is a multidirectional, iterative process in which almost any component can and does influence another.

Answer 4(b)

Risk Register is a document which is maintained by an organisation to keep the details of different risks as faced by an organisation and the methodology as used by the organisation to mitigate the risk. Risk register must contain the name of risk, its nature, its root cause, its severity, the possibility of its occurrence, methodology of risk mitigation. An example of Risk register is as given below:

<i>Sr. No.</i>	<i>Risk Area</i>	<i>Key risks</i>	<i>Root cause</i>	<i>Mitigation measures</i>
1.	Business Risk	Decreasing market share	Lack of innovation, market survey etc.	Keeping a vigil on latest developments and continuous monitoring
2.	Financial risk	Leveraging capital structure and the cash flows	Inability to assess the appropriate funding requirements	Adopting a Resource planning policy
3.	Regulatory and Compliance Risk	Non-compliance of applicable laws	Not keeping abreast of the latest changes in the Regulatory environment	Knowledge updation & maintenance of a robust compliance check list

Answer 4(c)

Fraud Risk is the risk of unexpected financial, material or reputational loss as the result of fraudulent action of persons internal or external to the organization. Fraud is perpetrated through the abuse of systems, controls, procedures and working practices. It may be perpetrated by an outsider or insider. Fraud may not be usually detected immediately and thus the detection should be planned for on a proactive basis rather than on a reactive basis.

Methodology to deal with the Fraud Risk in an organisation:

1. *Defining fraud* : This shall cover activities which the company would consider as fraudulent.
2. *Defining Role & responsibilities* : The policy may define the responsibilities of the officers who shall be involved in effective prevention, detection, monitoring & investigation of fraud. The company may also consider constituting a committee or operational structure that shall ensure an effective implementation of anti-fraud strategy of the company. This shall ensure effective investigation in fraud cases and prompt as well as accurate reporting of fraud cases to appropriate regulatory and law enforcement authorities.
3. *Communication channel* : Encourage employees to report suspicious cases of fraud/misconduct. Any person with knowledge of suspected or confirmed incident of fraud/misconduct must report the case immediately through effective and efficient communication channel or mechanism.
4. *Disciplinary action* : After due investigations disciplinary action against the fraudster may be considered as per the company's policy.

Answer 4 (d)

Risk oversight is the responsibility of the entire Board and the same can be achieved through a review mechanism which inter alia include:

1. Developing policies and procedures around risk that are consistent with the organization's strategy and risk appetite.
2. Taking steps to foster risk awareness.
3. Encourage an organizational culture of risk adjusting awareness
4. Maintenance of a Risk Register
5. A compliance certificate on the identification of risks and establishment of mitigation measures.

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

- (a) *The Companies Act, 2013 brought revolutionary changes and mandated the Corporate Social Responsibility (CSR) provisions for the companies. As per the*

provisions related to CSR, eligible companies need to file a CSR Report on annual basis. What are the contents of CSR report ? (5 marks)

- (b) *Integrated reporting is founded on integrated thinking, which helps to demonstrate interconnectivity of strategy, strategic objectives, performance, risk and incentives and helps to identify sources of value creation. In reference to integrated reporting, explain the International Integrated Reporting Council (IIRC). (5 marks)*
- (c) *Explain the regulatory framework with respect to sustainability reporting in India. (5 marks)*
- (d) *As per SEBI Circular No. CIR/CFD/CMD/10/2015 dated 4th November, 2015, a format for “Business Responsibility Report (BRR)” has been prescribed. This circular prescribes the BRR framework into five sections. Explain the contents of these five sections, in brief. (5 marks)*

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *“A trusted employee who has easy access to a business’s finances may abuse his authority by stealing company funds.” Considering the statement, narrate any 10 points to be worth noted for a variety of internal control techniques in your organisation. (5 marks)*
- (ii) *As a Company Secretary of the Company, you are asked by the management to provide inputs on Internal Control to be observed by the Audit Committee mandatorily in terms of Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. State any five information which are to be mandatorily reviewed by the Audit Committee in this regard. (5 marks)*
- (iii) *“Global Reporting Initiative (GRI) Sustainability Reporting Standards (GRI Standards) helps businesses, governments and other organizations understand and communicate the impact of business on critical sustainability issues.” Considering the statement, discuss any five distinctive elements of the GRI Standards. (5 marks)*
- (iv) *State any five points/sub-points which are incorporated in the compliance certificate which shall be furnished by CEO and CFO of a company in terms of Regulation 17 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. (5 marks)*

Answer 5(a)

The Board of the Company is mandated to prepare a CSR Report under Section 134(3)(o) of the Companies Act, 2013. The Companies (CSR Policy) Rules, 2014 provides for the format for reporting CSR activities annually. The format for the annual report on CSR activities to be included in the Board's report is as follows:

1. Brief outline on CSR Policy of the Company.
2. The Composition of the CSR Committee.
3. Web-link where Composition of CSR committee, CSR Policy and CSR projects approved by the board are disclosed on the website of the company.

4. Details of Impact assessment of CSR projects carried out in pursuance of sub-rule (3) of rule 8 of the Companies (Corporate Social responsibility Policy) Rules, 2014.
5. Details of the amount available for set off in pursuance of sub-rule (3) of rule 7 of the Companies (Corporate Social responsibility Policy) Rules, 2014 and amount required for set off for the financial year, if any.
6. Average net profit of the Company as per Section 135(5).
7. (a) Two percent of average net profit of the company as per section 135(5):
 - (b) Surplus arising out of the CSR projects or programmes or activities of the previous financial years
 - (c) Amount required to be set off for the financial year, if any
 - (d) Total CSR obligation for the financial year (7a+7b-7c).
8. (a) CSR amount spent or unspent for the financial year in the table provided
 - (b) Details of CSR Amount spent against Ongoing Projects for the financial year in the table provided:
 - (c) Details of CSR Amount spent against other than Ongoing Projects for the financial year in the table provided:
 - (d) Amount Spent in Administrative Overheads
 - (e) Amount Spent on Impact Assessment
 - (f) Total Amount Spent for the Financial Year (8b+8c+8d+8e)
 - (g) Excess Amount for Set Off, if any
9. (a) Details of Unspent CSR amount for the preceding three financial years
 - (b) Details of CSR amount spent in the financial year for Ongoing Projects of the preceding financial years
10. Details relating to the asset so created or acquired through CSR spent in the financial year;
 - (a) Date of Creation or Acquisition of the Capital Asset(s)
 - (b) Amount of CSR spent for creation or acquisition of capital asset
 - (c) Details of the entity or public authority or beneficiary under whose name such capital asset is registered, their address etc.
 - (d) Details of the capital asset(s) created or acquired (including complete address and location of the capital asset).

Answer 5(b)

The International Integrated Reporting Council (IIRC) is a powerful, international cross section of leaders from the corporate, investment, accounting, securities, regulatory, academic and standard-setting sectors as well as civil society.

The IIRC was established in 2010 in recognition of the need to move to-wards an International Integrated Reporting Framework that is fit-for-purpose for the 21st century. The IIRC seeks to build upon, enhance and support the work that has been done to date, and is ongoing, to achieve a reporting framework that:

- communicates the organization's strategy, business model, performance and plans against the background of the context in which it operates;
- provides a coherent framework within which market and regulatory driven reporting requirements can be integrated;
- is internationally agreed, so as to encourage convergence of approach and hence more ready understanding of information presented;
- reflects the use of and effect on all of the resources and relationships or “capitals” (human, natural and social as well as financial, manufactured and intellectual) on which the organization and society depend for prosperity; and
- reflects and communicates the interdependencies between the success of the organization and the value it creates for investors, employees, customers and, more broadly, society.

The IIRC is developing an International Integrated Reporting Framework that will facilitate the development of reporting over the coming decades. The core objective of the Framework is to guide organizations on communicating the broad set of information needed by investors and other stakeholders to assess the organization's long-term prospects in a clear, concise, connected and comparable format. This will enable those organizations, their investors and others to make better short-and long-term decisions.

Answer 5(c)

Considering the importance of sustainability in businesses, Ministry of Corporate Affairs (MCA) launched Corporate Social Responsibility Voluntary Guidelines in 2009. These Voluntary Guidelines addressed six core elements - Care for all Stakeholders, Ethical functioning, Respect for Workers' Rights and Welfare, Respect for Human Rights, Respect for Environment and Activities for Social and Inclusive Development. To take this further, in 2011, MCA issued 'National Voluntary Guidelines on Social, Environmental and Economical Responsibilities of Business' which encouraged reporting on environment, social and governance issues.

In line with the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business and considering the larger interest of public disclosure regarding steps taken by listed entities from an Environmental, Social and Governance (“ESG”) perspective, SEBI decided to mandate inclusion of Business Responsibility Reports (“BRR reports”) as part of the Annual Reports for listed entities.

SEBI in its (Listing Obligations and Disclosure Requirements) Regulations, 2015 has mandated the requirement of submission of BRR for top 1000 listed entities describing initiative taken by them from an environmental, social and governance perspective in the prescribed format.

Regulation 34(2)(f) of SEBI(LODR) Regulations 2015 provides that the annual report shall contain for the top one thousand listed entities based on market capitalization, a

business responsibility report describing the initiatives taken by the listed entity from an environmental, social and governance perspective, in the format as specified by the Board from time to time.

It also contains that the requirement of submitting a business responsibility report shall be discontinued after the financial year 2021–22 and thereafter, with effect from the financial year 2022–23, the top one thousand listed entities based on market capitalization shall submit a business responsibility and sustainability report in the format as specified by the Board from time to time. Even during the financial year 2021–22, the top one thousand listed entities may voluntarily submit a business responsibility and sustainability report in place of the mandatory business responsibility report.

Answer 5(d)

The Business Responsibility Reports framework is divided into five sectors:

Section - A : General Information about the Organization - Industry sector, products & Services, Markets, other General Information.

Section - B : Financial Details of the Organisation - Paid Up capital, Turnover, Profits, CSR (Corporate Social Responsibility) spend.

Section - C : Other Details - BR initiatives at Subsidiaries and Supply Chain Partners.

Section - D : BR information - structure, Governance & Policies for Business Responsibility.

Section - E : Principle wise performance - Indicators to assess performance on the business responsibility principles as envisaged by the National Voluntary Guidelines (NVGs).

Answer 5A(i)

Fraud can have a large negative impact on one's business's bottom line. In some cases, a trusted employee who has easy access to a business's finances may abuse his authority by stealing company funds. A variety of internal control techniques can help prevent improprieties. The following points in this regard are worth mentioned:

- There should be clear division of the work.
- Segregation of the work should be in such a manner that the work done by one person is the beginning of the work for another person.
- There should be the clarity of the responsibility.
- The work flow process be documented or standardized so that the staff may perform the work as suggested in the work flow chart.
- No single persons should be allowed to have access or control over any important business operation.
- There should be job rotation of the staff duties periodically.
- Staff should be asked to go on mandatory leave periodically so that other person may come to know if someone is playing foul with the system.

- Persons having the charge of the important assets should not be allowed to have access to the books of accounts.
- Periodical inspection of the physical assets be carried out to ensure its physical existence as well in good working conditions.
- The valuable items like cash and others, by physically inspected and the periodicity should be at irregular intervals, so that the person under whose charge the assets are, cannot know in advance, when the inspection will take place and manage the affairs.

Answer 5A(ii)

The audit committee shall mandatorily review the following information:

1. Management discussion and analysis of financial condition and results of operations;
2. Statement of significant related party transactions (as defined by the audit committee), submitted by management;
3. Management letters / letters of internal control weaknesses issued by the statutory auditors;
4. Internal audit reports relating to internal control weaknesses; and
5. The appointment, removal and terms of remuneration of the chief internal auditor shall be subject to review by the audit committee.
6. Statement of deviations:
 - (a) Quarterly statement of deviation(s) including report of monitoring agency, if applicable, submitted to stock exchange(s).
 - (b) Annual statement of funds utilized for purposes other than those stated in the offer document/ prospectus/notice.

Answer 5A(iii)

Global Reporting Initiative Standards help businesses, governments and other organizations understand and communicate the impact of business on critical sustainability issues. Some of the distinctive elements of the GRI Standards – and the activity that creates them – include:

Multi-stakeholder input : The approach is based on multi stakeholder engagement, representing the best combination of technical expertise and diversity of experience to address the needs of all report makers and users. This approach enables to produce universally applicable reporting guidance. All elements of the Reporting Framework are created and improved using a consensus seeking approach, and considering the widest possible range of stakeholder interests which includes business, civil society, labour, accounting, investors, academics, governments and sustainability reporting practitioners.

A record of use and endorsement : Of the world's largest 250 corporations, 92% report on their sustainability performance and 74% of these use GRI's Standards to do so. With over 23,000 GRI Reports recorded in the database, sustainability reporting

using the GRI Standards continues to grow. New audiences for sustainability information, like investors and regulators, are now calling for more and better performance data. Annual growth in the number of reporters is expected to continue, as we work towards a key area of our strategy: more reporters and better reporting.

Governmental references and activities : Enabling policy is a key aspect of overall strategy and GRI work with governments, international organizations and capital markets to further this agenda. As a result, 35 countries use GRI in their sustainability policies and look for guidance as the world's most widely used sustainability reporting standards. In addition GRI have long-standing collaborations with over 20 international organizations such as the UNGC, OECD and the UN Working Group on Business & Human Rights.

Independence : The creation of the Global Sustainability Standards Board in 2014, and related governance structure changes, have strengthened the independence of the standards aspect funding approach also ensures independence. GRI is a stichting – in Dutch, a non-profit foundation - with a business model that aims for a degree of self-sufficiency. Funding is secured from diverse sources; governments, companies, foundations, partner organizations and supporters.

Shared development costs : The expense of developing GRI's reporting guidance is shared among many users and contributors. For companies and organizations, this negates the cost of developing in-house or sector based reporting frameworks.

Answer 5A(iv)

Regulation 17 (8) of the SEBI (LODR), 2015 provides that the Chief Executive Officer(CEO) and the Chief Financial Officer(CFO) shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II as provided below:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief:
 1. These statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 2. These statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entities during the year which are fraudulent, illegal or violative of the company's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity's pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D. They have indicated to the auditors and the Audit committee:
 1. significant changes in internal control over financial reporting during the year;

2. significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
3. instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

PART IV

Question 6

- (a) Explain the term “Ethical Dilemma” and the mode to come out of Ethical Dilemma. (5 marks)
- (b) Karl-Henrik Robert along with a group of 50 scientists developed four basic, non-negotiable system conditions for global sustainability. What are these conditions ? (5 marks)

Answer 6(a)

Dilemma is a situation that requires a choice between options that are or seem equally unfavourable or mutually exclusive. By definition, an ethical dilemma involves the need to choose from among two or more morally acceptable courses of action, when one choice prevents selecting the other; or, the need to choose between equally unacceptable alternatives.

A dilemma could be a right vs. wrong situation in which the right would be more difficult to pursue and wrong would be more convenient. A right versus wrong dilemma is not so easy to resolve. It often involves an apparent conflict between moral imperatives, in which to obey one would result in transgressing the other. This is also called an ethical paradox.

An ethical dilemma involves a situation that makes a person question what is the ‘right’ or ‘wrong’ thing to do. They make individuals think about their obligations, duties or responsibilities. These dilemmas can be highly complex and difficult to resolve. Easier dilemmas involve a ‘right’ versus ‘wrong’ answer; whereas, complex ethical dilemmas involve a decision between a right and another right choice. However, any dilemma needs to be resolved.

Modes to come out of Ethical Dilemmas

The ethical dilemma consideration takes us into the grey zone of business and professional life, where things are no longer black or white and where ethics has its vital role today. A dilemma is a situation that requires a choice between equally balanced arguments or a predicament that seemingly defies a satisfactory solution.

An ethical dilemma is a moral situation in which a choice has to be made between two equally undesirable alternatives. Dilemmas may arise out of various sources of behaviour or attitude, as for instance, it may arise out of failure of personal character, conflict of personal values and organizational goals, organizational goals versus social values, etc. A business dilemma exists when an organizational decision maker faces a choice between two or more options that will have various impacts on (i) the organization's

profitability and competitiveness; and (ii) its stakeholders. 'In situations of this kind, one must act out of prudence to take a better decision.

Answer 6(b)

In an attempt to address criticism of the vagueness in the definition of sustainable development, Karl-Henrik Robert, founder of the environment organization, The Natural Step, along with a group of 50 scientists sought to obtain a consensus on sustainability and developed four 'basic, non-negotiable system conditions for global sustainability'. These include:

1. No systematic increase of substances from the earth's crust in the ecosphere. This condition implies a drastic reduction in the use of minerals, fossils fuels and non-renewable resources.
2. No systematic increase of substances produced by society in the ecosphere. This condition means that substances cannot be produced faster that they are broken down and degraded biologically. Therefore, the uses of non-biodegradable materials must be minimized.
3. No systematic diminishing of the physical basis for productivity and diversity of nature. This condition requires preservation of biodiversity, non-environmentally damaging land use practices and use of renewable resources.
4. Fair and efficient use of resources and social justice. This implies equitable access to a just distribution of resources.

ADVANCED TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

2. ALL the references to sections in Part-II of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2022-23 unless stated otherwise.
3. Wherever necessary, suitable assumptions can be made and the same be stated clearly in the answer.
4. Working notes should form part of the answer.

PART I

Question 1

- (a) SK Health and diagnostic centre situated in Noida, registered under GST furnishes the following figures of their collection from various medical services provided to the patients for the month of January, 2022 :

S. No.	Particulars	Amount (₹)
(i)	Treatment fees from in-patient	22,50,000
(ii)	Ambulance services to in-patient	3,80,000
(iii)	Supply of medicine and bandage etc. to the in-patients	2,60,000
(iv)	Receipts from implants	4,70,000
(v)	Plastic surgery to restore anatomy of a child affected due to an accident	3,00,000

Compute the taxable value of supply and GST payable for the month of January, 2022. (rate of GST may be taken as 18%)

(5 marks)

- (b) Kajri Pvt. Ltd., a registered supplier, is engaged in the manufacture of taxable goods. The company provides the following information pertaining to purchase made/services availed by it during the month of August, 2021 :

S. No.	Particulars	GST (₹)
(i)	Raw spices purchase for personal use of directors	3,50,000
(ii)	Electric machinery purchased for being used in the manufacturing process	2,25,000
(iii)	Club Membership fees for employees working in the factory	1,55,000
(iv)	Motor vehicle used for transportation of employee (seating capacity 12 persons)	2,70,000

- (v) *Payment made to contractor for construction of staff quarter* 80,000

Determine the amount of Input Tax Credit (ITC) available with Kajri Pvt. Ltd. for the month of August, 2021 in the context of provision of CGST Act, 2017 by giving the necessary explanation for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled. (5 marks)

- (c) *Mahaveer International entered into a transaction for import of goods from a vendor located in Germany. Due to financial issues Mahaveer International was not in a situation to clear the goods upon payment of import duty. Mahaveer International sold the goods to Sairam Export House by endorsement of title to the goods, while the goods were in high seas. The agreement further provided that Mahaveer International shall purchase back the goods in future from Sairam Export House. Determine the taxability of transaction(s) involved, under the GST law.* (5 marks)
- (d) *Mention the Provisions of the penalty under the GST Law relating to the following offences :*
- (i) *Ram collects ₹25,000 on account of GST from customers and failure to pay it to the credit of government beyond a period of three months from its due date.*
- (ii) *Shyam collects ₹7,500 on account of GST from customers and failure to pay it to the credit of government beyond a period of three months from its due date.*
- (iii) *Jai fails to deduct tax in accordance with the provision of section 51 of CGST Act, 2017 of ₹15,000, such deduction of an amount which is less than the amount required to be deducted from his client.*
- (iv) *Vijay fails to collect tax in accordance with the provision of section 52 of CGST Act, 2017 of ₹2,000 such deduction of an amount which is less than the amount required to be collected from his client.*
- (v) *R.K. claimed and obtained ₹1,50,000 fraudulently by way of refund under CGST Act, 2017.* (5 marks)

Answer 1(a)

Computation of Taxable Value of Supply and GST payable of SK Health and diagnostic centre for the month of January, 2022

S. No.	Particulars	Amount (Rs.)
(i)	Treatment fees from in-patient (WN-1)	Nil
(ii)	Ambulance services to the in-patient (WN-1)	Nil
(iii)	Supply of medicine and bandage etc. to the in-patients (WN-2)	Nil
(iv)	Receipt from implants (WN-2)	Nil

(v)	Plastic surgery to restore anatomy of a child affected due to an accident (WN-1)	Nil
	Value of Taxable Supply	Nil
	CGST@9%	Nil
	SGST@9%	Nil
	Total GST Liability	Nil

Working Notes :

- Entry 74 of the Notification no. 12/2017 Central Tax (Rate) dated June 28, 2017 exempts Health care services by a clinical establishment, an authorized medical practitioner or paramedics from GST.

Health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

- Further it is held in various advance rulings that the supply of implants and medicines as a part of health care services constitute a composite service and such supplies shall also be considered as health care service and accordingly exempted.

Alternate Answer 1(a)**Computation of Taxable Value of Supply and GST payable of SK Health and diagnostic centre for the month of January, 2022**

<i>S. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
(i)	Treatment fees from in-patient (WN-1)	Nil
(ii)	Ambulance services to the in-patient (WN-1)	Nil
(iii)	Supply of medicine and bandage etc. to the in-patients (WN-2)	Nil
(iv)	Receipt from implants (WN-2)	Nil
(v)	Plastic surgery to restore anatomy of a child affected due to an accident (WN-1)	Nil
	Value of Taxable Supply	Nil
	CGST@9%	Nil
	SGST@9%	Nil
	Total GST Liability	Nil

Working Notes :

- Entry 77 of Notification No. 9/2017- Integrated Tax (Rate) dated on June 28, 2017 exempts the services of:-

- Treatment fees of in-patient department.
- Services provided by way of transformations of a patient in an ambulance.

Health Care Services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

- Further it is held in various advance rulings that the supply of implants and medicines as a part of health care services constitute a composite service and such supplies shall also be considered as health care service and accordingly exempted.

Alternate Answer 1(a)**Computation of Taxable Value of Supply and GST payable of SK Health and diagnostic centre for the month of January, 2022**

<i>S. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
(i)	Treatment fees from in-patient (WN-1)	Nil
(ii)	Ambulance services to the in-patient (WN-1)	Nil
(iii)	Supply of medicine and bandage etc. to the in-patients (WN-2)	2,60,000
(iv)	Receipt from implants (WN-2)	4,70,000
(v)	Plastic surgery to restore anatomy of a child affected due to an accident (WN-1)	Nil
	Value of Taxable Supply	7,30,000
	CGST@9% [Rs. 7,30,000 x 9%]	65,700
	SGST@9% [Rs. 7,30,000 x 9%]	65,700
	Total GST Liability	1,31,400

Working Notes :

- Entry 74 of the Notification no. 12/2017 Central Tax (Rate) dated June 28, 2017 exempts Health care services by a clinical establishment, an authorized medical practitioner or paramedics from GST.

Health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

2. Exemption Notification No. 12/2017 does not include: -
 - i. Supply of medicine and bandage through pharmacy.
 - ii. Implants

Alternate Answer 1(a)

Computation of Taxable Value of Supply and GST payable of SK Health and diagnostic centre for the month of January, 2022

S. No.	Particulars	Amount (Rs.)
(i)	Treatment fees from in-patient (WN-1)	Nil
(ii)	Ambulance services to the in-patient (WN-1)	Nil
(iii)	Supply of medicine and bandage etc. to the in-patients (WN-2)	2,60,000
(iv)	Receipt from implants (WN-2)	4,70,000
(v)	Plastic surgery to restore anatomy of a child affected due to an accident (WN-1)	Nil
	Value of Taxable Supply	7,30,000
	GST@ 9% [Rs. 7,30,000 x 9%]	65,700
	SGST@ 9% [Rs. 7,30,000 x 9%]	65,700
	Total GST Liability	1,31,400

Working Notes :

1. Entry 77 of Notification No. 09/2017- Integrated Tax (Rate) dated on June 28, 2017 exempts the services of:-
 - i. Treatment fees of in-patient department.
 - ii. Services provided by way of transformations of a patient in an ambulance.

Health Care Services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct

anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

2. Exemption Notification No. 09/2017 does not include: -
- i. Supply of medicine and bandage through pharmacy.
 - ii. Implants

Answer 1(b)

Computation of Input Tax Credit (ITC) available with Kajri Pvt. Ltd. for the month of August 2021

S. No.	Particulars	Amount (Rs.)
(i)	Raw spices purchase for personal use of directors [ITC is not available on goods used for personal consumption as credit blocked under Section 17(5) of Central Goods and Services Tax Act, 2017.]	Nil
(ii)	Electric machinery purchased for being used in the manufacturing process	2,25,000
(iii)	Club Membership fees for employees working in the factory [Covered under Blocked credit in terms of Section 17(5) of Central Goods and Services Tax Act, 2017]	Nil
(iv)	Motor vehicle used for transportation of employee [ITC on motor vehicles for transportation of persons with seating capacity \leq 13 persons (including the driver) is blocked except when the same are used for (i) making further taxable supply of such motor vehicles (ii) making taxable supply of transportation of passengers (iii) making taxable supply of imparting training on driving such motor vehicles. In the given case, motor vehicle used for transportation of the employee is covered under blocked credit in term of section 17(5) of Central Goods and Services Tax Act, 2017]	Nil
(v)	Payment made to contractor for construction of staff quarter [ITC is not available on goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.]	Nil
	Total available ITC	2,25,000

Answer 1(c)

As per Section 7(2) of the Central Goods and Services Tax Act, 2017 along with Schedule III, high seas sale transaction i.e. supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India, but before clearance for home consumption shall not be considered as supply under GST.

Thus, the sale of goods by Mahaveer International to Sairam Export House in high seas shall not be liable to GST.

Further, the import duty including IGST shall be payable by Sairam Export House at the time of clearance of goods at port of import. In case the goods are sold back by Sairam Export House to Mahaveer International at a subsequent point of time, the same shall be treated as normal domestic sale transaction; and GST shall be applicable on the same subject to other conditions prescribed under GST Law.

Answer 1(d)

<i>Case</i>	<i>Offences prescribed</i>	<i>Penalties prescribed</i>
(i)	Ram collects Rs. 25,000 on account of GST from customers and failure to pay it to the credit of government beyond a period of three months from its due date.	<p>Penalty of Rs. 25,000</p> <p>As per Section 122(1) of Central Goods and Services Tax Act, 2017 prescribed following penalties:</p> <p>(a) INR 10,000/- or</p> <p>(b) An amount equivalent to tax evaded (i.e. Rs. 25,000)</p> <p>whichever is higher</p>
(ii)	Shyam collects Rs. 7,500 on account of GST from customers and failure to pay it to the credit of government beyond a period of three months from its due date.	<p>Penalty of Rs. 10,000</p> <p>As per Section 122(1) of Central Goods and Services Tax Act, 2017 prescribed following penalties:</p> <p>(a) INR 10,000/- or</p> <p>(b) An amount equivalent to tax evaded (i.e. Rs. 7,500)</p> <p>whichever is higher</p>
(iii)	Jai fails to deduct tax in accordance with the provision of section 51 of Central Goods and Services Tax Act, 2017 of Rs. 15,000 deduction of an amount which is less than the amount required to be deducted.	<p>Penalty of Rs. 15,000</p> <p>As per Section 122(1) of Central Goods and Services Tax Act, 2017 prescribed following penalties:</p> <p>(a) INR 10,000/- or</p>

		(b) tax not deducted/collected, or short deducted/collected, or deducted/collected but not paid, (i.e. Rs. 15,000) whichever is higher
(iv)	Vijay fails to collect tax in accordance with the provision of section 52 of Central Goods and Services Tax Act, 2017 of Rs. 2,000 such deduction of an amount which is less than the amount required to be collected.	Penalty of Rs. 10,000 As per Section 122 (1) of Central Goods and Services Tax Act, 2017 prescribed following penalties: (a) INR 10,000/- or (b) tax not deducted/collected, or short deducted/collected, or deducted/collected but not paid, (i.e. Rs. 2,000) whichever is higher
(v)	R.K. claimed and obtained Rs. 1,50,000 fraudulently by way of refund under Central Goods and Services Tax Act, 2017.	Penalty of Rs. 1,50,000 As per Section 122(1) of Central Goods and Services Tax Act, 2017 prescribed following penalties: (a) INR 10,000/- or (b) Refund claimed fraudulently, (i.e. Rs. 1,50,000) whichever is higher

(Attempt all parts of either Q.No.2 or Q. No. 2A)

Question 2

- (a) Determine the time of supply (TOS) by giving reason in brief in each of the following cases in accordance with the provisions of CGST Act, 2017 :
- (i) Sunshine Pvt. Ltd. engaged in supply of services. It receives advance of ₹2,35,000 from clients on 14th May, 2021 for the service to be rendered in the month of June, 2021.
 - (ii) Deep Ltd. provided management consultancy services to M/s. PBS & Co. on 14th August, 2021 and billed it for ₹1,60,000 on 19th September, 2021. It received the payment for the same on 23rd September, 2021.
 - (iii) A provided the professional services to B Ltd. on 16th July, 2021 and date of raising invoice was 11th August, 2021, he received part payment 50% on 1st August, 2021 and Remaining 50% payment on 26th August, 2021.
 - (iv) Ankit Kumar purchased some goods covered under reverse charge mechanism. The goods received on 19th June, 2021, Date of invoice is 14th May, 2021 and the payment is made on 22nd June, 2021.

(v) *TPS Ltd. is an Indian Company. It has received taxable supply of services from its associated enterprises Alfa Ltd. an US based company on 1st January, 2022. Alfa Ltd. raised an invoice of \$ 80,000 on 10th February, 2022. TPS Ltd. debited its books of account on 25th February, 2022 and made the payment on 25th, March, 2022.* (5 marks)

(b) *Lalit Industries, registered in Assam, is engaged in making inter-state supplies of hosiery garments. The aggregate turnover of Lalit Industries in the preceding financial year is ₹72 Lakh. It has opted for composition levy under Section 10(1) and 10(2) of CGST Act, 2017 in the current financial year and paid tax for the April-June quarter of current year under composition levy. The proper officer has levied penalty for wrongly availing the scheme on Lalit Industries in addition to the tax payable by it.*

Justify, in the context of provision of CGST Act, 2017 the validity of the action taken by proper officer. (5 marks)

(c) *XYZ Pvt. Ltd., Nagpur, provide housekeeping services. The company supplies its services exclusively through an E-commerce website owned and managed by Elixir Technology Pvt. Ltd., Nagpur. The turnover of XYZ Pvt. Ltd. in the current financial year is ₹19 lakh.*

Advice suitably to the company XYZ Pvt. Ltd. as to whether it is required to obtain GST registration as per provisions contained under the CGST Act, 2017. Will your answer would be different if XYZ Pvt. Ltd. sells readymade garments exclusively through an E-commerce website owned and managed by Elixir Technology Pvt. Ltd. ? (5 marks)

(d) *Aryan & Sons is an unregistered dealer of taxable supplies in Delhi. On 10th September, 2021 aggregate turnover of Aryan & Sons exceeded ₹20,00,000. The firm applied for registration on 27th September, 2021 and was granted the registration certificate on 1st October, 2021.*

Under CGST Rules, 2017, you are required to advise Aryan & Sons as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of revised tax invoices. (5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

(i) *Secure Meter Ltd., registered in Gurgaon, Haryana, is engaged in manufacturing heavy steel machinery. It enters into an agreement with Rajveer Associates, registered in Delhi, for imparting motivational training to the top level management of Secure Meter Ltd. in a 10 day residential motivational training program at an agreed consideration of ₹21,00,000.*

Rajveer Associates books the conference hall along with the rooms of Hotel Shourya residency in Ajmer (registered in Rajasthan) for the training program, for a lump sum consideration of ₹14,00,000.

You are required to determine the place of supply in respect of the supply(ies) involved in the given scenario in the context of CGST Act, 2017.

- (ii) *Nizam Traders, registered in New Delhi, is engaged in supply of taxable goods. Its turnover in the preceding FY 2020-2021 was ₹230 lakh and was furnishing its GST return on monthly basis. In the beginning of April month in the current FY 2021-2022, it sought advice from its tax consultant, Vaibhav Consultants, whether it can furnish its GST on quarterly basis from now onwards. Vaibhav Consultants advised Nizam Traders that it cannot furnish its return on quarterly basis as the GST law does not provide for quarterly return any circumstances. Discuss the technical veracity of the advice given by Vaibhav Consultants.*
- (iii) *Write the difference between zero rated supply and exempted supply under the GST Law.*
- (iv) *State few cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017.*
(5 marks each)

Answer 2(a)

Case	Time of Supply (TOS)	Reason
(i)	14th May, 2021	As per Section 13(2) of the Central Goods and Services Tax Act, 2017 The time of supply of services shall be the earliest of the following dates, namely:- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or (b) the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier. In both the cases, advance payment is the Time of Supply.
(ii)	14th August, 2021	As per Section 13(2) of Central Goods and Services Tax Act, 2017 read with section 31(2) of Central Goods and Services Tax Act, 2017 and rule thereof, in case invoice has not been issued within 30 days of completion of service, time of supply of service is date of completion of service or date of receipt of payment, whichever is earlier. Thus, Time of supply of service is 14th August, 2021.
(iii)	1st August, 2021 for first 50% payment and 11th August, 2021 for remaining 50% amount.	As invoice is issued within 30 days from the date of completion of service, time of supply shall be date of invoice or date of receipt of payment, whichever is earlier. For first 50% payment time of supply is 1st August,

		2021 and for the remaining 50% payment time of supply is 11th August, 2021.
(iv)	14th June, 2021	As per Section 12(3) In case of supply of reverse charge on goods time of supply is (a) date of receipt of goods; or (b) date of payment; or (c) date immediately following 30 days from the issue of invoice, whichever is earlier. Thus, Time of supply of goods under reverse charge is 14th June, 2021.
(v)	25th February, 2022	As per Section 13(3) of Central Goods and Services Tax Act, 2017, In case of associated enterprises where the person providing the service is located outside India, the Time of supply of service shall be (a) the date of debit in the books of account of the person receiving the service; or (b) date of making the payment, whichever is earlier. Thus, Time of supply of goods under reverse charge is 25th February, 2022.

Answer 2(b)

As per section 10(1) of the Central Goods and Services Tax Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed Rs. 1.5 crore in a State/Union Territory [Rs. 75 Lakh in case of Special Category States except Assam, Himachal Pradesh and Jammu and Kashmir], may opt for composition scheme.

However, he shall not be eligible to opt for composition scheme if, inter alia, he is engaged in making any inter-State outward supplies of goods or services.

In the given case, since Lalit Industries is engaged in making inter-State supplies of hosiery garments, it is not eligible to opt for composition scheme in current year irrespective of its turnover not exceeding the threshold limit of Rs. 75 Lakh in the preceding financial year.

Further, if the proper officer has reasons to believe that a taxable person has paid tax under composition scheme despite not being eligible, such person shall, in addition to any tax payable, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

Thus, the action taken by the proper officer of levying the penalty for wrongly availing the composition scheme is valid in law.

Answer 2(c)

As per Section 22 of Central Goods and Services Tax Act, 2017, every supplier of goods or services or both is required to obtain registration in the State or Union Territory from where he makes a taxable supply if his aggregate turnover exceeds the threshold limit in a financial year.

However, Section 24 of Central Goods and Services Tax Act, 2017 enlists certain

categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such **Electronic Commerce Operator (ECO)**, who is required to collect tax at source under section 52, is one such person specified under clause (ix) of Section 24. However, where the ECO is liable to pay tax on behalf of the suppliers of services under a notification issued under Section 9(5), the suppliers of such services are entitled for threshold exemption.

Section 2(45) defines ECO as any persons who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined under section 2(44) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Elixir Technology Pvt. Ltd. owns and manages a website for e commerce where both goods and services are supplied, it will be classified as an ECO under Section 2(45).

Notification No. 17/2017 Central Tax (Rate) dated 28.06.2017 issued under section 9(5) specifies services by way of housekeeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the suppliers.

In the given case, XYZ Pvt. Ltd. provides housekeeping services through an ECO. It is presumed that Elixir Technology Pvt. Ltd. is an ECO which is required to collect tax at source under section 52. However, housekeeping services provided by XYZ Pvt. Ltd., which is not liable for registration under section 22(1), as its turnover is less than Rs. 20 lakh, is a service notified under section 9(5). Thus, XYZ Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain compulsory registration even though it supplies services through ECO.

In the second case, XYZ Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Therefore, in the second case, XYZ Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).

Answer 2(d)

Section 22(1) of Central Goods and Services Tax Act, 2017, provides that every supplier is liable to be registered under this act in the State or Union Territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the threshold limit.

Section 25(1) of Central Goods and Services Tax Act, 2017, provides that a supplier whose aggregate turnover in a financial year exceeds the threshold limit in the State or Union Territory is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e. the date of crossing the threshold limit).

Where the application is submitted within the same period, the effective date of registration is the date on which the person becomes liable to registration vide Central Goods and Services Tax, Rule 10(3).

In the given case, since Aryan & Sons have applied for registration on 27th September, 2021 which is within 30 days from the date of becoming liable to registration (10th September), its effective date of registration is 10th September, 2021.

Further, every registered person who has been granted registration with effect from a date earlier than the date of issuance tax of registration certificate to him, may issue revised tax invoices in respect of taxable supplies affected during this period within one month from the date of issuance of registration certificate [Section 31(3)(a) read with rule 53(2)].

In view of the same, Aryan & Sons may issue revised tax invoices against the invoices already issued during the period between effective date of registration (10th September, 2021) till the date of issuance of registration certificate (1st October, 2021) within one month from the date of issuance of certificate of registration, i.e. on or before 1st November, 2021.

Answer 2(A)(i)

In the given situation, two supplies are involved:

- (i) Services provided by Rajveer Associates to Secure Meter Ltd. by way of providing motivational training to its top management.
- (ii) Services provided by Hotel Shourya Residency to Rajveer Associates by way of accommodation in said hotel for organizing the training program.

The place of supply in respect of each of the above supplies is determined as under:

1. As per the provisions of Section 12(5)(a) of the Integrated Goods and Services Tax Act, 2017, the place of supply of services provided in relation to training and performance appraisal to a registered person, shall be the location of such person.

Therefore, the place of supply of services supplied by Rajveer Associates to the registered recipient - Secure Meter Ltd. by way of providing motivational training to its top management is the location of Secure Meter Ltd., i.e. Gurgaon, Haryana.

2. As per the provisions of Section 12(3)(c) of the Integrated Goods and Services Tax Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, inter alia, any official/business function including services provided in relation to such function at such property, shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Hotel Shourya Residency to Rajveer Associates by way of accommodation of conference hall along with the rooms is location of Hotel Shourya Residency i.e. Ajmer, Rajasthan.

Answer 2(A)(ii)

No, the advice given by Vaibhav Consultants is not valid in law. With effect from 01.01.2021, a quarterly return has been introduced under GST law where the payment of tax is to be made on monthly basis. The scheme is known as **Quarterly Return Monthly Payment (QRMP) Scheme**.

The scheme has been introduced as a trade facilitation measure and in order to further ease the process of doing business. It is an optional return filing scheme, introduced for small taxpayers having aggregate annual turnover (PAN based) of upto Rs. 5 crore in the current and preceding financial year to furnish their Form GSTR-1 and Form GSTR-3B on a quarterly basis while paying their tax on a monthly basis through a simple

challan. Thus, the tax payers need to file only four GSTR-3B returns in a year. Similarly, they would be required to file only four GSTR-1 returns since Invoice Furnishing Facility (IFF) is provided under this scheme.

Opting of QRMP Scheme is GSTIN wise. Distinct person can avail QRMP Scheme option for one or more GSTINs for a PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the said scheme.

Since, the aggregate turnover of Nizam Traders does not exceed Rs. 5 crores in the preceding financial year, it is eligible for furnishing the return on quarterly basis till the time its turnover in the current financial year does not exceed Rs. 5 crores. In case its aggregate turnover crosses Rs. 5 crore during a quarter in the current financial year, it shall no longer be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter and needs to opt for furnishing of return on a monthly basis.

Answer 2(A)(iii)

The difference between Exempted Supplies and Zero rated Supplies is tabulated as below:

S. No.	Basis of Difference	Exempted Supplies	Zero rated Supplies
1.	Meaning	As per Section 2(47) of the Central Goods and Services Tax Act, "Exempt supply" - means supply of any goods or services or both which attracts nil rate or tax or which may be wholly exempt from tax under section 11 of Central Goods and Services Tax Act, 2017 or under section 6 of IGST Act, 2017 and includes non - taxable supply.	As per Section 16 of Integrated Goods and Services Tax Act, 2017, "Zero-rated supply" - means export of goods or services or both or supply of goods or services or both to a SEZ developer or a SEZ unit.
2.	Tax treatment	No tax on the outward exempted supplies, however the input supplies used for making exempt supplies are not exempt automatically.	No tax on the outward supplies; input supplies also to be tax free by way of refund.
3.	Input tax credit	No ITC on the exempted supplies. Therefore Credit of Input tax needs to be reversed, if taken.	Credit of Input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC allowed on zero-rated supplies by way of set off or refund.

4.	Registration requirement	Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the Central Goods and Services Tax or Integrated Goods and Services Tax Act, 2017, shall not be liable to registration.	A person exclusively making zero rated supplies may have to register as refund of utilized ITC or integrated tax paid shall have to be claimed.
5.	Tax invoice/bill of supply	A Registered person supplying exempted goods or services or both shall issue, instead of a tax invoice, a bill of supply.	Normal Tax invoice shall be issued with declaration – Supply meant for Export/ Supply to SEZ unit or Developers.

Answer 2(A)(iv)

Section 54(8) of the Central Goods and Services Tax Act, 2017, provides that the refundable amount shall be paid to the Applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to-

- (a) Refund of tax paid on export of goods and/or services or on inputs or input services used in making such exports;
- (b) Refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;
- (c) Refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) Refund of tax paid on a transaction treating it to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa.
- (e) The tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person, or
- (f) The tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Question 3

- (a) *Piyush Manufactures, a registered person, instructs its supplier to send the capital goods directly, to Vijay Enterprises, who is a job-worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 10th April and were received by the job-worker on 15th April. Vijay Enterprises carried out the job-work, but did not return the capital goods to their principal - Piyush Manufactures. Discuss whether Piyush Manufactures are*

eligible to retain the input tax credit availed by them on the capital goods. What action under the GST Act is required to be taken by Piyush Manufactures ? What would be your answer if in place of capital goods, jigs and fixtures are supplied to the job worker and the same has not been returned to the principal ?

- (b) Explain the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy detected in the return filled, while conducting scrutiny of returns under section 61 of the CGST Act, 2017.*
- (c) Mention the provision and features relating to Registration of non-resident taxable person under the CGST Act, 2017.*
- (d) State the circumstances when the proper officer can authorize to 'arrest' of any person under the CGST Act, 2017.*
- (e) What is the Provision of applicability of GST on supply of food in Anganwadi's and Schools ? Define the latest Clarification in this regard as per 43rd GST council meeting. (4 marks each)*

Answer 3(a)

As per section 19(5) of the Central Goods and Services Tax Act, 2017: Notwithstanding anything contained in 16(2)(b), the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business

Further, section 19(6) of the Central Goods and Services Tax Act, 2017 stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were received by the job worker.

In view of aforementioned provisions, Piyush Manufactures are eligible to retain the input tax credit availed by them on the capital goods.

However, if the capital goods are not returned by Vijay Enterprises within 3 years from 15th April and Piyush Manufactures shall be liable to pay the tax along with applicable interest.

There is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [section 19(7) of Central Goods and Services Tax Act, 2017].

However, if Vijay Enterprises does not return the jigs and fixtures to Piyush Manufactures, it shall not be considered as a supply of jigs and fixtures to Vijay Enterprises by Piyush Manufactures. In this case also, Vijay Manufactures will be eligible to retain the input tax credit availed by them.

Answer 3(b)

If proper explanation is not furnished for the discrepancy detected in the return filled, while conducting scrutiny of returns under section 61 of the Central Goods and Services Tax Act, 2017 of a registered person, the proper officer may:

1. Conduct audit of the registered person under section 65 of the Central Goods and Services Tax Act, 2017; or

2. Direct the registered person to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant nominated for this purpose by the Commissioner under section 66 of the Central Goods and Services Tax Act, 2017; or
3. Exercise the powers of inspection, search and seizure with respect to the registered person under section 67 of the Central Goods and Services Tax Act, 2017; or
4. Proceed to determine the tax and other dues of the registered person under section 73 or 74 of the Act.

Answer 3(c)

The various provisions and features relating to registration of a non-resident taxable person is as below:

1. Registration is mandatory for a non-resident (Section 24 of the Central Goods and Services Tax Act, 2017).

A non-resident taxable person shall apply for registration at least five days prior to the commencement of business (Section 25 of the Central Goods and Services Tax Act, 2017).

2. The certificate of registration issued to a non-resident taxable person shall be valid for the period specified in the application for registration or 90 days from the effective date of registration whichever is earlier, such person shall make taxable supplies only after the issuance of certificate register.

The proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of 90 days by a further period not exceeding ninety days.

3. A non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

4. Procedure of Registration

Rule 13 of Central Goods and Services Tax (CGST) Rules, 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 either directly or through a Facilitation Centre notified by the Commissioner:

Provided that in the case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its Permanent Account Number, if available.

Answer 3(d)

Various circumstances enumerated in GST law for arrest are as follows:

According to Section 69 of the Central Goods and Services Tax Act, 2017

1. Where the commissioner has reason to believe that person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (D) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorised any officer of central tax to arrest such person.
2. Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.
3. Subject to the provision of the Code of Criminal Procedure, 1973, -
 - a. Where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132. he shall be admitted to bail or in default of bail, forwarded to the custody to the magistrate.
 - b. In the case of non-cognizable and bailable offence, the deputy commissioner or the assistant commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same power and subject to the same provision as an officer-in-charge of police station.

Answer 3(e)**Clarification regarding applicability of GST on supply of food in Anganwadis and School**

Circular No. 149/05/2021-GST, dated June 17, 2021:

1. Clarification on applicability of GST on the issues as to whether serving of food in schools under Mid- Day Meals Scheme would be exempt if such supplies are funded by government grants and/or corporate donations. The issue was examined by GST Council in its 43rd meeting held on 28th May, 2021.
2. Entry 66 clause (b)(ii) of notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017, exempts Services provided to an educational institution, by way of catering, including any mid- day meals scheme sponsored by the Central Government, State Government or Union territory. This entry applies to pre-school and schools.
3. Accordingly, as per said entry 66, any catering service provided to an educational institution is exempt from GST. The entry further mentions that such exempt service includes mid- day meal service as specified in the entry. The scope of this entry is thus wide enough to cover any serving of any food to a school, including pre-school. Further, an Anganwadi inter alia provides pre-school non-formal education. Hence, Anganwadi is covered by the definition of educational institution (as pre-school).

4. As per recommendation of the GST Council, it is clarified that services provided to an educational institution by way of serving of food (catering including mid-day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations [under said entry 66 (b)(ii)]. Educational institutions as defined in the notification include anganwadi. Hence, serving of food to anganwadi shall also be covered by said exemption, whether sponsored by government or through donation from corporates.

Question 4

- (a) Briefly explain the following with reference to the Customs (Determination of Value of Imported Goods) Rules, 2007 :

(i) Goods of the same class or kind

(ii) Place of Importation

(iii) Computed Value.

(6 marks)

- (b) Balu Ram Ltd. imported White Kerosene Oil (WKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed.

On account of highly combustible nature of WKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse.

The department demanded the differential duty. The company challenged the demand. Whether it will succeed ? Discuss briefly taking support of decided case(s), if any.

(4 marks)

Answer 4(a)

- (i) *Goods of the same class or kind* : As per rule 2(1) (c) of Customs Valuation (Determination of value of imported goods) Rules, 2007, goods of the same class or kind, means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.
- (ii) *Place of Importation*: As per rule 2(1) (da) of Customs Valuation (Determination of value of imported goods) Rules, 2007, "place of importation" means the customs station, where the goods are brought for being cleared for home consumption or for being removed for deposit in a warehouse.
- (iii) *Computed Value* : As per rule 2(1)(a) of the said rules, computed value means the value of imported goods determined in accordance with rule 8. The value of imported goods is taken as computed value when valuation is not possible as per any of rules earlier than rule 8 and cost is ascertainable. As per rule 8, subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of-
- (a) The cost or value of materials and fabrication or other processing employed in producing the imported goods;

- (b) An amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;
- (c) The cost or value of all other expenses under sub-rule (2) of rule 10.

Answer 4(b)

Yes, the company will succeed.

The facts of the given situation are similar to the case of *CCus vs. Biecco Lawrie Ltd. 2008 (223) EL T 3 (SC)* where in Supreme Court has held that where duty on the warehouse goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods allowed to be retained for storage in the warehouse as permitted under section 49 of the Customs Act, 1962 are not treated as warehouse goods and importer would not be required to pay anything more.

Section 49 of the Customs Act, 1962 inter alia also proves that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer and if the same cannot be cleared within a reasonable time, shall not be deemed to be warehouse goods for the purposes of this Act, and accordingly the provisions of chapter IX shall not apply to such goods.

PART II

Question 5

- (a) Examine with reasons, the allowability of the following expenses incurred by *Anand, a wholesale dealer of commodities, under the Income Tax Act, 1961 while computing profit and gains from business or profession for the Assessment Year 2022-23.*
 - (i) *Construction of school building in compliance with CSR activities amounting to ₹5,70,000.*
 - (ii) *Commodities transaction tax paid ₹20,000 on sale of bullion.*
 - (iii) *Purchase of oil seeds of ₹50,000 in cash from a farmer on a banking day.*
(3 marks)
- (b) *XYZ Ltd. makes the following payments to Rahim, a contractor, for contract work during the P.Y. 2021-22 :*
 - ₹20,000 on 1.05.2021
 - ₹25,000 on 1.08.2021
 - ₹28,000 on 1.12.2021

On 1.03.2022, a payment of ₹30,000 is due to Rahim on account of a contract work. Discuss whether XYZ Ltd. is liable to deduct tax at source under section 194C from payments made to Rahim.
(3 marks)
- (c) *The concept of Permanent Establishment is one of the most important concepts in determining the tax implications of cross border transactions. Examine the significance thereof, when such transactions are governed by Double Taxation*

Avoidance Agreements (DTAA).

(3 marks)

(d) *Assessing Officer can complete the assessment of income from international transaction in disregard of the order passed by the Transfer Pricing Officer by accepting the contention of assessee. Discuss the correctness or otherwise with reference to the provisions of Income-Tax Act, 1961.*

(3 marks)

(e) *Briefly explain the following subjects in the context of International Taxes :*

(i) *Tax Havens*

(ii) *Exchange Controls.*

(3 marks)

Answer 5(a)

Allowability of the expenses incurred by Mr. Anand, a wholesale dealer in commodities, while computing profits and gains from business or profession for AY 2022-23 are as under:

(i) **Construction of school building in compliance with CSR activities amounting to Rs. 5,70,000** : As per provision of section 37(1) of the Income tax Act, 1961, expenditure not being in the nature of capital expenditure or personal expenses of an assessee and not covered under section 30 to 36 of the Income tax Act, 1961, and incurred wholly and exclusively for the purposes of the business is allowed as deduction while computing business income. However, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and, hence, shall not be allowed as deduction under section 37 of the Income tax Act, 1961.

Accordingly, the amount of ₹5,70,000 incurred by Mr. Anand towards construction of school building in compliance with CSR activities shall not be allowed as deduction.

(ii) **Commodities transaction tax of ₹20,000 paid on sale of bullion** : As per provision of section 36(1)(xvi) along with section 43B of the Income tax Act, 1961, Commodities transaction tax paid in respect of taxable commodities transactions entered into in the course of business during the previous year is allowable as deduction, provided the income arising from such taxable commodities transactions is included in the income computed under the head "Profit and gains from business or profession".

Assuming that the income from these commodities transactions is included while computing the business income of Mr. Anand, the commodity transaction tax of ₹20,000 paid is allowable as deduction under section 36 (1) (xvi) of the Income tax Act, 1961.

(iii) **Purchase of oil seeds of Rs. 50,000 in cash from a farmer on a banking day** : As per rule 6DD (e) of the Income tax Rules, 1962, in case, the payment is made for purchase of agriculture produce directly to the cultivator, grower or producer of such agriculture produce, no disallowance under section 40A(3) of the Income tax Act, 1961 is attracted even though the cash payment for the expense exceeds ₹10,000 in a single day.

Therefore, in the given case, cash payment of ₹50,000 made to a farmer is allowable expenditure because disallowance under section 40A(3) is not attracted since cash payment for purchase of oil seeds is made directly to the farmer.

Answer 5(b)

As per section 194C of the Income tax Act, 1961, the tax will be required to be deducted at source where the amount credited or paid to a contractor or sub-contractor exceeds ₹30,000 at one time or ₹1,00,000 in aggregate during the financial year.

In the given case, the individual contract payments made to Mr. Rahim does not exceed Rs. 30,000. However, the aggregate amount paid / credited to Mr. Rahim during the P.Y. 2021-22 exceeds ₹1,00,000 (on account of the last payment of Rs. 30,000 due on 1.3.2022, taking the total from ₹73,000 to ₹1,03,000), the TDS provisions under section 194C would get attracted and TDS is required to be deducted @ 1% on the entire amount of ₹1,03,000 from the last payment of ₹30,000 and the balance of ₹28,970 (i.e. ₹30,000 - ₹1,030) is to be paid to Mr. Rahim.

Answer 5(c)

Double Taxation Avoidance Agreements (DTAAs) generally contain an article providing that business income is taxable in the country of residence, unless the enterprise has a permanent establishment 'PE' in the country of source, and such income can be attributed to the permanent establishment.

As per section 92F(iii) of the Income tax act, 1961, the term "Permanent Establishment" includes a fixed place of business through which the business of an enterprise is wholly or partly carried on.

As per this definition, to constitute a permanent establishment, there must be a place of business which is fixed and the business of the enterprise must be carried out wholly or partly through this place.

Section 9(1)(i) of the Income tax Act, 1961, requires existence of business connection for deeming business income to accrue or arise in India. DTAAs, however, provide that business income is taxable only if there is a permanent establishment in India. As per section 92(2) of the Income tax Act, 1961, the DTAA or the provisions of the Income-tax Act, 1961, whichever is more beneficial, shall apply. The PE concept is narrower than the business connection concept. Therefore, in a case where the Indian Government has entered into DTAA with a country, unless and until the PE test is satisfied, the business income would not be taxable in the source country.

However, in cases not covered by DTAAs, business income attributable to business connection is taxable.

Answer 5(d)

The statement is not correct.

Section 92CA(4) of the Income tax Act, 1961, provides that on receipt of the order of the Transfer Pricing Officer determining the arm's length price of an international transaction, the Assessing Officer shall proceed to compute the total income in conformity with the arm's length price determined by the Transfer Pricing Officer. The order of the Transfer Pricing Officer is binding on the Assessing Officer.

Therefore, the Assessing Officer cannot complete the assessment of income from international transactions is disregard of the order of Transfer Pricing Officer by accepting the contention raised by the assessee.

Answer 5(e)

(i) Tax Havens

Tax havens are jurisdiction which tends to have nil tax or low tax rate. Tax havens may also be jurisdiction which has other benefits like financial secrecy, minimum reporting requirements, ring fencing, discretionary tax privileges, allowing ownership to be held in trust, no registry of companies and partnership, no taxes on dividends and interest payments to non-residents, etc. Several countries have SAARs i.e. Specific Anti Avoidance Rules to limit the deductions of tax expense or tax benefits to entities located in tax havens. For e.g. India has enacted section 94A, where on being notified, there is restriction on allowability of payment to entity in such jurisdictions, higher withholding taxes, applicability of Transfer Pricing provisions etc.

(ii) Exchange Controls

Exchange control and tax clearances may be used by countries as anti-avoidance measures on cross-border transactions. These transactions are subject either to prior government approvals or post transaction reporting thereof. Many countries (mostly developing countries) have a partial or full exchange control. E.g. in India all capital account transactions under FEMA are not freely allowed unless provided otherwise and all revenue account transactions are freely allowed, unless provided otherwise.

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

Question 6

(a) *The net profit as per Statement of Profit and Loss of Stable Ltd., a resident company for the year ended 31.03.2022 is ₹390 lakh after arrived the following adjustments :*

(i) <i>Depreciation on Assets</i>	<i>₹ 110 Lakh</i>
(ii) <i>Amount transferred to reserve for currency exchange fluctuation</i>	<i>₹ 150 Lakh</i>
(iii) <i>Provision for income tax including interest under Income tax Act</i>	<i>₹ 80 Lakh</i>
(iv) <i>Proposed Dividend</i>	<i>₹ 220 Lakh</i>

Following further information are also provided by the company :

- (a) *Net profit includes loss of ₹40 lakh from a subsidiary company.*
- (b) *Provision for tax includes ₹2 lakh of interest payable on Income Tax.*
- (c) *Depreciation on assets includes ₹30 lakh towards revaluation of assets.*
- (d) *Amount of ₹50 lakh credited to P & L account was drawn from revaluation reserve.*

- (e) Brought forward business loss and unabsorbed depreciation as per books are ₹60 lakh and ₹45 lakh respectively for the year ended 31.03.2021.

Compute the Book profit of the company u/s 115JB while calculating MAT under the Income Tax Act, 1961 for the year ended 31.03.2022. (5 marks)

- (b) Comment on the following independent situations, whether P.C. Ltd. (domestic company) and R.D. Ltd. (incorporated in UK) constitute “associated enterprises” under the provisions of section 92A of Income Tax Act, 1961 :
- Book value of total assets of P.C. Ltd. is ₹ 100 crore. R.D. Ltd. has advanced a loan of ₹ 80 crore to its wholly owned subsidiary company A Ltd., A Ltd. has in turn advanced a loan of ₹ 80 crore to P.C. Ltd.
 - P.C. Ltd. is engaged in trading of furniture. During the previous year 2021-22, it purchases furniture of ₹ 50 lakh from R.D. Ltd. Total purchases of P.C. Ltd. during the previous year 2021-22 is ₹ 55 lakh.
 - P.C. Ltd. has two units, Unit A and Unit B. Unit A manufactures industrial equipment using the manufacturing process exclusively owned by R.D. Ltd. Unit B is engaged in buying and selling of toys independently.
 - Total value of raw materials and consumables purchase of P.C. Ltd. is ₹700 crore. Of this, R.D. Ltd. supplies to the tune of ₹ 650 crore, at prices mutually agreed upon once in six months and depending upon the market conditions.
 - Gulgulia Ltd. holds 40% of shareholding in P.C. Ltd. and 30% shareholding in R.D. Ltd., where neither P.C. Ltd. has any holding in R.D. Ltd. nor R.D. Ltd. has any holding in R.C. Ltd. (5 marks)
- (c) State briefly the objectives and the factors of a tax treaty made between two contracting States. (5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

- On January 20, 2022 TPS Ltd. a domestic company purchases its own shares (face value ₹ 10 per share, amount offered to shareholders : ₹ 90 per share). Total amount distributed by TPS Ltd. on buy back of 30,000 share is ₹27,00,000. These shares were issued by TPS Ltd. in 2014-15 at a premium of ₹ 15 per share. Mr. X who is one of the Shareholder purchased 1200 shares of TPS Ltd. at the price of ₹ 75 per share on January 25, 2021 and applied all its share to company for buy back option. The TPS Ltd. will pay him ₹ 1,08,000 for purchase its own share held by Mr. X. Considering the above transaction, you are requiring to compute the income tax liability of Mr. X and TPS Ltd. for assessment year 2022-23. (5 marks)
- Explain briefly the provision of General Anti Avoidance Rule (‘GAAR’) in the following independent cases :
 - General Anti Avoidance Rule (‘GAAR’) is regulated by section 95 of Income Tax Act, 1961 and do not over rule other sections of this Act.

(b) Where relief is available under double taxation avoidance agreement (DTAA), there will not be implication of GAAR.

(c) Impermissible avoidance agreement is the substance of GAAR. Mention in brief what are the constituents of impermissible avoidance agreement.

(5 marks)

(iii) In respect of a non-resident, what are the key parameters for determining the existence of "Business Connection" in India ?

(5 marks)

Answer 6(a)

Computation of Book Profit u/s 115JB of Stable Ltd. for AY 2022-23

Particulars	Amount (in Lakh)
Profit as per P & L account	390
Add:	
(i) Depreciation on Assets	110
(ii) Amount transferred to reserve for currency exchange fluctuation	150
(iii) Provision for income tax including interest under Income tax Act	80
(iv) Proposed Dividend	220
(v) Loss of Subsidiary company	40
Total	990
(i) Depreciation excluding depreciation on revaluation of assets (110-30)	(80)
(ii) Amount withdrawn from revaluation reserve credited to P&L a/c to the extent of depreciation on account of revaluation	(30)
(iii) Lower of brought forward loss Rs. 60 Lakhs or unabsorbed depreciation Rs. 45 lakhs as per books	(45)
Book Profit u/s 115JB	835

Answer 6(b)

(i) **P.C. Ltd and R.D. Ltd. are not associated enterprises** : Under section 92A of the Income tax Act, 1961, two enterprises are deemed to be associated enterprise if loan advanced by one enterprise to another enterprise constitutes not less than 51 % of book value of total assets.

Here R.D. Ltd and A Ltd. as well as A Ltd. and PC Ltd. are associated enterprises, but P.C. Ltd and R.D. Ltd are not associated enterprises because under this clause, R.D. Ltd has not directly given loan to P.C. Ltd. Hence, they do not qualify as associated enterprises.

- (ii) **P.C. Ltd and R.D. Ltd. are not associated enterprises** : Under section 92A of the Income tax Act, 1961, two enterprises are deemed to be associated enterprises if 90% or more of the raw material required for the manufacture or processing of goods carried out by one enterprises, are supplied by the other enterprise. This clause is applicable only if the purchasing enterprise is engaged in manufacturing or processing of goods. In this case, P.C. Ltd. is not engaged in manufacturing or processing of goods and hence. P.C. Ltd and R. D. Ltd. do not qualify as associated enterprises.
- (iii) **P.C. Ltd and R.D. Ltd. are not associated enterprises** : Under section 92A of the Income tax Act, 1961, two enterprises are deemed to be associated enterprises if the business carried on by one enterprise is wholly dependent upon the intangible owned by the other enterprise not only unit wise. Here condition of 92A for associate enterprises does not apply. Hence P.C. Ltd and R.D. Ltd. do not qualify as associated enterprises.
- (iv) **P.C. Ltd and R.D. Ltd. are not associated enterprises** : Even though R.D. Ltd. supplies more than 90% of the raw materials and consumables required by P.C. Ltd, they are not qualify as associated enterprises because the price of supply is not influenced by R.D. Ltd. but is mutually agreed upon once in six months depending upon prevailing market conditions.
- (v) **P.C. Ltd and R.D. Ltd. are associated enterprises** : Under section 92A of the Income tax Act, 1961, two enterprises are deemed to be associated enterprises if any person or enterprise holds, directly or indirectly, share carrying not less than 26% of the voting power in each of such enterprises. In this situation, since Gulgulia Ltd. directly holds 40% shareholding in P.C Ltd. and 30% shareholding in RD Ltd., hence P.C. Ltd and R.D. Ltd. are associated enterprises.

Answer 6 (c)

Objective of a Tax treaty

As per OECD Model Conventions:

Principle objective of double taxation conventions is to promote, by eliminating international double taxation, exchange of goods and services, movement of capital and person. Also to prevent tax avoidance and evasion.

As per UN Model Conventions:

The principal objectives of UN Model Conventions are as follows:

- To Protect tax payer from double taxation
- To encourage free flow of international trade and investment
- To encourage transfer of technology
- To prevent discrimination between taxpayer
- To provide a reasonable element of legal and fiscal certainty to investors and traders
- To arrive at an acceptable basis to share tax revenues between two states
- To improve the co-operation between taxing authorities in carrying out their duties

In order to advance the object of avoiding/reducing the hardship caused by double taxation, the following factors are considered in tax treaties:

1. Scope of the treaty, taxes covered, entities covered.
2. Determination of residential status of a person for the purpose of tax credit and also to determine whether a person is entitled to treaty benefits (limitation of benefits).
3. Provision for reduced rate of tax in the country / state of Source.
4. Exchange of information.
5. Provision for procedural frame work for enforcement, availing credit of taxes paid, collection of taxes and dispute resolution etc.

Answer 6A(i)

(i) Income Tax Liability in the hand of Mr. X for Assessment year 2022-23:

The income arising to the shareholders in respect of such buy back of shares by the domestic company would be exempt under section 10(34A) of the Income tax Act, 1961, where the company is liable to pay the additional income-tax on the buy-back of share. Hence Mr. X is not chargeable to Income tax in this transaction. Capital gain arising to him under the buy-back Scheme is exempt u/s 10(34A) of the Income tax Act, 1961.

(ii) Income tax liability on TPS Ltd in the buy-back scheme for Assessment Year 2022-23:

TPS Ltd. will have to pay additional income tax @ 23.296% (20% tax plus surcharge @ 12% plus health and education cess @ 4%) on buy-back of its share on distributed income u/s 115QA of the Income tax Act, 1961.

Computation of additional income tax liability of TPS Ltd. for Assessment Year 2022-23

<i>Particulars</i>	<i>Amount (in Lakh)</i>
Amount paid to shareholders at the time of buyback (Rs. 90 x 30,000)	27,00,000
Less : Amount received at the time of issue of shares in 2014-15 (Rs. 25 x 30,000)	(7,50,000)
Distributed income	19,50,000
Tax on distributed income @ 20%	3,90,000
Add : Surcharge @ 12%	46,800
Add : Health and Education Cess @ 4% on (Rs. 390000+ Rs. 46800)	17,472
Income tax liability of TPS Ltd. u/s 115QA	4,54,272
Round off	4,54,270

Answer 6A(ii)

- (a) The statement is incorrect as section 95 of the Income Tax Act, 1961 starts with a non-obstante clause which over rules all other provision of the entire act and shall have operation notwithstanding anything contained in this Act.
- (b) The statement is incorrect as even in cases where relief is available under double taxation avoidance agreement (DTAA), the tax payer will still be continued to be monitored by the provision of GAAR by virtue of section 90(2A) of the Income tax Act, 1961.
- (c) Section 96 of the income tax Act, 1961 refer to and defines an "Impermissible Avoidance Arrangement" - An impermissible avoidance arrangement means an arrangement, the main purpose of which is to obtain a tax benefit, and:
 - 1. It creates right, or obligation, which are not ordinarily created between person dealing at arm's length;
 - 2. It result, directly or indirectly, in the misuse, or abuse, of the provision of this Act;
 - 3. Lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or part: or
 - 4. is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purpose.

Answer 6(A)(iii)

The term business connection has not been defined in the Income Tax Act, 1961. However, an inclusive definition is available in Explanation 2 of section 9(1)(i), with respect to business connection arising on account of an agent of a non-resident. However, based on various judicial pronouncements and practice and well established principles, the following are considered as the pre-requisites to conclude that a non-resident has a business connection in India.

- 1. There must be a business activity outside India
- 2. There must be a business activity within India.
- 3. The relation between the two should contribute to the earning of income by the non -resident.
- 4. There must be an element of continuity between the business of the non-resident, carried out outside India and inside India.
- 5. A stray and isolated transaction cannot be regarded as business connection.

DRAFTING, PLEADINGS AND APPEARANCES

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer ALL Questions.

Question 1

- (a) Describe Secretarial Standard – 2 as stipulated under the Companies Act, 2013 on the mode of delivery of Notice.
- (b) Differentiate between complaint and first information report (FIR) under the Criminal Procedure Code, 1973.
- (c) Draft a specimen Deed of Revocation of a Trust.
- (d) “The system of Appeal provides an opportunity to correct Judicial Orders which otherwise would operate unjustly”– Elaborate with relevant provision under the Civil Procedure Code, 1908 and the Criminal Procedure Code, 1973.
(5 marks each)

Answer 1(a)

Notice shall be sent by hand or by ordinary post or by speed post or by registered post or by courier or by facsimile or by e-mail or by any other electronic means as suggested in the Guidance Provision of Secretarial Standard – 2 (SS-2).

In case the Notice and accompanying documents are given by e-mail, these shall be sent at the Members’ e-mail addresses, registered with the company or provided by the depository, in the manner prescribed under the Act.

Notice shall be sent to Members by registered post or speed post or courier or e-mail and not by ordinary post in the following cases:

- if the company provides the facility of e-voting;
- if the item of business is being transacted through postal ballot.

If a particular mode of delivery is specified by the member, notice shall be sent by that mode at the expense of the member as may be prescribed by the company. Notice shall be sent to Members by registered post or speed post or email if the Meeting is called by the requisitionists themselves where the Board had not proceeded to call the Meeting.

In case of companies having a website, the Notice shall simultaneously be hosted on the website till the conclusion of the Meeting.

Answer 1(b)

Complaint

Defined under Section 2(d) of the Criminal Procedure Code means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but it does not include a police report.

However, a report made by the police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint.

First Information Report:

Section 154 of The Criminal Procedure Code, 1973 deals with information in cognizable offence.

- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
- (2) A copy of the information as recorded under Sub-section (1) shall be given forthwith, free of cost, to the informant.
- (3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-section (1) may send the substance of such information, in writing by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

Answer 1(c)

A Specimen Deed of Revocation of a Trust

THIS DEED is made on the..... day of..... by A.B. etc. (hereinafter called "the Settlor") of the one part AND C.D. etc. (hereinafter called "the Trustee") of the other part.

WHEREAS by a deed of trust dated the Settlor transferred him property specified therein to the Trustee upon trust to sell the same and with the proceeds of the sale to pay the debts due from the Settlor to the several creditors named in the said deed;

AND WHEREAS the trust created as aforesaid has not yet been communicated to any of the aforesaid creditors;

AND WHEREAS the Settlor now desires to revoke the said trust and to make other arrangements for the discharge of his aforesaid debts.

NOW THIS DEED WITNESSES that the Settlor hereby revokes the trust created by the aforesaid deed of trust. IN WITNESS WHEREOF parties have signed this deed on the..... day of.....

Signed by.....
In the presence of.....
and of.....

Answer 1(d)

Any society that claims to uphold the supremacy of law will definitely have an elaborate provision for appeal under its various laws. This is because the majesty of judiciary notwithstanding, at the end of the day, judges are human beings and they can also be at fault just like any other individual. It is a fundamental tenet of a just society that the shortcomings of men should not operate to the disadvantage of fellow human beings in the courts of law. Various laws themselves have specific provisions for appeal.

Under The Civil Procedure Code, 1908, an appeal may be an appeal from order or an appeal from decree. All orders are not appealable and complete description of the appealable orders has been given in Order 43 of the Code of Civil Procedure, 1908. The appeal has to be preferred within prescribed limitation period before the appellate court. The limitation period for appeal to High Court is 90 days and appeal to District Court is 30 days. If the period of limitation is expired, then application for condonation of delay also is required to be moved.

The Code of Criminal Procedure, 1973 also contains elaborate provisions on appeals against a judgement or order of the criminal courts. Appeals to the Sessions Court and to the High Court are largely governed by the same set of rules and procedure. But the High Court being the highest appellate court within a state, has been given primacy in many cases where appeal is permissible. Thus, District and Sessions Court and High Courts are the most common appellate forums.

The Supreme Court is the appellate court of last resort and enjoys very wide plenary and discretionary powers in the matters of appeal. Under Article 136 of the Constitution, the Supreme Court also enjoys a plenary jurisdiction in matters of appeal. However, Article 136 is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgement or order of any court or tribunal in India in its discretion.

Indian laws that have constituted Tribunals for dispute settlement or grievance redressal have constituted appellate forum. For example, National Companies Law Appellate Tribunal (NCLAT), Securities Appellate Tribunal (SAT) and Debt Recovery Appellate Tribunal (DRAT), and Appeals from NCLAT will go directly to the Supreme Court and not to the High Courts. As appeal by itself shall not operate as stay of proceedings under the decree or order, except when directed otherwise by the appellate court, the execution of decree passed by the lower court also shall not be stayed for the mere reason that appeal is preferred.

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

Draft the following as per the instructions (Assume facts, if required) :

- (a) Specimen application for review of a judgment.*
- (b) Will in favour of a Minor Son.*
- (c) Specimen Agreement by a company adopting the contract made on its behalf before its Incorporation.*
- (d) Specimen Affidavit of creditor in proof of his debt in proceeding for liquidation of a Company. (4 marks each)*

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

Draft the following as per the instructions (Assume facts, if required) :

- (i) *Specimen Deed of Guarantee for the Performance of a Contract.*
- (ii) *Petition for grant of probate of a will.*
- (iii) *Specimen of attendance slip and proxy form under the Companies Act, 2013.*
- (iv) *Minutes of the third Annual General Meeting of CJV Ltd. with agenda of adoption of accounts and declaration of dividend featured for consideration and decision.*
(4 marks each)

Answer 2(a)**Specimen Application for review of a judgment**

(Under Or. 47, R. 1 of C.P. Code)

A.B..... Plaintiff.

Versus

1. C.D.

2. E.F. Defendants

The above-named defendants most respectfully sheweth:

1. That the plaintiff instituted a suit against the petitioner- defendants in this court and obtained a judgment and a decree in his favour on.....
2. That no appeal is allowed against the said judgment/decree by law. (Or, no appeal has been preferred against the said decree/judgment).
3. That the defendants are aggrieved with the said judgment/decree and pray for review of the said judgment/ decree on the following, amongst others,

Grounds

- (a) Discovery of new and important matter or evidence.
- (b) Discovery of some mistake or error apparent on the face of the record.
- (c) Any other sufficient reason.

It is, therefore, prayed that Your Honour may be pleased to

- (i) set aside the judgment;
- (ii) re-hear the suit and pass judgment accordingly.

Date:

Place:

(Applicant)

Through Counsel

ABC

Answer 2(b)

Will in Favour of a Minor Son

I, AB, etc. execute this last Will of mine this day of in the city of voluntarily out of my own free will without any compulsion or pressure from any person and having a second disposing mind.

WHEREAS I had made a Will dated in favour of my wife CD bequeathing all my properties to her,

AND WHEREAS the said wife died on leaving EF, aged years as our only son.

- (i) I hereby revoke the Will made in favour of my wife CD on.....
- (ii) I hereby declare and bequeath all my properties, movable and immovable, belonging to me or which may belong to me and remain undisposed of during my life-time unto EF, my son aforesaid.
- (iii) In case I should die before the said son EF attains majority, I appoint GH as an executor under this Will, who shall realise all my to outstanding and administer the estate left by me for the benefit of EF, of the said legatee after defraying all expenses of such administration. The said executor shall be entitled during such administration to charge Rs..... per month as remuneration for his service till the aforesaid EF attains majority. When the said EF attains majority, the said GH shall handover all the estate then in existence unto the said EF. During the majority of the said EF, the executor shall act as guardian of the said EF and shall look after his education and training in a befitting and useful manner so as to earn a decent living either as an engineer or as a member of some other noble profession. However, if the said EF attains majority during my life-time and survives me, this provision relating to appointment of the executor shall not be operative and the said EF shall be entitled to receive and appropriate as owner all and every part of the estate left by me.

IN WITNESS WHEREOF I have signed this Will in the presence of witnesses hereunder who have attested the same in my presence.

Sd.....

(AB)

Testator

Signed by the above named AB in our presence at the same time and each of us has in the presence of the testator signed his name hereunder as an attesting witness.

Witnesses :

1. _____

2. _____

Answer 2(c)**Specimen Agreement by a company adopting contract made on its behalf before its Incorporation**

This Agreement made at on this.....day of.....2021 between Shri A of the 1st part, Shri B of the Second part and AB & Co. Ltd. (hereinafter referred to as “the company”) of the third part.

Whereas after the execution of the contract on 10th July, 2021 (hereinafter referred to as “the said contract”) between Shri A, the vendor, and Shri B, on behalf of the company, the said company AB & Co. Ltd. has been incorporated under the Companies Act, 2013.

Now it is hereby agreed by and between the parties hereto as under:

- (i) The said contract dated 10th July, 2021 is hereby adopted by the company and shall be binding on the said Shri A and on the company in the same manner and shall be take effect in all respects as if the company had been in existence at the date of the agreement.
- (ii) Shri B who actually signed on behalf of the proposed company shall be discharged from all liability under the said contract as the company had adopted and ratified the said contracts.

In witness whereof the parties hereunto have put their hands and signatures and the company has caused its common seal affixed in the presence of Shri..... and Shri..... two directors who have set their respective hands and signatures the day and year first herein above written in terms of the Resolution passed in its Board of Directors in their meeting held on.....

Common Seal

Witnesses:

(Signature)

1.....

Director

2.....

(Signature)

Director

Signatures of A

B

Answer 2(d)**Specimen Affidavit of Creditor in proof of his debt in proceeding for liquidation of a Company:**

IN THE NATIONAL COMPANY LAW TRIBUNAL

_____, BENCH

The matter of Companies Act, 2013

And

The matter of the liquidation of Company Limited.

I, A.B., aged..... years, son of Shri..... resident of....., do hereby on oath (or on solemn affirmation) state as follows:

1. That above named company was on the..... day of....., 2021, the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of Rupees..... (Rs.....) only in account of (describe briefly the nature of the debt).
2. That in proof of the aforesaid debt I attach hereto the documents marked A, B and C.
3. That I have not, nor have any person or persons by my order or to my knowledge or belief for my use, received the aforesaid sum of Rupees..... or any part thereof, or any security or satisfaction for the same or any part thereof except the sum or security (state the exact amount of security).
4. That this my affidavit is true and, that it conceals nothing and no part of it is false.

Sd/-

A.B.

Dated

Deponent

Verification

I, the abovementioned deponent, verify that the contents of paragraphs 1 to 4 of this affidavit are true to my personal knowledge.

Sd/-

A.B.

Dated.....

I,.....S/o.....R/o.....declare, from a perusal of the papers produced by the deponent before me that I am satisfied that he is Shri A.B.

Sd/-.....

Solemnly affirmed before me on this..... day of..... 2021 of..... by the deponent.

Sd/-.....

(Oath Commissioner)

Answer 2A(i)**Specimen Deed of Guarantee for the Performance of a Contract**

THIS DEED OF GUARANTEE made this day of between Shri, son of Shri..... resident of... (hereinafter called “the Guarantor”), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc of the one part and Shri, son of resident of (hereinafter called “the Principal), which expression shall, unless repugnant to the context, include his heirs, legal representatives, assigns etc., of the other part.

WHEREAS BY AN AGREEMENT DATED..... made between Shri son of Shri..... resident of... etc., therein referred to as “the Contractor”, of the one part and the said..... Shri..... herein referred to as “the Principal”, of the other part, it was inter alia agreed by and between the parties as follows:

(Mention nature of Work to be done by the contractor with assumed facts);

AND WHEREAS the said work was entrusted to the Contractor upon the Guarantor having agreed with the Principal as to its guarantee of performance by the Contractor and to indemnify and keep indemnified the Principal against all losses, damages, costs, charges and expenses arising out of performance or non-performance thereof. Now it is agreed and declared by and between the parties as follows:

1. The Guarantor will see that the Contractor (unless relieved from the performance by operation of any clause of the contract or by statute or by virtue of the decision of any tribunal or court of competent jurisdiction, shall carry out, execute and perform the contract without any exception or reservation and in case he commits any breach thereof, the Guarantor will indemnify and keep indemnified the Principal and his estate against all losses, damages, costs, expenses or otherwise which he may suffer or otherwise incur by reason of any act, negligence, default or error in judgement on the part of the Contractor in performing or non-performing the contract.
2. In case of any dispute or difference as regards the quantum of such losses, damages, costs, charges or expenses, the same shall be decided by reference to arbitration of one architect or engineer if the parties so agree or otherwise to two architects or engineers, one to be appointed by each, whose decision shall be final and binding on all parties.

IN WITNESS WHEREOF, the parties hereto have hereunto set and subscribed their respective hands and seals the day....., month..... and the year first above-written. Signed, Sealed and delivered in the presence of

- 1.
- 2.

Guarantor
Principal

Answer 2A(ii)**Petition for grant of probate of a will****(Under Section 276 of the Indian Succession Act, 1925)**

In the Court of the District Judge

Act 39 of 1925 Case (Or. Misc. Judicial Case) No.of XXX

..... A.B. son of C.D.

(State here description and address)

..... Petitioner.

In the matter of grant of a probate of the will of E.F., deceased, under Section 276 of the Indian Succession Act, 1925.

The above-named petitioner states as follows:

1. That E.F., since deceased ofP.S. Dist.....died at his residence at..... on. (date of death) and the writing annexed, in sealed cover, is his last will, duly executed by the deceased on
2. That the petitioner was named as the executor in the said will.
3. That the amount of assets which is likely to come to the petitioner's hand is estimated at Rs. as described in Schedule 'A' below (when necessary – and the amount of debts are shown in Schedule 'B' below).
4. That the said deceased left behind the following relations, besides the petitioner:
 - (i) G..... Son of
(State residence) Brother (of the deceased)
 - (ii) H..... widow of
(State residence) Widow (of the deceased)
 - (iii) M..... Daughter of
(State residence) Daughter (of the deceased)
5. That at the time of his death the deceased had his fixed abode at.....(or the deceased had his immovable properties at village – P.S. – Dist.-) within the jurisdiction of this court.
6. That to the best of the petitioner's belief no application has been made to any other court for a probate of the said will (see Section 279 of the Indian Succession Act, 1925).
7. (Where necessary) That the petitioner has paid off Estate Duty on the estate of E.F. – deceased.

The petitioner, therefore, prays that the court may be pleased to grant to the petitioner probate of the said will of the deceased.

Verification

I, (A.B.), the petitioner in the above petition, declare that statements made in paras 1 to 7 hereinabove are true to my knowledge and belief and I sign this verification this theday ofYear...

A.B.

I, Sri. one of the witnesses to the last will of E.F. deceased, declare that I was present and saw the said testator affixing his signature in the said will.

Schedule 'A'

(State here assets likely to come to the hand of the executor).

Schedule 'B'

(State here liabilities, debts, if any – where necessary).

Answer 2A(iii)**Specimen Attendance Slip**

Name of the Company

Registered Address

CIN : Email : Telephone:

Website :

ATTENDANCE SLIP

.....(Meeting Number and meeting type) on.....(Day),.....(Date)
AT..(Venue)

Folio No.	DP ID	Client ID No.
-----------	-------	---------------

I/We hereby record my/our presence at the (meeting number) Annual General Meeting of the Company at(Place), at(time) on(day),(date).

Name of First named Member/Proxy/ Authorised Representative

Name of Joint Member(s), if any:

No. of Shares held:

I/we certify that I/we am/are member(s)/proxy for the member(s) of the Company.

Signature of First holder/Proxy/Authorised Representative

Signature of 1st Joint holder

Signature of 2nd Joint holder

Note(s) :

1. Only Member/Proxyholder can attend the Meeting.
2. Please complete the Folio No./DP ID No., Client ID No. and name of the Member/Proxyholder, sign this Attendance Slip and hand it over, duly signed, at the entrance of the Meeting Hall.
3. A Member/Proxyholder attending the meeting should bring copy of the Annual Report for reference at the meeting.

Form No. MGT-11

Proxy form

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

CIN:

Name of the company:

Registered office:

Name of Member(s) : Registered address : E-mail Id : Folio No/ Client Id: DP ID :

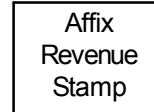
I/We, being the member (s) of shares of the above named company, hereby appoint

1. Name:
 Address:
 E-mail Id:
 Signature:....., or failing him
2. Name:
 Address:
 E-mail Id:
 Signature:....., or failing him
3. Name:
 Address:
 E-mail Id:
 Signature:....., or failing him

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

Resolution No.

- 1.....
- 2.....
- 3.....



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

Signature of shareholder

Signature of Proxy holder(s)

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

Answer 2A(iv)

MINUTES OF THIRD ANNUAL GENERAL MEETING OF THE MEMBERS OF CJV LTD. HELD ON ... (DATE) AT AM (TIME) AT THE REGISTERED OFFICE OF THE COMPANY

Time of commencement a.m./p.m.

Time of conclusion a.m./p.m.

The following were present:

- 1. Mr. W (in the Chair)
- 2. Mr. B (Director and Member)
- 3. Mr. C (Director)
- 4. Mr. D (Director and Member)
- 5. Mr. E (Director and Chairman of Audit Committee)
- 6. Mr. F (Company Secretary)
- 7. (Members present in person)[state number]
- 8.representing shares (Members present by Proxy)[state number]
- 9. Mr. G, Partner of M/s., Chartered Accountants, Auditors of the Company, was present.

Mr. H, Practising Company Secretary, Secretarial Auditor of the Company, was also present.

1. Chairman

In accordance with Article of the Articles of Association, Mr. W Chairman of the Board of directors took the Chair.

The Chairman welcomed the Members and introduced the Directors seated on the dais.

The Chairman declared that the requisite Quorum was present and called the meeting to order.

The Register of Director's shareholding was placed at the Meeting and was available for inspection.

With the consent of the Members present, the Notice convening the Annual General Meeting of the company was taken as read. The Chairman requested the Company Secretary to read the Auditor's Report. After the Auditor's Report had been read, the Chairman delivered his speech.

The business of the Meeting as per the Notice thereof was thereafter taken up item Wise.

2. Adoption of Accounts

The Chairman proposed the Ordinary Resolution for the adoption of the Accounts for the year ended DD/MM/YYYY and Mr. seconded the Ordinary Resolution:

"RESOLVED that the audited financial statement (including consolidated financial statement) for the financial year ended on that date, together with the Schedules and Notes attached thereto, along with the report thereon of the Directors and the auditors as circulated to the members and laid before the meeting be and are hereby approved and adopted."

The resolution was put to vote.

On a show of hands the chairman declared the aforesaid ordinary resolution carried by the requisite majority.

3. Declaration of Dividend

Mr. M. proposed the following Resolution as an Ordinary Resolution:

"RESOLVED that the dividend@ Rs. ...per share on ... shares of ..., each, fully paid-up, aggregating to..... be and is hereby declared for payment, to those members whose names appear on the Company's Register of Members on. DDMMYYYY".

The Resolution was seconded by Mr. and was put to the vote as an Ordinary Resolution.

On a show of hands, the Chairman declared the aforesaid Ordinary Resolution carried unanimously.

4. Vote of Thanks

There being no other business to transact, the Meeting closed with a vote of thanks to the Chair.

Date :

Place :

.....

Chairman

(DIN.....)

Attempt all parts of either Q. No. 3 or Q No. 3A

Question 3

- (a) *Draft a specimen irrevocable power of attorney to be executed by a borrower company in favour of a lender company. Assume facts, if required.* (6 marks)
- (b) *Draft a specimen written statement of a suit for ejectment and arrears of rent. Assume facts, as required.* (6 marks)
- (c) *Explain Probate and Letters of Administration.* (4 marks)

OR (Alternate question to Q. No. 3)

Question 3A

- (i) *Explain various stages of a criminal trial in a warrant case.* (6 marks)
- (ii) *"A subordinate Court cannot be supposed to entertain a reasonable doubt on a point of Law." Explain and state various provisions of reference under the Civil Procedure Code, 1908.* (6 marks)
- (iii) *Write a note on Electronic Data Interchange (EDI).* (4 marks)

Answer 3(a)**Irrevocable Power of Attorney**

This Power of attorney granted at this..... day of..... 2021 by "A Limited" a company within the meaning of the Companies Act and having its registered office at (hereinafter referred to as "the Borrower" which expression shall, unless excluded by or repugnant to the context include its successors and assigns) in favour of a corporation constituted by and having its Head office at (hereinafter referred to as "the LENDER", which expression shall include its successors and assigns).

1. WHEREAS by an Agreement dated the day of..... 2021 (hereinafter referred to as "the said Agreement") made between the 'Borrower' and the 'Lender'. 'Lender' has agreed to grant the 'Borrower' financial assistance by way of a term of Rs..... (Rupees) (hereinafter

referred to as “the financial assistance”) for the purposes and on the terms and conditions set out therein.

2. 'Lender' has stipulated, inter alia, that if so required by 'Lender' at any time, the 'Borrower' shall secure Lender's loan of Rs. (Rupees.....) together with interest, commitment charge and other money payable by the Borrower to Lender under the said Agreement by a registered legal mortgage in English form of all the properties of the Borrower immovable and movable, present and future and other assets, including uncalled capital and the charge in favour of the Lender to rank pari passu with the charge or charges created and/or to be created by the Borrower in favour of the Lender, AND the charge of Lender on movables to be subject to the charge or charges created and/or to be created by the Borrower in favour of its bankers on stocks of raw- materials or other movables as may be permitted by Lender in writing to secure borrowings for working capital requirements.
3. Lender has also stipulated that the Borrower shall, for the aforesaid purpose, execute an undertaking in favour of the Lender and shall simultaneously with the execution of such undertaking, grant an irrevocable power of attorney to the Lender, being these presents, authorising the Lender to execute in favour of itself a first legal mortgage in English form for and on behalf of the Borrower in the event of the Borrower failing, when required by the Lender, to duly execute and register a first legal mortgage in English form of all its immovable and movable properties as aforesaid.

NOW THIS DEED WITNESSETH THAT in consideration of the Lender having sanctioned the said financial assistance to the Borrower, the Borrower hereby irrevocably appoints the Lender to be the true and lawful attorney of the Borrower in the name and for and on behalf of the Borrower to do, execute and perform the following acts, deeds and things, namely:

- (i) To make, execute, sign, seal and deliver in favour of the Lender, at the expense of the Borrower, in all respects, a first legal mortgage in English form of all its immovable and movable properties agreed to be mortgaged to the Lender, with all conditions as may in absolute discretion of the Lender, be deemed necessary or expedient and in particular granting in favour of the Lender a right to take over the management of the Borrower, a right to appoint a receiver of the undertaking of the Borrower and a right to sell the Borrower's properties without intervention of the Court, for the purposes of securing to the Lender all the moneys payable by the Borrower's under the said Agreement, as aforesaid, the charge of the Lender to rank pari passu with the charge created and/ or to be created by the Borrower in favour of the Lenders for the purposes and in the manner mentioned therein.
- (ii) To apply for and obtain necessary clearance certificates under Section 230A of the Income Tax Act, 1961.
- (iii) To do or cause to be done all such acts, deeds and things as may be necessary or proper for the effectual completion and registration of the said mortgage.
- (iv) The Borrower hereby agrees that all or any of the powers hereby conferred upon

the Lender may be exercised by any officer or officers of the Lender nominated by the Lender in that behalf.

- (v)
- (vi)
- (vii) AND the Borrower does hereby declare that this power of attorney shall be irrevocable.

IN WITNESS WHEREOF the Borrower Company has caused its Common Seal to be hereunto affixed the day and year first hereinafter written.

The Common Seal of the Borrower Company was hereunto affixed pursuant to the resolution of its Board of Directors passed on the..... in the presence of Shri..... Director and Shri..... Director who have signed these presents in token thereof.

Witness

- 1.
- 2.

Director

Answer 3(b)

Format of Written Statement

In the Court of Small Cause,

Suit No. of

AB S/o CD Age..... Resident of Plaintiff

Versus

PQ S/o RS Age..... Resident of Defendant

Written Statement on behalf of the defendant to the suit for Ejection, Arrears of Rent and mesne profits.

The above said named defendant states as follows: -

1. That the defendant admit the facts stated in paragraph 1 of the plaint.
2. That the defendant admits the agreement mentioned in paragraph 2 of the plaint and his occupation of the said house as alleged therein.
3. That the defendant denies that he has not paid the rent from June 1, 20.. , as stated in paragraph 3 of the plaint.
4. That the defendant admits service of the notice alleged in paragraph 4 of the plaint, but does not admit that the plaintiff duly determined the defendant's tenancy thereby. The defendant admits that he continues to be in occupation of the said house but denies that he has not paid any part of the said arrears of rent or that

he is liable to Ejectment under the provisions of law alleged in paragraph 4 of the
plaint.

- 5. That the defendant does not admit anyone of the several allegations made in paragraph 5 of the plaint.
- 6. That no cause of action even occurred to the plaintiff alleged in paragraph 6 of the plaint.
- 7. That the defendant admits the jurisdiction of the court.
- 8. That paragraph 8 of the plaint relates to valuation of the suit and payment of court fee which is matter of record.

Additional Pleas

- 9. That the defendant has paid the rent for the months May, June, July.... 2021 to Sri EF, the plaintiff's authorized agent who has been collecting the rent of the said house on behalf of the plaintiff but no rent receipts in respect of the aforesaid months have been issued to the defendant even after repeated demands by the defendant.
- 10. That the rent of monthof 2021, tendered to the said agent of the plaintiff and to the plaintiff himself but both have refused to accept it.
- 11. That in fact only Rupees , are due from the defendant to the plaintiff as arrears of the rent and that the defendant is ready and willing to pay the said amount to the plaintiff.
- 12. That there are absolutely no grounds for granting the relief prayed for by the plaintiff and the suit is liable to be dismissed with costs.

Place:

AB

Date:

Defendant

Through Advocate

Verification

I, AB, he aforesaid, defendant, do hereby verify the contents of paragraphs and of the above plaint are true to my personal knowledge and the contents of the paragraphs and, I believe to be true on information received.

Signed and verified this day of20.., at

AB

Defendant

Answer 3(c)

Probate

Probate is a certificate granted under the seal of Competent Court, certifying the Will (a copy whereof is annexure thereto) as the Will of the testator and granting the

administration of the estate of the deceased in accordance with that Will to the executor named under the Will.

Letters of Administration:

A letter of administration can be obtained from the Court of competent jurisdiction in cases where the testator has failed to appoint an executor under a will or where the executor appointed under a will refuses to act or where he has died before or after proving the Will but before administration of the estate. Letters of Administration are not always necessary in cases of intestacy of Hindus, Mohammedans, Buddhists, Sikhs, Jains, Indian Christians or Parsis. Letter of Administration is always necessary where a person (governed by the Indian Succession Act) dies intestate.

Answer 3A(i)

According to warrant case as defined in Section 2 (x) of Code of Criminal Procedure 1973, which relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial.

These are Different Stages of Criminal Trial in a Warrant Case when instituted by the police report-

(i) *First Information Report*

Under Section 154 of the Code of Criminal Procedure, an FIR or First Information Report is registered by any person. FIR puts the case into motion. An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.

(ii) *Investigation*

The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then that conclusion is filed to the Magistrate as a police report.

(iii) *Charges*

If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.

(iv) *Plea of guilty*

Section 241 of the Code of Criminal Procedure, 1973 talks about the plea of guilty. After framing of the charges the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.

(v) *Prosecution evidence:*

After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called “examination in chief”. The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.

(vi) *Statement of the accused:*

Section 313 of the Criminal Procedure Code gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.

(vii) *Defence evidence:*

An opportunity is given to the accused to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence.

(viii) *Judgement:*

The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. This is usually done when the person is convicted of an offence whose punishment is life imprisonment or capital punishment which is to be awarded.

Answer 3A(ii)

Reference Provision are given in Section 113 and Order XLVI, The Civil Procedure Code, 1908, as under:-

- (a) A reference is made to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule I of the Code of Civil Procedure, 1908, only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.
- (b) Where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance or Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

Order XLVI Rule 7 of Civil Procedure Code, 1908 states that:-

- (i) drawing up a statement of the facts;
- (ii) stating the point on which doubt is entertained; and
- (iii) stating his opinion on such point.

Under Order XLVI, Rule 7, a reference may be made only when it appears to the District Court that a Court subordinate to it has by reason of erroneously holding a suit to be cognizable by a Court of Small Causes, or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested; unless this condition is fulfilled – that is, unless the Court is itself of opinion that one of these errors has been committed, – it has no power to refer; when that condition is fulfilled, the Court still has a discretion to make or refuse to make a reference unless it be required to make it by a party. In the latter case, the Court is bound to make a reference.

Answer 3A(iii)

Electronic Data Interchange (EDI)

These contracts, used in trade transactions which enable the transfer of data from one computer to another in such a way that each transaction in the trading cycle (for example, commencing from the receipt of an order from an overseas buyer, through the preparation and lodgment of export and other official documents, leading eventually to the shipment of the goods), can be processed with virtually no paperwork. Here unlike the other two, there is exchange of information and completion of contracts between two computers and not an individual and a computer.

Question 4

Distinguish between the following :

- (a) *Testatum and testimonium clause.*
- (b) *Public trust and Private trust.*
- (c) *Continuing guarantee and Counter guarantee.*
- (d) *Usufructuary Mortgage and Mortgage by Conditional Sale. (4 marks each)*

Answer 4(a)

Testatum

This is the “witnessing” clause which refers to the introductory recitals of the agreement, if any, and also states the consideration, if any, and recites acknowledgement of its receipt. The witnessing clause usually begins with the words “NOW THIS DEED WITNESSES”. Where there are more than one observations to be put in the clause the words, “NOW THIS DEED WITNESSES AS UNDER” are put in the beginning and then paragraphs are numbered.

Testimonium clause

Testimonium is the clause in the last part of the deed. Testimonium signifies that the parties to the document have signed the deed. This clause marks the close of the deed and is an essential part of the deed.

The usual form of testimonium clause is as under:

“In witness whereof, parties hereto have hereunto set their respective hands and seals the date and year first above written”. This is the usual English form of testimonium

clause. In India, except in the case of companies and corporations seals are not used and in those cases testimonium clause reads as under:

“IN WITNESS WHEREOF the parties hereto have signed this DEED on the date above written”.

Thus, Testimonium clause can be worded according to the status and delegation of executants. Moreover, this clause in the deed presupposes that the proper parties are signing the document.

Answer 4(b)

Public Trust and Private Trust

In a public trust the beneficiary is the general public or a specified section of it. In a private trust the beneficiaries are defined and ascertained individuals. In a public trust the beneficial interest is vested in an uncertain and fluctuating body of persons. The nature of the trust may be proved by the evidence of dedication or by user and conduct of parties. Where a trust is created for the benefit of the members of the settlor's family, it is a private trust and not a public trust. Every charitable trust is only a public trust as benefit to the community at large or to a section of the community is of the essence of a valid charitable trust. But a religious trust need not necessarily be a public trust as there can be a private religious trust also.

Answer 4(c)

Continuing Guarantee

Section 129 of the Indian Contract Act, 1872, lays down that a guarantee which extends to a series of transactions is called a continuing guarantee, and according to Section 130 of the Indian Contract Act, 1872, a continuing guarantee may be revoked by the surety at any time as to future transactions, by notice to the creditor.

Counter Guarantee

A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called “counter guarantee”

Answer 4(d)

Usufructuary Mortgage

In this mortgage, the mortgagor delivers possession of the mortgaged property to the mortgagee who retains the possession until the satisfaction of the debt. The mortgagee will take the usufruct in lieu of the interest or part payment of the principal or partly in payment of interest or partly in part payment of the principal. The mortgagor is not personally liable to pay the debt and the mortgagee is not entitled during the term of the mortgage to demand his mortgage money.

Mortgage by Conditional Sale

In a mortgage by conditional sale, the property is sold subject to the condition that on default in payment of the mortgaged money on a certain date the sale shall become

absolute or that on such payment the sale shall become void or on such payment the buyer shall transfer the property to the seller. Possession of the property shall be with the mortgagee.

Question 5

- (a) *“Registration of partnership firm under the Income-tax Law is distinct from the registration of firm under Indian Partnership Act, 1932.” Explain. (5 marks)*
- (b) *“The opinion giver may also be requested to furnish an opinion on matters governed by the laws of some other country.” Comment and discuss the reliance of the opinion of local counsel on foreign laws. (5 marks)*
- (c) *What do you understand by the Endorsements and Supplemental Deeds ? Does such endorsement and supplemental deeds attract stamp duty ? (6 marks)*

Answer 5(a)

Registration of partnership firm has been made optional under the provisions of Section 58 of the Indian Partnership Act, 1932. Consequences of non-registration of a partnership firm are set out in Section 69 of the Partnership Act, 1932. An unregistered firm cannot enforce a right or claim arising out of a contract against any third party. However, if the firm obtains registration on the date of institution of the claim against third person, the said claim or right would be perfectly maintainable. Since the blow of the consequences of non-registration is very severe.

Registration of partnership under the Income-tax Law is distinct from registration of firm under the Partnership Act. Rule 22 of Income-tax Rules, 1962 provides that an application for registration of partnership firm should be accompanied with an instrument of partnership specifying the apportionment of shares of profit and losses of the business amongst the partners of the firm. This registration is required to be renewed every year under the orders of the concerned Income-tax Officer.

Answer 5(b)

Foreign Law and Reliance on Local Counsel

The principal opinion giver for a party in a business transaction typically renders an opinion covering the laws of the state and applicable central laws and sets forth this limitation in the text of the opinion. The opinion giver may also be requested to furnish an opinion on matters governed by the laws of some other country. Unless the limited nature of the review of another jurisdiction’s law is described in the opinion, the opinion giver will, in most instances, seek the advice and opinion of local counsel.

An opinion giver should, however, always be cognizant of the fact that rendering an opinion based upon legal principles applicable in foreign jurisdictions exposes the opinion giver to liability for a negligent interpretation of that law. The retention of local counsel to furnish an opinion raises different questions with respect to the principal opinion giver’s responsibility for the opinions expressed in the local lawyer’s opinion. If the principal opinion giver renders an opinion on the same matters as the local lawyer, the opinion giver customarily expresses its reliance on the local counsel’s opinion (an example of

recommended language is included below) rather than simply restating the local counsel's opinion in the body of its opinion:

In rendering the opinions expressed in paragraphs, and, we have relied [solely] on the opinion of, in so far as such opinions relate to the laws of, and we have made no independent examination of the laws of that jurisdiction.

When expressly stating reliance on the opinion of local counsel, the principal opinion giver's sole responsibility is to exercise reasonable care in the selection of local counsel (if, in fact, the principal opinion giver selects such counsel). The opinion giver is not responsible for independently investigating or otherwise verifying the law of the foreign jurisdiction. The principal opinion giver may assume a broader responsibility to examine the statutory and case law of the foreign jurisdiction if the principal opinion giver's opinion letter states that the opinion giver "concur[s]" with the legal opinions provided in the opinion letter of local counsel or that the local counsel's opinion letter is satisfactory in substance. The preferred and more recent common practice is for the local counsel's opinion letter to be addressed to the recipient of the principal opinion letter (rather than to the principal opinion giver) and for the principal opinion giver not to render an opinion on that subject.

Answer 5(c)

Endorsement means to write on the back or on the face of a document wherein it is necessary in relation to the contents of that document. The term "endorsement" is used with reference to negotiable documents like cheques, bill of exchange etc. Endorsement is used to give legal significance to a particular document with reference to new facts to be added in it. Endorsement helps in putting new facts in words on such document with a view to inscribe with a title or memorandum or to make offer to another by inscribing one's name on the document or to acknowledge receipt of any sum specified by one's signatures on the document or to express definite approval to a particular document.

Supplemental deed is a document which is entered into between the parties on the same subject on which there is a prior document existing and operative for adding new facts to the document on which the parties to the document have agreed which otherwise cannot be done by way of endorsement. Supplement deed is executed to give effect to the new facts in the deed.

All endorsement and supplement deed should be stamped according to the nature of transaction which they evidence. In case the endorsement is made for receipt of money which should be stamped as a receipt. In case it is an agreement, it must be stamped as an agreement. Some document if endorsed are exempted from stamp duty like endorsement on prior deed, receipt of mortgage money, endorsement on mortgage deed. Similarly transfer of bill of exchange or Policy of Insurance or Security of Government of India can be endorsed without attracting the stamp duty.

Question 6

- (a) *Turfy Pvt. Ltd. wants to offer online shopping services to its customers. Some of the products are stocked with Doodle Warehouses while others are stocked with the manufacturers. Outline the scope of services provided by Turfy Pvt. Ltd., restricting the liabilities in case of defects found in products sold through the Turfy Pvt. Ltd. website. Further, illustrate the important disclaimers regarding use of the website by the customers while drafting the e-contract, in case of*

loss or damaged suffered by the customers while availing services of Turfy Pvt. Ltd.

- (b) *Draft a deed to sub-lease the property, with the permission of the original lessor, Hanu Sisodia, between Aarya (sub-lessor) and Pranita (the sub-lessee), bearing survey no. 856, Part I, measuring as 60 acres of agricultural land situated at the western bank of Godavari River in Nasik, for a period of 30 years w.e.f. 1st December, 2021, with a covenant for renewal of three Consecutive periods of 30 years each, though the sub-lease has to be initially valid for 30 years only.*

(8 marks each)

Answer 6(a)

Important Points in regard to E-contract

The contract must specify that by using the Turfy Pvt. Ltd. website, the customer becomes subject to the terms of a legal agreement between the customer and Doodle. Customers must be informed that they must be of legal age to enter into the contract.

Acceptance of the terms of the contract : The contract must clearly lay down that a customer cannot use the Turfy Pvt. Ltd. website unless he agrees with the terms of the contract. The customer can usually indicate his acceptance by clicking on an “I Accept” link or checking an “I Accept” checkbox.

Copyright : The contract should clearly state that all content included on the Turfy Pvt. Ltd. website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Turfy Pvt. Ltd.

Customers duties and obligations

The contract should clearly lay down the duties and obligations of the customer. Amongst others, the customer must:

- a. Not overload Doodle’s systems.
- b. Not download or modify the Turfy Pvt. Ltd. website.
- c. Collect and use any product listings, descriptions, or prices.
- d. Download or copy account information by data gathering and extraction tools.
- e. Not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form).
- f. Not use any meta tags or any other “hidden text” utilizing Doodle’s name or trademarks.

License from Doodle

The contract should specify that Turfy Pvt. Ltd. is giving the customer a limited, revocable, and nonexclusive right to create a hyperlink to the home page of Turfy Pvt. Ltd. so long as the link does not portray Doodle, or its products or services in a false, misleading, derogatory, or otherwise offensive matter. The contract must also specify that Turfy Pvt. Ltd. is giving the customer a personal, worldwide, royalty-free, non-assignable and non-exclusive licence to use the software provided as part of the Turfy Pvt. Ltd.

website. The contract must clarify that this licence is for the sole purpose of enabling the customer to use the Turfy Pvt. Ltd. website. The contract must forbid the customer from the following acts in respect of the said software:

- copying,
- modifying,
- creating a derivative work of,
- reverse engineering,
- decompiling or otherwise attempting to extract the source code.

The contract must mention that the customer cannot assign, sub-licence or transfer his rights to use the Turfy Pvt. Ltd. software.

Reviews and comments

The contract should clearly mention that the reviews, comments, photos etc posted by customers should not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties.

It should also be mentioned that such content should not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of “spam.” It should also be stated that a customer who posts content grants to Turfy Pvt. Ltd. non-exclusive, royalty-free, perpetual, irrevocable, and fully sub licensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, and display such content throughout the world in any media.

The contract must also state that the customer posting the content indemnifies Turfy Pvt. Ltd. against all legal action and claims resulting from the said content

Risk of loss

Turfy Pvt. Ltd. has a shipping contract with various courier companies to deliver the products to the customers.

The contract should clearly state that once the products are handed over to the courier company, Turfy Pvt. Ltd.’s liability ends.

Pricing

The contract should clarify how the prices listed on the Turfy Pvt. Ltd.’s website are computed. The various options could be:

The listed price represents the full retail price listed on the product itself,

The listed price is suggested by the manufacturer or supplier,

The listed price is estimated in accordance with standard industry practice, or

The listed price is estimated in accordance with the estimated retail value for a comparably featured item offered elsewhere.

Prohibitions

The contract must specifically prohibit the following: Using “deep-link”, “page-scrape”, “robot”, “spider” etc. to access, acquire, copy or monitor any portion of the service.

Reproducing the navigational structure or presentation of the service.

Circumventing the navigational structure or presentation of the service.

Attempting to gain unauthorized access to any portion or feature of the service.

Harvesting or collecting user names, email addresses or other member identification information.

Probing, scanning or testing the vulnerability of the service.

Tracking information relating to other users.

Agreeing not to use any device, software or routine to interfere or attempt to interfere with the proper working of the service or any transaction being conducted on the service, or with any other person's use of the service.

Using the service for any unlawful purpose.

Applicable Law

The contract should mention the city / state and country whose law will prevail in this contract. The courts having exclusive jurisdiction over the disputes should also be mentioned. Conditions relating to arbitration of disputes may also be mentioned.

Limitation of liability

The contract must clearly mention that Turfy Pvt. Ltd. (and its subsidiaries, affiliates, licensors etc) will not be liable to the customer for:

- a. Access delays or interruptions to the Turfy Pvt. Ltd. web site.
- b. The loss of registration or processing of an order.
- c. The unauthorized use of the customer's account with Doodle.
- d. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to Turfy Pvt. Ltd. staff.

Errors taking place with regard to the processing of the customer's orders. Any direct, indirect, incidental, special consequential or exemplary damages incurred by the customer pursuant of his use of the Turfy Pvt. Ltd. website. Any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the Turfy Pvt. Ltd.'s services. Any loss or damage incurred by the customer as a result of relationship or transactions with advertisers using the Doodle website. Changes in or cessation of the Turfy Pvt. Ltd.'s services. Customer's failure to keep his account information, passwords etc secure and confidential.

Exclusion of warranties

The contract must clearly mention that the customer expressly understands and agrees that his use of the services is at his sole risk and that the services are provided "as is" and "as available". The contract must expressly disclaim all warranties and conditions of any kind (express and implied).

It must also be mentioned clearly that Turfy Pvt. Ltd. (its subsidiaries, affiliates, licensors etc.) do not represent or warrant that:

- a. The Turfy Pvt. Ltd.'s services will meet the customer's requirements,
- b. The Turfy Pvt. Ltd.'s services will be uninterrupted, timely, secure or free from error,
- c. The information provided by or through the Turfy Pvt. Ltd.'s services will be accurate or reliable, and
- d. That defects in the operation or functionality of the Doodle services will be corrected.

Ending the relationship between Turfy Pvt. Ltd. and the customer. The contract must lay down that the customer can terminate the contract by closing his accounts with Doodle. Turfy Pvt. Ltd. must retain the right to terminate the contract under the following circumstances: The customer breaches any provision of the contract. The customer acts in a manner that clearly shows his intention to breach a provision of the contract. Turfy Pvt. Ltd. is required by law to terminate the contract. The provision of the services to the customer is no longer commercially viable.

Answer 6(b)

Deed of Sub-Lease

THIS LEASE made this 1st December day of 2021

between

Aarya (hereinafter called "the sub-lessor"), of the one part,

and

Pranita (hereinafter called "the sub-lessee"), of the other part.

WHEREAS By a lease (hereinafter referred to as "the original lease") dated 1st December the day of 2021 and made between Hanu Sisodia as owner and Aarya as lessee and registered in Book I, Vol. pages to bearing No for the year in the Office of Sub-Registrar of Nasik, agriculture land (bearing survey no. 856, Part I, measuring as 60 acres) described in the original lease were demised to the said original lessee for a period of 30 years with effect from the 1st December day of 2021 on a yearly rent and subject to the covenants and conditions to be performed and observed as therein contained.

AND WHEREAS the original lessee has agreed to grant and the sub-lessee has agreed to accept a sub-lease of the 60 acres of agriculture land hereinafter described upon the conditions hereinafter contained:

NOW THIS DEED WITNESSES that in consideration of the rent hereinafter reserved and the covenants by the sub-lessee hereinafter contained, the original lessee do hereby grant to the sub-lessee a lease of ALL THAT agriculture land known by the name of, etc., and situate at, etc., together with the appurtenances;

TO HOLD the same unto and to use of the sub-lessee for the period of 30 years, commencing with effect from the 1st December, 2021 at the monthly rent of Rupees SUBJECT to the following conditions:

The sub-lessee hereby agrees with and covenants with its lessor, viz., the lessee as follows:

1. To pay the said rent, clear of all deductions, on the..... day of every current month in advance during the term of the lease.
2. To pay all taxes and outgoings now payable or hereafter to become payable in respect of the agricultural land.
3. To keep the said land in good and tenantable condition, and not to make any alteration therein without the written consent of the landlord.
4. To perform all the covenants, conditions and stipulations contained in the original lease affecting the property hereby leased and to be observed and performed by the original lessee except payment of rent and not to do, execute or perform any act, deed or thing or suffer anything to the contrary whereby or by reason or means whereof the original lease may be avoided or forfeited and to allow the original lessee to enter upon the leased land for the purpose of inspection of the premises and performing any of such terms of agreement contained in the original lease, which may be necessary to prevent its forfeiture.
5. To keep the original lessee indemnified against all actions, claims, demands and expenses on account of performance or non-performance by the sub-lessee (of any of the terms, conditions and stipulations of this agreements).

The original lessee does agree and covenant with the sub-lessee as follows:

That upon the sub-lessee paying the rent hereby reserved and observing and performing the conditions and covenants herein contained, shall quietly and peacefully possess and enjoy the property, hereby leased during the said term without any interruption and disturbance by the original lessee or any person claiming under or in trust for him, provided that in case of any breach of any of the conditions and covenants to be observed and performed by the sub-lessee, the lease shall, at the option of the original lessee, stand determined who shall be entitled to repossess the property as his former estate without prejudice to his right to recover all arrears of rent and/or any damages for breach of such conditions or covenants.

The original lessee shall duly and punctually pay the rent reserved, observe and perform all the covenants and conditions contained in the original lease, and keep the same alive and in full force and virtue and will further, renewed for three consecutive periods of 30 (thirty) years each, keep the sub-lessee and his estate indemnified against all actions, claims, proceedings and demands on account of any breach of any of the conditions and covenants contained in the original lease.

The original lessee acknowledges the right of the sub-lessee as to production of the original lease and to delivery of copies thereof and undertakes for the safe custody thereof.

It is further agreed that the terms “the original lessee” and “sub-lessee” used herein shall, unless inconsistent with the context, include as well their respective successors and assigns.

IN WITNESS, etc.

Signed, sealed and delivered

Arya

Pranita

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