

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

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GROUP 1



**THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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ENVIRONMENTAL, SOCIAL AND GOVERNANCE – PRINCIPLES AND PRACTICE

GROUP 1 PAPER 1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

Drishya Infratech Limited ('DIL') was incorporated in 1998 as a private company and was converted into a public limited company in 2007 and got listed, when it undertook large-scale expansion in construction, energy, and allied manufacturing services. Headquartered in Chennai, the Company rapidly diversified into real estate, renewable energy, logistics, and even financial services through subsidiaries. With a paid-up capital of ₹ 1,200 crore and consolidated annual turnover of ₹ 8,500 crore, DIL positioned itself among India's fastest-growing conglomerates. The Board of Directors consisted of twelve members, including four independent directors, one woman director and promoter/executive directors. Though compliant with the provisions of the Companies Act, 2013 and SEBI (LODR) Regulations, 2015, proxy advisory firms often commented that the independence of directors was more on paper than in substance, given the long-standing personal and professional ties of most "independent" directors with the promoter family. Other mandatory committees were duly constituted, but their functioning was often perfunctory, with decisions driven largely by the promoter-chairman, Ranjhan, whose family collectively held 58% of the Company's equity.

In the early years of its growth, DIL emphasized on being a compliant organization and even claimed to have adopted global best practices, including OECD Principles of Corporate Governance and United Nations Sustainable Development Goals (SDGs). It presented glossy annual reports showcasing commitments to Environmental, Social and Governance (ESG) values, including Business Responsibility and Sustainability Reporting (BRSR) in line with SEBI's mandate for top 1,000 listed entities. Its renewable energy subsidiary claimed reductions in carbon emissions, while its logistics arm spoke of gender diversity in employment and its financial services subsidiary highlighted financial inclusion efforts. On the surface, the Company appeared as a model of corporate citizen, aligning itself with CSR activities, spending over ₹ 50 crore annually on education, sanitation, and rural infrastructure projects. DIL also declared its adoption of the "Integrated Reporting" framework, in accordance with international standards. Analysts praised DIL's meteoric rise, its issuance of green bonds and its consistent dividend policy. Shareholders received assurances that governance structures were strong and regulators accepted its disclosures as adequate. However, beneath the surface, tensions were growing, whistleblower complaints pointed to irregularities in awarding EPC contracts to related entities, statutory auditors raised concerns about inadequate internal controls and minority shareholders questioned the opaque decision-making process.

Environmental activists highlighted that DIL's mining and infrastructure projects had caused large-scale deforestation, violating environmental clearances and that disclosures in the BRSR report were selective rather than comprehensive. Moreover, global ESG rating agencies downgraded DIL's governance scores citing weak board independence and poor disclosure practices. The unravelling began in 2024, when an investigative journalist exposed that DIL had overstated its renewable energy achievements in its sustainability report. An independent review found that

only 40% of claimed solar capacity was functional, with the rest being under litigation or awaiting approvals. SEBI initiated an inquiry under SEBI (LODR), examining misstatements in annual reports. At the same time, the Ministry of Corporate Affairs received complaints alleging siphoning of funds through related party transactions with shell companies controlled by relatives of promoter directors. The independent directors, instead of exercising their duties, remained passive, leading to questions about their effectiveness. Further, CSR funds, which were supposed to be spent on rural education were allegedly diverted to trusts managed by the promoters. Institutional investors, guided by proxy advisory firms, began voting against board resolutions, citing poor governance practices. The situation worsened when a tragic accident at one of DIL's construction sites killed 14 contract workers, revealing lapses in occupational health and safety standards. NGOs alleged violation of SDG 8 (Decent Work) and ESG social safeguards, which directly contradicted DIL's sustainability commitments. Media backlash and social media activism damaged DIL's reputation, causing a 35% fall in its share price within weeks. Credit rating agencies downgraded its debt citing governance risks and banks tightened lending norms. The Board was accused of non-compliance with provisions relating to performance evaluation of independent directors. In response, the Board announced separation of the roles of Chairperson and CEO (in line with SEBI recommendations), reconstitution of the Audit Committee with truly independent experts and appointment of a Big 4 firm to conduct a sustainability audit. Yet, damage had been done, foreign investors withdrew funds, retail shareholders filed class-action suits under the Companies Act and regulators- imposed penalties. While the Company had complied with structural mandates such as appointing independent directors, forming committees, and disclosing CSR spends, it failed to internalize the spirit of accountability, transparency, fairness, and responsibility.

In the background of above facts, answer the following questions :

- (a) Examine the roles and responsibilities of DIL's independent directors, in the context of the Companies Act, 2013 and SEBI (LODR) regulations.
- (b) Indicate the factors and parameters to be considered for evaluation of independent directors.
- (c) Outline the implications of CSR irregularities by the Company and suggest ways to strengthen the CSR governance to avoid misuse of CSR funds.
- (d) Examine how weak risk management contributed to crisis at DIL and recommend steps to strengthen the risk framework.

(5 marks each)

Answer 1(a)

Independent Directors (IDs) are expected to act as custodians of shareholder interests and guardians of governance standards. Section 149(6) of the Companies Act, 2013, read with Regulation 16(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, define qualifications and independence criteria of Independent Directors.

Section 166 of the Companies Act, 2013 sets out the duties of directors, mandating that they act with due and reasonable care, skill, and diligence, and refrain from placing themselves in situations involving direct or indirect conflicts of interest. Further, Schedule IV to the Companies Act, 2013 lays down the "Code for Independent Directors," which emphasizes the exercise of objective judgment, protection of stakeholder interests, and ensuring the integrity of financial controls and risk management systems. The company and independent directors shall abide by the provisions specified in Schedule IV in accordance with the section 149(8).

Section 134(5)(e) of the Companies Act, 2013 further mandates the directors of a listed company

to laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Regulation 17(5) of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, requires the Board of Directors to formulate a code of conduct applicable to all members of the board and senior management of the listed entity. Further, Regulation 17(10) mandates that the performance evaluation of Independent Directors be carried out by the entire board of directors.

In the case of Drishya InfraTech Limited (DIL), although the company appointed four independent directors in compliance with statutory requirements, the independence appears to be only formal and lacked substance. Many IDs had long standing personal or professional relationships with the promoter family, compromising their ability to challenge decisions objectively. This “friendly board culture” diluted their oversight role, as seen in their silence during red-flag issues like related party transactions, siphoning of CSR funds, and inflated ESG disclosures. SEBI (LODR) requires IDs to attend meetings, review performance, and safeguard minority shareholder rights. Regulation 17(10) of SEBI (LODR) Regulations also requires performance evaluation of IDs, but DIL’s board failed to conduct transparent evaluation. Furthermore, IDs did not raise concerns when whistleblowers reported irregularities, indicating their inability to enforce Section 166 of the Companies Act, 2013 dealing with duties of directors (acting in good faith for the benefit of shareholders, employees, and community).

The failure of IDs in DIL demonstrates the gap between legal mandates and practical execution. Their passive acceptance of promoter decisions contravened the essence of corporate governance — independence, accountability, and transparency. In law, IDs are not expected to micromanage operations but to provide oversight, question management, and ensure compliance. By failing to object to greenwashing in sustainability reports and by not ensuring robust internal financial controls under Section 134(5)(e), they neglected their statutory role.

In conclusion, while DIL formally complied with the law, IDs failed to discharge their fiduciary duties effectively.

Answer 1(b)

Section 178 (2) and Schedule IV of the Companies Act, 2013 to be read with regulation 17(10) of SEBI (LODR) Regulations, 2015 specify that the performance evaluation of independent directors shall be done by the entire board of directors. Further, the Nomination and Remuneration Committee shall lay down the evaluation criteria and the same shall be disclosed by the Board in its Annual Report.

The major factors to be considered for evaluation of Independent Directors include the following:

- The quality of the issues that get raised, discussed and debated at the meetings of the Board and its Committees.
- The guidance provided by the Board in the light of changing market conditions and their impact on the organisation.
- The methodology adopted by the Board to solve issues referred to them.
- The effectiveness of the directions provided by the Board on the issues discussed in meetings.

In addition, an Independent Director may also be evaluated on the following parameters:

- Exercise of objective independent judgment in the best interest of Company;
- Ability to contribute to and monitor corporate governance practice;
- Adherence to the code of conduct for independent directors;

- Performance of the Board against the benchmark performance set;
- Overall value addition by the discussions taking place at the Board meetings;
- The regularity and quality of participation in the deliberations of the Board and its Committees;
- The answerability of the top management to the Board on performance related matters.

Answer 1(c)

The diversion of CSR money not only violated statutory provisions but also betrayed public trust, since CSR is meant to benefit communities, not promoters. The implications are multi-fold:

Regulatory penalties:

Non-compliance with CSR norms attracts fines under Section 135(7) of the Companies Act, 2013 which provides that if a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.

Other Implications include:

- Reputational loss: Media revelations of CSR misuse triggered public outrage and eroded DIL's "responsible corporate citizen" image.
- Stakeholder backlash: Communities felt exploited, while NGOs and activists criticized the tokenism of DIL's CSR model.
- Investor activism: Shareholders, especially institutional investors, now monitor CSR reports closely and may vote against boards involved in such misconduct.

To prevent such misuse, CSR governance must be strengthened through:

- Independent CSR audits to validate fund utilization.
- Mandatory impact assessment under CSR Rules for projects above ₹1 crore.
- Board-level accountability: CSR Committee must ensure independent monitoring based on milestones and disclose reasons for unspent amounts.
- Technology-based tracking of CSR spends to ensure funds reach intended beneficiaries.
- Third-party partnerships: Collaboration with credible NGOs to avoid conflict of interest.

DIL's CSR irregularities show that compliance in form is insufficient without genuine intent. The case highlights the need for CSR to move from "philanthropy" to "strategic responsibility," where impact assessment, transparency, and accountability are central. Strengthening governance in CSR is not just a legal requirement but also a reputational safeguard and a strategic tool for sustainable growth.

Answer 1(d)

Risk management is integral to corporate governance. Regulation 21 of SEBI (LODR) Regulations 2015, mandates that the top 1,000 listed entities and high value debt listed entity to constitute a Risk Management Committee (RMC) to oversee identification, assessment, mitigation, and monitoring of risks.

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

Globally, OECD guidelines and COSO frameworks emphasize embedding risk management into decision-making. At DIL, risk management was superficial. While a formal RMC existed, it failed to anticipate or mitigate key risks such as reputational risks from ESG greenwashing, compliance risks from related party transactions, operational risks in safety management, and financial risks from inflated disclosures. The fatal accident at the construction site demonstrated poor occupational risk management, while siphoning of funds revealed inadequate internal financial controls under Section 134(5)(e) of the Companies Act, 2013.

According to the Section 134(3)(n) of the Companies Act, 2013 a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company in the Board Report. The absence of effective whistleblower protection compounded risks. Employees who reported irregularities were ignored, showing weak risk culture. Moreover, the Board failed to recognize reputational risk as a strategic threat only after media exposure and investor backlash did it attempt crisis management. This reactive approach indicated that risks were not integrated into boardroom discussions.

Weak risk management led to:

- Financial losses- Share price fell 35%, credit ratings downgraded, and banks tightened lending.
- Reputational damage- Public trust eroded, amplified by social media and activist campaigns.
- Regulatory penalties- SEBI and other regulatory action can be initiated
- Stakeholder disengagement - Investors withdrew funds, employees resigned, and communities protested.

To avoid such failures, companies must strengthen risk frameworks:

- Ensure independent and competent RMCs with clear risk appetite frameworks.
- Adopt Enterprise Risk Management (ERM) aligned with COSO/ISO standards.
- Conduct regular risk audits and scenario planning for ESG, compliance, and operational risks.
- Integrate reputation risk into strategic planning, as reputational crises can quickly trigger financial losses.
- Foster a risk-aware culture where whistleblowers are protected and boardrooms openly discuss vulnerabilities.

DIL's crisis illustrates that risk management cannot be a box-ticking exercise. It must be proactive, comprehensive, and integrated. Weak governance and weak risk culture are two sides of the same coin.

Question 2

- (a) A complaint was filed before the Lokpal against a senior officer of a central public sector undertaking, alleging misuse of funds in awarding a contract. During the preliminary inquiry,

the officer failed to produce the relevant documents despite repeated notices. The Lokpal's Inquiry Wing, therefore, directed him to appear personally and submit the required records. At the same time, the Lokpal also requisitioned certified copies of certain related files from a government ministry and issued a commission for recording the statement of a key witness who was bedridden and unable to attend the proceedings in person. The officer challenged the authority of Lokpal, arguing that it did not have the same powers as a civil court to summon individuals, demand documents, or issue commissions.

With reference to provisions of the Lokpal and Lokayukta Act, 2013, examine whether the contention of the officer is tenable.

(5 marks)

- (b) Ananthi Advisory Private Ltd. ('AAPL') a SEBI-registered proxy advisory firm, provides voting recommendations to institutional investors for resolutions at Genuine Tech Ltd.'s (GTL) annual general meeting. While reviewing the report, the management of GTL notices that the methodology and sources used to formulate the recommendations are not fully transparent and some recommendations seem to be based on incomplete information. The Company also learns that AAPL offers consultancy services to certain shareholders, raising concerns about potential conflicts of interest. GTL wishes to ensure that its clarifications are considered, any necessary amendments are communicated to investors and the policies on disclosure, communication, and conflict-of-interest policies are fully adhered to. GTL has appointed you, a Company Secretary, seeking your advise to engage with AAPL, in compliance with SEBI's regulatory framework. Advise the Company.

(5 marks)

- (c) Ayeman Ltd., a listed company, has recently received multiple complaints from its shareholders regarding delayed receipt of dividend payments, non-receipt of annual reports, and delays in issuance of duplicate share certificates. Additionally, some debenture holders have raised grievances concerning interest payments and maintenance of security cover. The Company's management wants to ensure that these issues are addressed in line with regulatory requirements and enhance the overall satisfaction of its security holders. The Company has a Stakeholders Relationship Committee in place, chaired by a non-executive director, with a composition of three directors including one independent director. The Chairperson is expected to attend the upcoming Annual General Meeting to respond to shareholder queries.

Explain the key responsibilities of the Stakeholder Relationship Committee under SEBI (LODR) Regulations 2015.

(5 marks)

Answer 2(a)

Under Section 27 of the Lokpal and Lokayukta Act, 2013, the Inquiry Wing of the Lokpal, for the purpose of any preliminary inquiry, is vested with all the powers of a civil court under the Code of Civil Procedure, 1908 while trying a suit. These powers specifically include:

- summoning and enforcing the attendance of any person and examining him on oath,
- requiring the discovery and production of documents,
- receiving evidence on affidavits,
- requisitioning any public record or copy thereof from any court or office,

- issuing commissions for the examination of witnesses or documents (where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal).

Therefore, in the given situation, the Lokpal was well within its powers to (i) summon the officer, (ii) direct production of documents, (iii) requisition files from the Ministry, and (iv) issue a commission for examining the witness who could not attend personally. Further, as per Section 27(2), any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code.

The actions taken by the Lokpal in the case are fully valid and legally justified under Section 27 of the Lokpal and Lokayukta Act, 2013 and thus the contention of the officer is not sustainable.

Answer 2(b)

The Procedural Guidelines were developed by SEBI for regularizing the powers of proxy firms and the salient features of these guidelines are:

- Proxy advisory firms have to disclose policies on the recommendation of voting and these are to be reviewed every year.
- The report should be shared simultaneously with the company and investors and if there are any clarifications or comments that the company wants to suggest, the same could be sent by the company to proxy advisors within the timeline decided beforehand and the needful changes can be made in the report.
- If the opinion of the company varies from that of the proxy advisor's report and it could not be justified by minor amendments, then the needful changes can be done by issuing additional reports or adding an addendum depending on the issue.
- Proxy Advisors shall alert clients, within 24 hours of receipt of information, about any factual errors and any impending material revisions to their reports. Further, any such material revisions to their reports shall be communicated to the clients within 72 hours of receipt of the information, while ensuring that adequate time is available for clients to make an informed decision.
- The methodologies, procedures, and sources that were being referred to or followed, to formulate the report should also be disclosed to the clients.
- An explicit framework is to be set up to handle and resolve any conflict of interest that arises during the course of ancillary services; like if the firm provides consultancy service in addition to the advisory services which could lead to a biased point of view the same should be disclosed to the clients also.
- Firms need to clarify the situations in which the firm will not provide voting recommendations in its voting recommendation policy.
- They also need to mention adequate reasons if they are suggesting any higher standard in their recommendations than generally stipulated by law.
- The stated communication process between clients and the listed company should be developed so as to interact and inform the clients regarding recommendations and to get reviews on the same.
- In the unlikely event of a stalemate, a reference can be made to SEBI who will act as an arbitrator and settle the case on merits.

Thus, in the given case, GTL can rely on these guidelines, which require proxy advisors to disclose their voting recommendation policies, methodologies, and sources annually, share reports

simultaneously with the company and investors, and make corrections within 72 hours if errors are pointed out. Further, the framework obliges proxy advisors to provide an opportunity to companies to clarify or respond, issue addendums in case of material disagreements, and disclose any conflict of interest. These measures ensure transparency, accuracy, and fair play in proxy advisory services, protecting investor interest and promoting good governance.

Answer 2(c)

Under Regulation 20 of SEBI (LODR) 2015, the Stakeholders Relationship Committee (SRC) plays a crucial role in safeguarding the interests of shareholders, debenture holders, and other security holders of a listed company. The Composition of the Committee shall be at least three directors with at least one independent director and the Chairperson being a non-executive director.

The key responsibilities to address the grievances and ensure compliance are as follows:

- **Resolving Security Holder Grievances:** The Committee must examine and resolve complaints relating to transfer or transmission of shares, non-receipt of annual reports, non-receipt/delayed receipt of declared dividends, issuance of new or duplicate share certificates, and other general meeting issues. In this case, complaints regarding delayed dividend payments, non-receipt of annual reports and issue of duplicate certificates must be addressed promptly through liaison with the Registrar & Share Transfer Agent (RTA) and/or internal departments to ensure timely resolution.
- **Review of Voting Rights Facilitation:** The Committee is required to review measures taken by the company to ensure shareholders can effectively exercise their voting rights. This includes verifying that voting through electronic means or at the Annual General Meeting (AGM) is accessible and well communicated. The Chairperson's presence at the AGM, as mandated, will facilitate direct responses to shareholder queries.
- **Monitoring Service Standards of RTA:** The Committee should evaluate adherence to service standards adopted by the company in respect of the RTA. Delays in dividend payments and share transfers indicate potential service gaps; the Committee should review these, recommend corrective measures, and establish monitoring mechanisms to prevent recurrence.
- **Reducing Unclaimed Dividends and Timely Communication:** The Committee must review initiatives aimed at reducing unclaimed dividends and ensuring timely delivery of dividend warrants, annual reports, and statutory notices. For Ayeman Ltd., this could involve implementing automated reminders, periodic reconciliations, and direct shareholder communication to improve transparency and compliance.
- **Debenture Holder Grievances:** Grievances related to debenture interest payments, principal repayment, creation of charge, or maintenance of security cover must be addressed. The Committee should verify that all covenants are adhered to, liaise with finance and compliance teams, and recommend remedial measures for any lapses.
- **Compliance and Meetings:** As per Regulation 20(3A), the Committee must meet at least once a financial year. These meetings provide an opportunity to review grievance trends, corrective actions, and compliance with Part D of Schedule II. Documentation of actions and outcomes ensures accountability and enhances stakeholder confidence.

By diligently performing these responsibilities, the Stakeholders Relationship Committee ensures Company's compliance with SEBI Regulations, resolves security holder grievances effectively, and strengthens trust among shareholders and debenture holders. This proactive approach aligns operational efficiency with regulatory expectations, safeguarding the interests of all stakeholders.

Question 3

(a) The Board of Meghank Technologies Ltd. convened a meeting through video conferencing to approve the quarterly financial results. During the meeting, one Director lost connectivity and continued participation via telephone for the remaining agenda items. Another Director, who had not given prior intimation of his intention to join electronically, logged in directly through video conferencing. Later, a shareholder challenged the validity of the Board's decisions, questioning whether the quorum was properly constituted. Examine the legal validity of this board meeting in light of the Companies Act, 2013.

(5 marks)

(b) BlueWave Pharmaceuticals Ltd., a listed company, has a robust internal policy to prevent insider trading in line with SEBI (Prohibition of Insider Trading) Regulations, 2015. The Company's compliance officer maintains a structured database of unpublished price sensitive information (UPSI) and persons with access to it. Employees undergo periodic training on insider trading norms. Recently, a senior R&D scientist was found sharing trial results of a new drug with a close friend before official disclosure. The Compliance Officer initiated an inquiry, imposed penalties and reported the incident to SEBI, strengthening internal controls and demonstrating adherence to Regulations.

Explain the internal controls that BlueWave can implement to effectively prevent insider trading.

(5 marks)

(c) Trinkle Manufacturing Ltd., a family-owned company, plans to expand internationally and is exploring models for long-term sustainability. The Board is studying family business practices globally, especially in Germany and Japan. The Company is particularly interested in succession planning, continuity and strategies that ensure longevity over multiple generations.

As a corporate governance consultant, advise the Company, on the key lessons it can learn from the Japanese 'ie' system.

(5 marks)

Answer 3(a)

As per Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, participation of directors through video conferencing or other audio-visual means is permitted, subject to prescribed conditions:

1. *Telephone Participation Not Counted:* If a director loses connectivity and continues through telephone/tele-conferencing, such participation cannot be considered as valid electronic mode participation. His presence will not count for quorum.
2. *Prior Intimation Mandatory:* A director intending to participate through video conferencing must give prior intimation to enable the company to make suitable arrangements. Participation without such intimation is irregular, though decisions taken are not automatically void if quorum is otherwise met.
3. *Quorum Requirement:* Quorum must be constituted by directors present either physically or validly through electronic mode. Since one director's telephone presence cannot be counted, quorum has to be re-verified excluding him.

The meeting is valid only if quorum was satisfied excluding the director connected via telephone. However, non-intimation by another director does not invalidate the meeting per se, but is a

procedural irregularity. The Company Secretary must ensure compliance in future to avoid legal challenges.

Answer 3(b)

Regulation 9A of the SEBI (Prohibition of Insider Trading) Regulations, 2015 dealing with Institutional Mechanism for Prevention of Insider trading. It provides that the Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

The internal controls shall include the following:

- (a) all employees who have access to unpublished price sensitive information are identified as designated person;
- (b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations;
- (c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;
- (d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;
- (e) all other relevant requirements specified under these regulations shall be complied with;
- (f) periodic process review to evaluate effectiveness of such internal controls.

BlueWave Pharmaceutical Ltd. must implement a multi-layered framework of preventive and detective internal controls. This system is designed to safeguard Unpublished Price Sensitive Information (UPSI) and govern trading activities. The first line of defence is the strict control over UPSI itself. Access to sensitive information must be governed by a "need-to-know" principle, enforced through a digital permissions system. This system should maintain a chronological log of all individuals who access specific UPSI, creating an audit trail with timestamps and purposes. All designated persons must execute legally binding confidentiality agreements, and the sharing of any UPSI must be mandated through secure, encrypted channels to prevent leaks. The second critical layer involves governing trading behaviour. No insider shall trade in securities when in possession of unpublished price sensitive information.

Answer 3(c)

Trinkle Manufacturing Ltd can draw important lessons from the longevity of family businesses in Germany and Japan to ensure sustainable succession and multi-generational continuity:

Translating to family or home, 'ie' represents a group of people who share a home and an economic and social life. A continuing unit of people, a group, a clan. In the case of the Japanese culture the 'ie' is more corporation than family, in that the business comes first, and the primary objective above all, is to survive and prosper. The 'ie' needs to last forever, because if it doesn't, the family doesn't either. The head of the 'ie' chooses their successor, at times overlooking their own children if they deem them less capable – it's about the survival of the tribe at all costs, no questions asked. The adoptee takes on the family name and once succession occurs will become the head of the 'ie' with full control. All other family members have been conditioned to support the head for the greater good whether they are bloodline, or not.

This strategy has been used by famous companies such as Suzuki, Canon, Kikkoman and Toyota.

The Company can adopt a hybrid approach ensuring strong family governance, professional succession planning, and merit-based selection of successors (including adoption where necessary) to achieve long-term stability, continuity, and resilience across generations.

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

Question 4

- (a) Shopo Sphere Private Ltd., a fast-growing e-commerce platform, faced challenges with inconsistent product descriptions, duplicate listings and inaccurate pricing across multiple sellers. To Address this, it implemented a strategy aimed at ensuring accuracy, consistency and compliance in all product-related data. The strategy included standardized product taxonomy, mandatory data quality checks before listings go live, and integration of AI-driven tools to detect anomalies in images, descriptions and prices. A centralized product information management (PIM) system was introduced to unify data across categories and sales channels. Regular audits, seller training programs, and defined escalation protocols for incorrect data were also part of the governance framework. As a result, customer complaints dropped by 35%, return rates decreased and search- to-purchase conversion improved. The initiative enhanced customer trust strengthened compliance with consumer protection norms, and streamlined seller onboarding, making Shopo Sphere more competitive in the crowded e-commerce market.

Outline the key points which an e-commerce business should consider for designing product data governance strategy.

(5 marks)

- (b) Ravi, a senior procurement manager at GreenTech Solutions, faced a dilemma when his Company invited bids for a multi-crore supply contract. One of the bidders, Eco Mart Private Ltd., was owned by Ravi's close friend. Eco Mart submitted the most competitive bid, offering quality products at a lower price than other vendors. However, the Company policy clearly requires employees to declare any conflict of interest and recuse themselves from related decision-making. Ravi's friend privately assured him of a generous "thank you" gift if Eco Mart secured the deal. Ravi knew awarding the contract to Eco Mart without disclosure would benefit the Company financially, but could also breach the Company's code of ethics and lead to personal and legal consequences. He had to decide whether to maintain professional integrity by reporting the conflict or act in his friend's favor and risk his reputation. Ravi was evaluating various approaches to solve his ethical dilemma. Advise Ravi.

(5 marks)

- (c) Info Trust Ltd., a leading IT-enabled services company, manages sensitive client data from global banking, healthcare, and e-commerce firms. With increasing digital transactions and reliance on cloud-based operations, the Company faces heightened risks of data breaches, unauthorized access and regulatory non-compliance. Recently, a client raised concerns after discovering that data storage practices in one of Info Trust's offshore centres did not comply with EU's General Data Protection Regulation (GDPR) norms. At the same time, domestic regulators have emphasized compliance with India's Digital Personal Data Protection Act, 2023 (DPDP Act), which requires companies to establish strong mechanisms for data privacy, security, and accountability. The Board of Info Trust recognizes that poor data governance could result in legal penalties, reputational loss, and erosion of client trust. Investors and clients alike are demanding a comprehensive data governance strategy ensuring data accuracy, transparency, privacy protection, and ethical usage. Given the developments in technology, the management suggested the use of Artificial Intelligence

(AI) in data governance.

Outline the benefits of AI powered data governance.

(5 marks)

Answer 4(a)

For E-Commerce businesses, establishing a product data governance strategy is a crucial aspect as it has a direct effect on brand reputation and revenue. When it comes to working with product data, the important part is to list out the key elements. Once that is done, they need to be treated as strategic resources.

Some of the key points to take away when coming up with a strategy are:

1. *Ease of use for all stakeholders:* Make sure that business users (everyone except developers who are hands-on with the product data) can utilize the product data easily. Avoid over-restricting data access.
2. *Transparent product data lifecycle:* When product data is moving through the stages of its entire lifecycle, transparency is a key component to the best outcome. From the initial stages of determining attributes for a particular item that will be manufactured and sold, to creating the description listing and distributing it on third-party platforms, everyone who is involved in the process should have clear communication in place that guarantees transparency.
3. *Pre-validation & assets adaptation:* To ensure high quality of product descriptions, it's important to review the information listed. Removing outdated details and updating new ones will provide an accurate product feed that in return boosts your customers' confidence in the buying decision.
4. *Controlled delivery & coverage monitoring:* The last step is the actual delivery process that requires accurate formatting for each endpoint the information is being uploaded to. Once all of the descriptions are successfully distributed throughout the external sales channels, it's important to double-check them. Review if there are any errors in the descriptions, confirm that the correct product pictures were chosen and make sure that all of the intended products were listed.

Answer 4(b)

An ethical dilemma is a problem in the decision-making process between two possible options, neither of which is absolutely acceptable from an ethical perspective. Every person may encounter an ethical dilemma in almost every aspect of their life, including personal, social, and professional.

Some examples of ethical dilemma include:

- Taking credit for others' work
- Offering a client, a worse product for your own profit
- Utilizing inside knowledge for your own profit

The biggest challenge of an ethical dilemma is that it does not offer an obvious solution that would comply with ethical norms. Throughout the history of humanity, people have faced such dilemmas, and philosophers aimed and worked to find solutions to them.

The following approaches to solve an ethical dilemma were deduced:

- Refute the paradox (dilemma): The situation must be carefully analyzed. In some cases, the existence of the dilemma can be logically refuted.

- Value theory approach: Choose the alternative that offers the greater good or the lesser evil.
- Find alternative solutions: In some cases, the problem can be reconsidered, and new alternative solutions may arise.

Any one of the following options can suit Ravi:

- He can sit out of the discussions finalizing the supplier after informing his relationship and likely conflict of interest;
- He can inform his employers about his relationship and also highlight the strengths of his friend and possibly get them to benefit from the lowest quote without direct participation.
- He can identify another supplier who can possibly match the quote of his friend and deliver an equally good product.
- There could be options beyond the above as well.

Answer 4(c)

The development of AI and machine learning in everyday business reflects the eminent role of data in management development strategies. To function effectively, AI depends on vast sets of data, which must be the subject of methodical and rigorous governance. Behind the concept of data governance lies the set of processes, policies, and standards that govern the collection, storage, management, quality, and access to data within an organization.

The role of data governance is to ensure that data is accurate, secure, accessible, and compliant with current regulations. The relationship between AI and data governance is a close one. AI models learn from data, and poor quality or biased data can lead to erroneous or discriminatory decisions.

The benefits of AI powered data governance are as under:

- **Improve Quality of Data:** Data quality is a key to any data strategy. The more reliable the data, the more relevant the lessons, choices, and orientations that emerge from it, and AI contributes to improving data quality through a number of mechanisms. In fact, AI algorithms can automate the detection and correction of errors in datasets, thereby reducing inconsistencies and inaccuracies. Moreover, AI can help standardize data by structuring it in a coherent way, making it easier and more reliable to use, compare, and put into perspective. With machine learning, it is also possible to identify trends and patterns hidden in the data, enabling the discovery of errors or missing data.
- **Automate Data Compliance:** At a time when cyber threats are literally exploding, data compliance must be a priority in an organization. But guaranteeing compliance requires constant vigilance, which can't depend exclusively on human intelligence. Especially as AI can proactively monitor potential violations of data regulations by performing real-time analysis of all data flows – detecting any anomalies or unauthorized access, triggering automatic alerts, and even making recommendations to correct any problems. In addition, AI facilitates the classification and labelling of sensitive data, ensuring that it is handled appropriately. Finally, AI systems can also generate automatic compliance reports, reducing the administrative workload.
- **Strengthening Data Security:** Through its ability to proactively detect threats by analysing data access patterns in real time, AI can alert about suspicious behaviour, such as attempted intrusions or unauthorized access. To take data governance even further, AI leverages machine-learning-based malware detection systems. These systems can identify

known malware signatures and detect unknown variants by analysing behaviour. Finally, it contributes to security by automating the management of security patches and monitoring compliance with security policies.

- Democratize Data: At the heart of the data strategy lies one objective: to encourage employees to use data whenever possible. In this way, it can foster the development of a data culture within the organization. The key to achieving this is to facilitate access to data by simplifying the search and analysis of complex data. AI search engines can quickly extract relevant information from large datasets, enabling employees to quickly find what they need. In addition, AI can automate the aggregation and presentation of data in the form of interactive dashboards making information even more accessible and easy to share.

OR (Alternative questions to Q. No. 4)

Question 4A

- (i) Suvidha and Sumedha were friends and batch mates in MBA. They started a business called 'Locosilks', a start-up which procures silk garments locally for exporting to other countries. This idea came from their strong understanding of the local sources and their niche marketing skills. They wanted to tap the unexplored local procurement and develop a robust supply chain. Explain local procurement program and its benefits.

(5 marks)

- (ii) Amanda Plc, a medium-sized UK-listed company is seeking to enhance its board-level oversight of cyber risk following the publication of the UK's new Cyber Governance Code of Practice. Nayan, a Compliance professional has been requested to advise the Company, on applying the Code's principles into Boardroom governance. In the background of UK Cyber Governance Code, advise the Company in aligning with Code's principles and reporting practices for cyber risks.

(5 marks)

- (iii) Jona Ltd., is planning to go for an IPO and appointed Vel, a Practising Company Secretary to support them in this process. During one of the meetings, Vel informed the Board of Directors of Jona Ltd., that the Company has to host certain information on its website and should provide timely updates to support investor transparency and regulatory compliance. The Board members asked Vel, to explain the key categories of information that a listed company is required to host on its website.

Prepare a brief note indicating the information that a listed company should host on its website, as per under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(5 marks)

Answer 4A(i)

Local procurement refers to the purchase of goods and services from local businesses. Typically, this occurs in emerging markets and in developed markets where local communities have expectations about participating in new opportunities (such as Australia and Canada). Also known as business linkages, local supplier development, local content or local sourcing, local procurement is increasingly favored as a strategic business tool by international companies in the extractive industries. Local procurement requires a real commitment from the company to work with and build capacity of local suppliers in a way that enables them to become more competitive and profitable. Typically, these suppliers will be small and medium enterprises (SMEs). To compete

for bidding and contracting opportunities local SMEs will often need training to bring them up to the required operational, safety, environmental and technical standards. A local procurement program (LPP) seeks to bridge the gap between the standards of the contracting company and the existing capacity of SMEs. It does this externally, through the provision of training, mentoring, and other support for SMEs, and internally, through a concerted effort to identify opportunities, communicate the business case and incentivize staff to commit to local procurement.

Local procurement can provide a range of benefits for companies, suppliers and supply chain alike:

- (a) It benefits the local suppliers: By keeping business local, the company will enjoy greater support from the community and deliver social value.
- (b) It helps meet CSR targets: Publicly procured projects have defined levels of local spend, so working with local suppliers will help the companies reach those targets.
- (c) It can shorten timeframes: With material challenges throughout the supply chain, working with suppliers that are local to the project may help reduce the time needed to source what is required.
- (d) It can help reduce costs: As fuel prices remain high, having local suppliers can lower the cost of transporting materials and reduce the logistical requirements.
- (e) It provides environmental benefits: By reducing shipping and storage, the overall environmental impact of the project (in terms of carbon footprint) is lessened.

Projects that embrace local procurement can add significant value for both the consumer and supply chain alike. By investing in local procurement, projects can directly support local economies through quantifiable apprentices, new jobs, safeguarded jobs and work placements. If the further benefits of reduced costs and lowered carbon emissions, as well as shorter and less logistically challenging pathways for material delivery and storage are factored, it is clear that taking a more localised approach to procurement can have benefits for all concerned.

Answer 4A(ii)

The Cyber Governance Code of Practice is a guiding framework developed by the UK Government to help organisations integrate cybersecurity into their overall corporate governance. The Code has been created to support boards and directors in governing cybersecurity risks. Thus, Boards must not relegate cybersecurity risk to IT teams. The Code has identified five broad areas while managing cybersecurity risks:

Risk Management: Under Risk Management, the board should ensure that the technology processes, information and services critical to the organisation have been “identified, prioritised and agreed,” that cyber risks are integrated into the “enterprise risk management and internal controls,” and that a defined “cyber risk appetite” is in place, that supplier information is “routinely” assessed and that risk assessments are conducted “regularly”.

Strategy: In Strategy, the Code mandates the board gain assurance that a “cyber strategy” is developed, aligned with broader business objectives, adheres to risk appetite of the organisation, and is effectively resourced and delivering intended outcomes. .

People: Regarding People, boards must promote “a cyber-security culture that encourages positive behaviours and accountability,” supported by clear policies and regular training and awareness programs whose effectiveness is measured using suitable metrics.

Incident Planning, Response and Recovery: For Incident Planning, Response & Recovery, the Code requires a tested “plan to respond to and recover from a cyber-incident,” regularly exercised

and iteratively improved through post-incident reviews, with clear regulatory and communication protocols in place.

Assurance and Oversight: Finally, Assurance & Oversight demands that cyber governance be structurally embedded into the organisation's governance framework, with defined roles, regular (e.g., quarterly) reporting using agreed metrics, two-way dialogue with cyber executives, and integration of cyber considerations into existing audit and assurance mechanisms.

By aligning actions precisely with all five principles of the Code, the Company elevates cyber risk to the board level, ensures comprehensive oversight, and embeds cyber resilience into its everyday governance culture.

Answer 4A(iii)

As per Regulation 46 of the SEBI (LODR) Regulation, 2015, the listed entity shall disseminate the following information under a separate section on its website:

1. details of its business;
2. Memorandum of Association and Articles of Association;
3. Brief profile of board of directors including directorship and full-time positions in body corporates;
4. terms and conditions of appointment of independent directors;
5. composition of various committees of board of directors;
6. code of conduct of board of directors and senior management personnel;
7. details of establishment of vigil mechanism/ Whistle Blower policy;
8. criteria of making payments to non-executive directors, if the same has not been disclosed in annual report;
9. policy on dealing with related party transactions;
10. policy for determining 'material' subsidiaries;
11. details of familiarization programmes imparted to independent directors;
12. the email address for grievance redressal and other relevant details;
13. contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
14. financial information;
15. shareholding pattern;
16. details of agreements entered into with the media companies and/or their associates, etc;
17. schedule of analyst or institutional investor meet at least two working days in advance;
18. Audio recordings, video recordings, if any, and transcripts of post earnings or quarterly calls, by whatever name called, conducted physically or through digital means;
19. new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;
20. items in sub-regulation (1) of regulation 47 (advertisement in the newspaper of board of directors at which the financial results were approved);
21. all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings;

22. separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year;
23. secretarial compliance report;
24. disclosure of the policy for determination of materiality of events or information;
25. disclosure of contact details of key managerial personnel who are authorized for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s);
26. disclosures under sub-regulation (8) of regulation 30 of these regulations (disclosure to the stock exchange of events or information);
27. statements of deviation(s) or variation(s);
28. dividend distribution policy by listed entities based on market capitalization;
29. annual return;
30. Employee Benefit Scheme Documents, excluding commercial secrets and such other information that would affect competitive position of the listed entity.

PART-II

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

Question 5

Keyor Infoware Private Ltd., a Bengaluru-based technology company, has grown significantly in the last decade, specializing in artificial intelligence, data analytics, and enterprise software solutions. Founded by a group of IIT graduates, it now employs over 1,200 people and reported a turnover of ₹ 220 crore in the last financial year. The Company services global clients in sectors such as banking, healthcare, and e-commerce and is gradually emerging as a recognized player in the technology consulting space. However, the rapid growth has exposed the Company to several governance and risk management challenges. Recently, a fraudulent financial transaction was detected within the accounts department. An employee, in collusion with an external vendor, manipulated invoices and diverted funds over a period of six months. Although the fraud was identified and reported, the incident raised questions about the adequacy of internal controls and fraud prevention mechanisms.

In another instance, the Company faced a major reputation risk when an overseas client posted negative feedback on social media regarding project delays. The post went viral within hours, leading to adverse commentary and speculation about the Company's delivery capability. The management realized that while technical expertise was its strength, Keyor lacked a robust framework for crisis communication and reputation management.

In a subsequent Board meeting, directors emphasized the need for a structured risk assessment framework covering financial, operational, reputational, compliance and information security risks. They insisted that risk assessment should not be a one-time exercise but an ongoing process integrated into corporate governance practices. Further, with turnover at ₹ 220 crore and borrowings standing at ₹ 80 crore, the Board sought clarity on the applicability of internal audit provisions under the Companies Act, 2013 and whether the company was now statutorily required to appoint an internal auditor. The Board also appointed a Company Secretary with the mandate to strengthen governance and compliance mechanisms.

Based on the above facts, answer the following questions :

- (a) Explain in brief the risk management process.
- (b) Elaborate the fraud risk management processes, that should be implemented to prevent frauds or such other incidents.
- (c) Outline the key principles of reputation risk management and their application in addressing negative stakeholder feedback in an organization.
- (d) With reference to provisions of Companies Act, 2013, evaluate whether the Company is required to appoint an internal auditor.

(5 marks each)

Answer 5(a)

Risk Management is a systematic process to identify, analyze, and evaluate risks that may affect the achievement of an organization's objectives. For a growing technology company like Keyor Infoware, the recent incidents of fraud and reputational challenges highlight the importance of institutionalizing the following process of Risk Management:

The process of Risk Management consists of the following sequential steps:

- Risk Identification
- Risk Analysis
- Risk Assessment
- Risk Handling.

Risk Identification: This process identifies the potential risks that can impact a business. The following steps are involved:

- Create a systematic process of identification of risks
- Gather Information from various sources about the risks and their potential.
- Use risk identification tools and techniques to sharpen the identification process.
- Document the risks in a risk register including therein causes and consequences.
- Document the identification process as well
- Regularly assess the effectiveness of the process undertaken

Risk Analysis: The next step is to analyse the risks identified in terms of their likelihood and impact. There are two sub-steps here: Identify the Threat and Estimate Risk. Threats can be of various types: human, operational, procedural, reputational, project related, financial, environmental, political or structural. Once the threats are identified it is necessary to determine the likelihood of their materialising. We then calculate the Risk Value of each risk using the formula: Risk Value = Event Probability * Event Cost.

Risk Assessment: The next step is to determine the importance of each risk to the overall objectives of the business. The sub-steps in Risk Assessment include the following:

Setting uniform evaluation standards across all business units and projects.

- Risks then should be assessed qualitatively and quantitatively Once risks are assessed, Keyor must assess the impact of interactions of these risks Risks then are prioritised in terms of their impact and interaction.

Risk Handling: The last step in the risk management process is handling the risk. There are various options here:

- Risk Avoidance: Business can avoid the risk altogether by not being present in the area involving such risk.
- Risk Acceptance: Business sees the risk but goes ahead acknowledging that the returns are better if the activity is executed correctly.
- Risk Reduction: Business works to see how the impact of a risk can be reduced from its original assessment using better processes or innovation.
- Risk Transfer: Insurance is a common form of Risk Transfer where the Insurance Company agrees to bear the risk. Another methodology is entering into contracts which transfer the risk to the other party e.g., a supplier.

Thus, a structured risk management process not only helps Keyor Infoware in preventing financial and reputational losses but also ensures long-term sustainability

Answer 5(b)

A structured approach to lowering fraud in an organisation is called Fraud Risk Management. Fraud Risk management involves institutionalizing the following processes, very much required for Keyor Infoware:

Identifying Risks:

- The first step is to identify areas and personnel most susceptible to fraud.
- For Keyor Infoware, departments such as accounts, procurement, and vendor management are high-risk areas.
- Employee brainstorming, workshops, and historical data analysis can be used to anticipate potential fraud strategies.
- Once identified, risks should be prioritized, focusing on those that could cause significant financial or reputational loss.

Assessing Risks:

- After identification, Keyor must evaluate the impact and root causes of each risk.
- Understanding the origin of fraudulent activities, such as collusion with vendors, helps in designing preventive controls.
- Assessment should also consider the potential effect on financial performance, client confidence, and compliance obligations.

Responding to Risks:

- Keyor should develop mitigation strategies such as stronger internal controls, segregation of duties, and approval hierarchies.
- Assign responsibility for executing risk mitigation plans and ensure corrective action is implemented promptly.
- Consider strategies to prevent recurrence of similar frauds, e.g., automated transaction monitoring or audit trails.

Monitoring and Reviewing Risks:

- Fraud risk management is continuous and dynamic. Keyor must regularly monitor controls, review risk mitigation effectiveness, and adjust strategies to emerging threats.

- New risks may arise at any time; timely detection ensures proactive management.

Reporting Risks:

- Effective communication to the Board and Audit Committee is critical.
- Keyor should maintain objective, transparent reporting, highlighting key risks, incidents, and mitigation measures.
- Reports should include recommendations to minimize fraud likelihood and improve governance.

By implementing these structured Fraud Risk Management Processes, Keyor Infoware can not only prevent financial losses but also strengthen stakeholder trust, corporate governance, and operational resilience.

Answer 5(c)

Reputation Risk is the risk arising out of the negative perception of any of the stakeholders about an organisation. Reputation Risk Management (RRM) is critical to protect stakeholder trust, corporate credibility, and long-term sustainability. In the context of an organization facing negative client feedback or public criticism, the following principles are essential:

- Integration of risk while formulating business strategy.
- Effective board oversight.
- Image building through effective communication.
- Promoting compliance culture to have good governance.
- Persistently following up the Corporate Values.
- Due care, interaction and feedback from the stakeholders.
- Strong internal checks and controls Peer review and evaluating the company's performance.
- Quality report/ newsletter publications.
- Cultural alignments.

Application to Keyor Infoware:

- i. Negative social media feedback about project delays highlighted weaknesses in reputation management.
- ii. By applying these principles, Keyor can proactively manage stakeholder perceptions, address concerns transparently, and reinforce trust in its capabilities.
- iii. Effective RRM ensures the organization mitigates reputational losses while maintaining operational continuity and long-term credibility.

A structured Reputation Risk Management framework is vital for organizations to safeguard their image, maintain stakeholder confidence, and align corporate actions with strategic and ethical objectives.

Answer 5(d)

As per Section 138 of the Companies Act, 2013, read with Rule 13 of the Companies (Accounts) Rules, 2014, the following classes of companies are required to appoint an internal auditor which may be either an individual or a partnership firm or a body corporate:

Listed Companies - Every company whose shares are listed on a recognized stock exchange.

Unlisted Public Companies - Any unlisted public company meeting any one of the following criteria:

- Paid-up share capital of ₹50 crore or more during the preceding financial year.
- Turnover of ₹200 crore or more during the preceding financial year.
- Outstanding loans or borrowings from banks or public financial institutions exceeding ₹100 crore at any point of time during the preceding financial year.
- Outstanding deposits of ₹25 crore or more at any point of time during the preceding financial year.

Private Companies - Any private company meeting either of the following criteria:

- Turnover of ₹200 crore or more during the preceding financial year.
- Outstanding loans or borrowings from banks or public financial institutions exceeding ₹100 crore at any point of time during the preceding financial year.

Existing companies meeting the above criteria must comply within six months of the commencement of Section 138.

Applicability to Keyor Infoware Pvt. Ltd.:

- Turnover: ₹220 crore in the last financial year → exceeds ₹200 crore threshold for private companies.
- Borrowings: ₹80 crore from banks → below the ₹100 crore threshold.
- Status: Private company → Section 138(c)(i) applicable.

Thus,

- Keyor Infoware Pvt. Ltd falls within the prescribed threshold for mandatory internal audit due to its turnover exceeding ₹200 crore.
- The company is therefore required to appoint an internal auditor as mentioned above.
- The scope of internal audit should include financial reporting, fraud risk management, internal controls, and compliance with corporate governance standards to strengthen overall organizational oversight.

OR (Alternative questions to Q. No. 5)

Question 5A

Sepay Technologies Ltd., a Pune-based multinational IT services firm, had earned a reputation for its cutting-edge solutions in cloud computing and artificial intelligence. With over 12,000 employees and clients in 25 countries, the Company was considered a trusted partner in digital transformation initiatives. The Company had good processes and procedures in place which would help them navigate any unforeseen circumstances.

In March 2025, Sepay faced a critical challenge when a sophisticated ransomware attack locked its central client management system. Payroll operations were stalled, sensitive customer data was at risk and employees could not access emails or work files for the first 48 hours, leading to widespread panic. The Board immediately activated the Crisis Management Plan (CMP). A cross-functional crisis committee, including finance, HR, IT, and marketing heads, was tasked with responding. The Finance Manager ensured emergency funds were released to hire external cybersecurity experts and kept regulators informed to maintain compliance. HR focused on employee morale, establishing alternative communication channels and ensuring salaries were processed via backup systems. Marketing and PR teams communicated proactively with clients, mitigating reputational

risk. Simultaneously, the Business Continuity Plan (BCP) was implemented. Sepay had previously identified critical functions client support, payroll and internal communications as “essential services.” Within 72 hours, makeshift systems supported priority client accounts. Off-site data backups enabled partial restoration of operations. The BCP also guided coordination with vendors and cloud service providers, minimizing disruption in client service delivery. The Disaster Recovery Plan (DRP) proved equally crucial. It outlined steps to restore IT infrastructure and mitigate technical losses. The IT team, working with external experts, isolated infected systems, cleaned servers and restored data from secure backups. Thanks to these coordinated efforts, Sepay was able to restore 80% of operations within two weeks, regaining client confidence. This incident highlighted the interdependence of CMP, BCP, and DRP. While the CMP enabled immediate decision-making and communication, the BCP ensured business continuity and the DRP provided technical restoration. Post-incident, the Board recognized the need to strengthen client communication and conduct regular simulation testing.

The cyberattack became a turning point for Sepay. The Company institutionalized quarterly simulation drills, upgraded data security protocols and refined the CMP to include social media crisis management. Leadership acknowledged that without these pre-designed frameworks, Sepay’s reputation and financial stability could have suffered irreparable damage. There was a detailed discussion about the event and the risks being addressed. One of the board members suggested that, risk transfer should be considered rather than risk reduction. Further the Board and the management were keen to appoint a consultant who would do a risk analysis and submit a detailed report highlighting various aspects of governance risks as well. One of the directors, who was on Board of another conglomerate, mentioned to the board members that the risks are not limited to cyber security risk or governance risks alone, they even include climate risk.

In the background of above facts, answer the following questions :

- (i) Distinguish between risk transfer and risk reduction.
- (ii) Explain the cyber security risk management process.
- (iii) What are the changes and improvements, which the Company should put in place to address cyber security risks.
- (iv) Explain climate risk and outline the steps involved in climate risk management process. (5 marks each)

Answer 5A (i)

Risk Reduction: Physical risk reduction, also known as loss prevention, is frequently the most effective way to handle any risk situation, and in most cases, it is possible to take precautions to lower the likelihood of loss. The planning stage of any project or business is the optimal time to consider risk reduction methods because this is the phase when a significant improvement may be made with little or no additional expense. The cautious remark regarding risk reduction is that expenditures should, to the extent possible, be tied to potential savings in losses and other risk costs in the future; in other words, risk reduction exercises generally should be evaluated in the same way as other investment projects.

Risk Transfer: In risk transfer, the cost of certain possible losses are being legally assigned to another party. As it deals with risks that may be transferred to a company that specialises in absorbing them for a fee, “risks insurance” is to occupy a significant position. Typically, there are three main ways to transfer losses:

- By Tort
- By contract other than insurance

- By contract of insurance.

The main method of risk transfer is insurance.

Answer 5A(ii)

Cyber Security Risk Management is the process of protecting an organisation's computers, phones, networks and data from hackers and malware so that the digital operations of the organisation continue unhindered. The following are the steps involved in the cyber security risk management process:

- Identify the risks that might compromise your cyber security. This usually involves identifying cyber security vulnerabilities in your system and the threats that might exploit them.
- Analyse the severity of each risk by assessing how likely it is to occur and how significant the impact might be if it does.
- Evaluate how each risk fits within your risk appetite (your predetermined level of acceptable risk).
- Prioritise the risks.
- Decide how to respond to each risk. There are generally four options: – Treat – modify the risk's likelihood and/or impact typically by implementing security controls. – Tolerate – make an active decision to retain the risk (e.g., it falls within the established risk acceptance criteria). – Terminate – avoid the risk entirely by ending or completely changing the activity causing the risk. – Transfer – share the risk with another party, usually by outsourcing or taking out insurance.
- Since cyber risk management is a continual process, monitor your risks to ensure they are still acceptable, review your controls to ensure they are still fit for purpose, and make changes as required.

Remember that your risks continually change as the cyber threat landscape evolves, and your systems and activities change.

Answer 5A(iii)

The Company can consider implementing the following controls to address cyber security risks:

Technical Controls:

- Email filters
- Antivirus software update
- Local and cloud data backup
- Firewall updates
- Administrative access restrictions
- HIPAA policy and procedure controls addressed

Employee Awareness Training:

- Recognizing suspicious emails
- Downloading from unfamiliar websites
- Recognizing phishing attempts
- Using approved portable storage devices

- New employee HIPAA security and privacy training
- Physical safeguards for data
- Updated policies and procedures enacted

Disaster Response and Business Continuity Planning:

- Data backup plan
- Backup testing
- Disaster recovery plan

Monitor Staff Usage and Practices:

- Phishing assessments
- User activity monitoring
- Security assessments
- Compliance requirement adherence
- Verify cybersecurity capability and knowledge of IT employees

Insurance review:

- Update professional liability insurance for data breaches
- Review cyber insurance for coverage for data breaches and response

Answer 5A(iv)

Globally, weather and climate-related risks, which potentially cause loss and damage, have increased dramatically over the past few decades. The most recent climate projections indicate a significant increase in the frequency, duration and intensity of extreme weather events as well as severe slow-onset climate related changes. These pose a growing risk to sustainable development of communities and countries. Internationally there is an increasing recognition that adaptation and mitigation may not be enough to manage the impacts of climate change and both climate science and the international climate negotiations stress the urgent need to develop and implement effective climate risk assessment and management approaches in order to avert, minimize and address losses and damages

The six-step climate risk management (CRM) process operationalises climate risk management at scale

- Assess and match information needs with risk management objectives.
- Define System of Interest.
- Develop context-specific methodology.
- Risk identification to identify low and high-levels of climate-related risk.
- Risk evaluation to identify acceptable, tolerable and intolerable risks.
- Assessment of risk management options.

PART-III

Question 6

- (a) Apex Appliances Ltd., a mid-sized listed Indian company engaged in the manufacture of consumer electronics, is in the process of preparing its first Business Responsibility and Sustainability Report (BRSR) pursuant to the disclosure requirements notified by the Securities and Exchange Board of India (SEBI). The Board of Directors have recognized that sustainability

and responsible business conduct are no longer matters of voluntary choice but essential obligations for listed companies. Consequently, the Board has instructed the Company Secretary to take a leading role in guiding senior management in implementing the BRSR Core framework in a way that adds real value to stakeholders. The decision to embark upon formal sustainability reporting has generated considerable discussion within the Company. Apex has enjoyed consistent profitability and a stable market presence, but sustainability has never been formally integrated into its strategy. The Company Secretary highlighted that BRSR is not only about regulatory compliance but also about demonstrating to investors, customers and society that the business is being conducted in a responsible and transparent manner. The Board concurred that disclosures made under the BRSR must be decision-useful, comparable across periods and benchmarked against peers to build investor confidence. During the initial scoping exercise, Apex identified several practical challenges. This led to confusion within the Company regarding alignment and applicability. Despite these hurdles, the leadership of Apex Appliances is convinced that credible and well-structured sustainability disclosures can generate long-term reputational capital, enhance investor trust and help secure regulatory goodwill. In addition, ESG-sensitive institutional investors are increasingly demanding transparency before allocating funds and customers are also more inclined towards brands perceived as responsible.

The Company Secretary has therefore emphasized that Apex must avoid treating BRSR as a tick in the box exercise. Instead, it should use the framework to systematically integrate ESG considerations into its corporate governance, risk management and strategic decision-making. The report should highlight not just policies on paper but actual practices, measurable outcomes and forward-looking targets. As Apex prepares its maiden BRSR, the management must carefully decide on the approach, scope and processes to be adopted. It must also develop systems for data accuracy, consistency and verification, as stakeholders will expect reliability in disclosures.

In this background, answer the following :

- (i) As the Company Secretary of Apex Appliances Ltd., explain the approach adopted for developing the BRSR Core framework. Further, identify the practical challenges that the Company may face in implementing BRSR reporting.
- (ii) Discuss the nature of disclosures mandated under the Business Responsibility and Sustainability Report (BRSR) framework.

(4+4=8 marks)

- (b) Sena, a senior academician was part of research team of KITE University and was involved in research about Environmental, Social and Governance (ESG) and its relevance to current day business. He presented a paper in a Seminar titled 'ESG—Current trends', wherein he highlighted various aspects of ESG and its relevance. He explained that with increasing global focus on sustainability and responsible business conduct, ESG has emerged as a critical area for corporate strategy and compliance. In the United States, Europe, the Middle East, and Africa, new regulations are being introduced to ensure that companies truly meet ESG requirements instead of resorting to "greenwashing." By 2024, ESG investments reached nearly \$12.4 trillion in the U.S., highlighting the importance of this trend. The U.S. SEC has proposed mandatory disclosures on Scope 1 and Scope 2 carbon emissions, while Europe's Corporate Sustainability Reporting Directive (CSRD) requires over 50,000 companies to comply with ESG disclosure norms. With the increasing global emphasis on sustainability, 2025 marks a significant shift in the regulatory landscape as companies prepare for an influx of new ESG reporting mandates and disclosure requirements. Organizations are expected not only

to demonstrate compliance but also to proactively integrate ESG considerations into their long-term business strategy. He emphasised that ESG reporting is of great relevance to the business and community at large. While the session was insightful, some of the participants had few questions.

In the background of above facts, answer the following :

- (i) Outline the importance of ESG reporting.
- (ii) Explain the key changes that companies must establish to effectively prepare for the challenges posed by evolving ESG reporting mandates.

(3+4=7 marks)

Answer 6(a)(i)

The BRSR Core framework has been developed with the objective of ensuring that sustainability disclosures made by listed entities are decision-useful, consistent, and comparable. Its approach emphasizes: -

- i) Quantifiable and outcome-oriented metrics

The Key Performance Indicators (KPIs) sought in the BRSR Core are quantifiable to the extent possible, so as to facilitate comparability of the disclosures. The KPIs also incorporate metrics that are reflective of sustainable outcomes in companies. For instance, one of the metrics recommended by the Committee was 'gross wages by gender' which was reflective of whether a company has gender diversity practices which attract and retain women in its workforce.

- ii) Relevance of the attributes / areas in the BRSR Core

The BRSR Core contains factors that are relevant to both the manufacturing and service factors and are relevant in the Indian context. Therefore, under the 'S' parameters, attributes such as job creation, and inclusive development have been considered. The 'G' parameter included openness / concentration of business including related party transactions.

- iii) Comparability across jurisdictions

The KPIs in the BRSR Core, contain a number of intensity ratios, such as intensity of Green-House Gas (GHG) emissions, water consumption, waste generation etc., so as to enable comparability, irrespective of the size of the company.

Challenges in BRSR Reporting faced by Apex Appliances Ltd.:

While the BRSR Core provides a strong framework, Apex Appliances Ltd. may face the following practical challenges in its first reporting cycle:

1. *Diverse Views on Sustainability:* Since there is no universally accepted definition of sustainability, the scope becomes very wide. This makes it overwhelming for the company to collate extensive information and structure it in a meaningful way.
2. *Multiplicity of Reporting Standards:* Globally, several sustainability reporting frameworks exist such as CDP, CDSB, GRI, IIRC, and SASB. Each framework has its own emphasis, leading to difficulties in harmonizing Apex's disclosures with global practices while remaining SEBI compliant.
3. *Time-Consuming Nature of Reporting:* Sustainability reporting requires vast data on environmental, social, and governance parameters. For a mid-sized company like Apex, gathering and validating such information across functions is resource- and time-intensive.

4. *Lack of Internal Awareness and Coordination:* Employees and management may have limited understanding of sustainability concepts. Without adequate training and proper coordination across departments, inconsistencies in data collection and reporting may arise, impacting the credibility of disclosures.
5. *Uncertain Financial Return on Investment:* While stakeholders often reward companies that demonstrate sustainable practices, there is no clear or immediate financial proof of returns. This uncertainty may make senior management hesitant about investing heavily in sustainability initiatives.

Thus, for Apex Appliances Ltd., while the BRSR Core offers a robust structure for credible sustainability disclosures, the company must address these operational, educational, and strategic challenges to ensure that reporting reflects genuine performance rather than being a compliance formality.

Answer 6(a)(ii)

The Business Responsibility and Sustainability Report (BRSR) framework mandates that listed entities provide comprehensive disclosures reflecting their economic, environmental, social, and governance practices. Unlike traditional financial reporting, BRSR emphasizes transparency and accountability across all dimensions of business responsibility, enabling stakeholders to make informed, decision-useful assessments.

- a) At the general level, entities are expected to disclose quantitative and qualitative KPIs, including principal business activities and products/services, markets served, locations of plants and offices, types of customers, contribution of exports, and R&D and capital expenditure on technologies that improve ESG outcomes. Trade and industry affiliations, along with an overview of material responsible business conduct issues, specific ESG commitments and performance, and external evaluations of ESG policies, form the broader disclosure landscape. These disclosures allow stakeholders to understand the strategic orientation, operational scale, and commitment to responsible business practices. For instance, a company reporting R&D investments in energy-efficient technologies signals both innovation and environmental accountability to investors.
- b) Under the environmental dimension, key disclosures include material environmental impacts, energy and water consumption and intensity, GHG emissions (scope 1 to 3) and related reduction initiatives, plastics and waste management, sustainable input sourcing, life cycle assessments, operations in ecologically sensitive areas, and compliance with environmental laws. Other notable disclosures relate to disaster management and business continuity plans. For example, a manufacturing company disclosing reduced water intensity and implementation of 3Rs waste management demonstrates proactive resource stewardship, enabling comparability and trust among stakeholders.
- c) The social dimension emphasizes human capital and community impact. Entities report on remuneration, return-to-work and retention rates, union memberships, occupational safety and health (OSH), safety incidents, human rights due diligence, employee grievance mechanisms, trainings on ESG/OSH, product recalls, CSR beneficiaries, and consumer rights protection. Policies on cyber security and data privacy also fall under this domain. Such disclosures allow stakeholders to evaluate workforce welfare, social inclusivity, and community engagement. For instance, reporting grievance redressal mechanisms and employee safety initiatives signals robust social responsibility and risk management.
- d) Governance disclosures focus on anti-bribery and corruption measures, conflicts of interest involving directors or key management personnel, stakeholder engagement processes, and related corrective actions. Transparent reporting in governance aspects enhances stakeholder confidence in ethical decision-making and regulatory compliance.

In essence, BRSR disclosures enable listed entities to present a transparent, comparable, and decision useful profile. Through standard KPIs and structured reporting, stakeholders can assess operational efficiency, ESG performance, ethical governance, and social impact across companies and sectors. For example, benchmarking GHG emissions or water usage per unit of production across firms allows investors to identify best practices and sustainable performers.

Answer 6(b)(i)

Importance of ESG Reporting

- **Raises Corporate Transparency:** It broadens organisational disclosure beyond traditional financial metrics and raises corporate transparency on environmental and social metrics. Sustainability reporting allows a balanced and understandable assessment of the company's performance by stakeholders to facilitate corporate accountability, as promulgated by one of the principles under the Code of Corporate Governance.
- **Strengthens Risk Management:** Sustainability reporting allows listed companies to consider emerging risk areas and to identify opportunities presented by risks that are overlooked by other analytical and system driven approaches. A risk management approach that incorporates sustainability provides management with useful data for identifying emerging issues and developing appropriate responses that help protect corporate reputation and improve shareholder value.
- **Promotes Stakeholder Engagement:** Identification of and engagement with stakeholders are fundamental to sustainability reporting and are cited as critical steps by various international sustainability frameworks. Listed companies need to identify their stakeholders to effectively engage those that are interested in and affected by the company's sustainability performance. Given the varied nature and interests of stakeholders such as shareholders, employees, customers, suppliers and communities, stakeholder engagement enables the company to take into account the Information needs of various stakeholders with regards to the disclosure of sustainability related information.
- **Improves Communications with Stakeholders:** By broadening disclosure beyond financial disclosure to include non-financial disclosure of environmental and social interaction and impact, the company provides a framework for measuring non-financial performance. It also gives guidance on the opportunities and threats faced in managing non-financial risks. Sustainability reports can be used for benchmarking and assessing sustainability performance with regard to existing frameworks, demonstrating how the organisation influences and is influenced by expectations about sustainable development, and facilitating peer comparison over time and enabling communication with stakeholders.

Answer 6b(ii)

Key changes that companies must establish to effectively prepare for the challenges posed by evolving ESG reporting mandates are as under:

- **Appoint a Chief Sustainability Executive:** The initial impact of these regulatory changes will result in companies making more of a cross-functional effort to understand what needs to happen internally to meet the moment. This will require businesses to build out teams with sustainability roles, from coordinators to C-level executives. Chief sustainability officers will be critical in influencing, communicating, and cutting through organizational complexity to allow their company to deliver on ESG commitments. People generally support the idea of working or living more sustainably until it involves them having to change their behaviors. And this is true in the corporate world as well. Many employees will be slow to adapt to new policies or focus on the difficulties involved with changing operational processes to be a

more sustainable business, including how it deals with the IT asset end-of-life phase, which requires it to move from a destruction mindset to a reuse/recycle process. It's up to the chief sustainability officer to cut through those obstacles while also continually making an effort to push for change. Once employees are informed and supportive of the goal, they are much more likely to be cooperative with the steps required to get there. This may take some creativity on the part of the chief sustainability executive, for example, including the company's achievement of its ESG goals as an element of employee bonuses could be a true motivator that links teams together to meet a common goal.

- *Create an ESG Policy Budget:* New ESG regulations will require organizations to hire people for key roles to implement new policies and to partner with companies that will help them achieve sustainability objectives. The first push-back on change is the lack of budget for making these changes; however, for sustainability policies to be successful, a budget must be set aside, and this will require the CFO's buy-in to make it happen. Justifying the spending may take some convincing, yet many of the changes could potentially save money. For example, extending the life of IT assets will result in purchasing fewer new computers, hard drives, and laptops each year.
- *Assess Partners' Sustainability Practices:* With the clear mandate for carbon footprint reduction, companies must now evaluate their supply chain in detail to ensure partners operate sustainably. This assessment goes beyond tangible suppliers like equipment or utilities to include service providers such as accountants and insurers. Since a company's footprint is impacted by its partners, it is vital that each of them takes measurable steps to cut emissions. With governments worldwide tightening regulations and separating genuine sustainability efforts from "greenwashing," companies that ignore this shift risk being left behind. Though compliance may demand time and resources, organizations that proactively align with net-zero goals will not only future-proof their businesses but also strengthen stakeholder trust and investor confidence.

DRAFTING, PLEADINGS & APPEARANCES

GROUP 1 PAPER 2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

(a) Hoskerehalli Technologies Limited, a software company, has been penalized by the Competition Commission of India (CCI) for abuse of dominant position under Section 4 of the Competition Act, 2002. The Managing Director of the company, S.P Indra, is currently residing in Abu Dhabi, UAE. Since he is unable to be physically present in India, he proposes to authorize the Company Secretary, Naveen Rathod, through a General Power of Attorney (GPA), to represent the company in appellate proceedings against the CCI order. In light of the above, explain the following :

- (i) Before which appellate authority can Hoskerehalli Technologies Limited challenge the order of the CCI ?
- (ii) Can Naveen Rathod, Company Secretary, validly represent the company before the appellate authority on the strength of a General Power of Attorney ?
- (iii) Draft a specimen clause of the GPA authorizing the Company Secretary to appear and act before the appellate authority.

(5 marks each)

(b) On 15 February 2022, Ramesh entered into a registered agreement with Suresh for the sale of 12 acre of agricultural land situated at Arsikere village for a total sale consideration of ₹ 72 lakh. An advance of ₹ 12 lakh was paid by registration of the sale deed.

Subsequently, it was discovered that out of the 12 acre, 3 acre had already been acquired by the State Government for a public irrigation project prior to the date of agreement, though this fact was unknown to both parties when the contract was executed. When the time came for performance, Ramesh refused to execute the sale deed, contending that the contract had become impossible to perform in its entirety and therefore, no decree for specific performance could be granted.

Suresh, however, filed a suit for specific performance before the Civil Court, claiming that at least 9 acre of the land can still be conveyed to him, and he is willing to pay the proportionate consideration for the same while relinquishing his rights in respect of the 3 acre which cannot be conveyed. In light of the above explain the following :

- (i) Whether Suresh is entitled to a decree of specific performance of the contract under the provisions of the Specific Relief Act, 1963, particularly Section 12.
- (ii) What are the principles, statutory limitations, and judicial considerations the court should examine while deciding whether to grant or refuse specific performance in this case ?

(5 marks each)

Answer 1(a)(i)**Appellate Authority under the Competition Act, 2002**

According to section 53B of the Competition Act, 2002 (the Act), the Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.

Section 53A of the Act empowers National Company Law Appellate Tribunal to hear and dispose of appeals against the direction issued or decision made or order passed by the Competition Commission of India (CCI).

Accordingly, Hoskerehalli Technologies Limited may approach the NCLAT against the CCI's order.

Answer 1(a)(ii)**Validity of Representation by Company Secretary through General Power of Attorney (GPA)**

Section 53S of the Competition Act, 2002 permits parties to appear before National Company Law Appellate Tribunal (NCLAT) in person or through authorized representatives, which include Company Secretaries, Chartered Accountants, Cost Accountants, legal practitioners or any of its officers.

The Powers-of-Attorney Act, 1882 read with the Indian Contract Act, 1872 recognizes the legality of a duly executed General Power of Attorney (GPA). A General Power of Attorney executed by the Managing Director (or the Board, as applicable) authorising the Company Secretary to represent the company, file pleadings, and appear before judicial or quasi-judicial authorities is legally valid.

Hence, Naveen Rathod, being a qualified Company Secretary and proposed to be duly authorized through a General Power of Attorney executed by S.P. Indra, the Managing Director, can lawfully represent Hoskerehalli Technologies Limited before NCLAT after the authorization.

Answer 1(a)(iii)**Specimen clause of the GPA authorizing the Company Secretary to appear and act before appellate authority**

I, S.P. Indra, Managing Director of Hoskerehalli Technologies Limited, a company incorporated under the Companies Act, 2013, CIN: XXX, having its registered office at 123, XYZ, do hereby nominate and appoint Naveen Rathod, Company Secretary of the said Company, as my true and lawful Attorney to represent Hoskerehalli Technologies Limited before the National Company Law Appellate Tribunal (NCLAT), New Delhi, or any Bench thereof, in connection with appeals, applications, interlocutory proceedings, or any other proceedings arising out of or relating to the order passed by the Competition Commission of India under the Competition Act, 2002.

My said Attorney is hereby authorized to sign, verify, file and present appeals, petitions, applications, affidavits, vakalatnamas, pleadings, statements, documents and other papers; to engage or instruct advocates, counsels or solicitors; to appear, plead and act on behalf of the Company; to do all such acts, deeds and things as may be necessary or incidental for effectively prosecuting or defending the proceedings before the Appellate Tribunal, and to generally represent the Company before all judicial, quasi-judicial and regulatory authorities in connection therewith.

I undertake to ratify and confirm all acts done by my said Attorney in pursuance of this authority.

Answer 1(b)(i)

The issue before the Court is whether Suresh can compel Ramesh to specifically perform the contract in respect of 9 acres of land despite the fact that 3 acres had already been acquired by the State Government prior to the execution of the agreement. Under Section 10 of the Specific

Relief Act, 1963(the Act), specific performance of a contract is the general rule subject to the limitations prescribed under Sections 11(2), 14, and 16. However, Section 12 deals with situations where a party is unable to perform the whole of the contract.

Section 12(1) of the Act provides that except as otherwise hereinafter provided in this section, the court shall not direct the specific performance of a part of a contract.

Sections 12(2) to 12(4) provides the provisions where partial specific performance may be allowed.

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

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

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

- (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b) pays or has paid the consideration for the whole of the contract without any abatement; and
- (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

Section 12(4): When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the court may direct specific performance of the former part.

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

In the given situation:

Out of 12 acres, 3 acres (25%) cannot be conveyed as the land ceased to exist in the ownership of the vendor at the time of performance.

Since 9 acres still exist and can be transferred, Suresh is willing to accept them and relinquish his claim over the unperformable portion (3 acres).

The present case squarely falls under Section 12, which applies where a part of the contract cannot be performed, the unperformable part is not capable of compensation in money, and the part which can be performed forms a substantial portion of the contract, and the plaintiff relinquishes all claims to the unperformable part and agrees to pay the full or proportionate consideration for the part that can be performed.

In this case, the land measuring 3 acres had already been acquired by the State prior to the agreement. Hence, performance in respect of that portion has become legally impossible, not due to any fault of the purchaser.

The remaining 9 acres are identifiable, available, and capable of conveyance. Suresh has expressly stated his willingness to relinquish his claim over the 3 acres and to pay proportionate consideration for the remaining 9 acres. Thus, the statutory conditions under Section 12 stand satisfied.

In view of the above mentioned discussions, Suresh can be entitled to decree of specific performance to the extent of 9 acres.

Answer 1(b)(ii)

The general principle which court can consider in this case is “Specific Performance Must Be of the Whole Contract”

Section 12(1) of the Specific Relief Act, 1963 lays down the general rule that except as otherwise provided in this section, the court shall not direct the specific performance of a part of a contract.

This means that ordinarily, courts do not enforce fragmented or partial performance of a contract. Specific performance is an equitable remedy and is granted only when the entire contract can be performed as agreed.

The present case falls within the exception/ limitation carved out under Section 12, which reads:

(3) Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either—

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

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

- (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b) pays or has paid the consideration for the whole of the contract without any abatement; and
- (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

Section 12(4) also substantiates the right in this matter.

Further, while deciding whether to grant specific performance, the court can consider the following judicial considerations:

- (i) Readiness and willingness of the plaintiff under Section 16(c) of the Specific Relief Act, 1963
 - Suresh has shown continuous readiness by offering proportionate consideration.
- (ii) Absence of unfair advantage or hardship
 - Granting partial performance does not impose any inequitable burden on Ramesh.
- (iii) Conduct of parties
 - The defect in title was not caused by Suresh; it existed prior to the agreement.
- (iv) Equitable nature of the remedy
 - Equity favours enforcing lawful contracts rather than allowing a party to escape obligations due to technical or partial impossibility.

Alternate Answer

Specific performance is an equitable, though now generally available, remedy and is not granted where damages in money would afford an adequate relief, particularly considering the unique

nature of immovable property and the parties' conduct. While applying Section 12 in cases of partial impossibility, the court should ensure:

- The plaintiff is not in default and has been continuously ready and willing to perform his part of the contract, including paying the stipulated or proportionate price.
- The part that cannot be conveyed (here, 3 acres already acquired by the State) is clearly severable and capable of valuation in money so that fair compensation or abatement of price can be given, without causing undue hardship or injustice to the defendant beyond what was contemplated at the time of contract.

The plaintiff expressly relinquishes all claims to further performance regarding the portion that cannot be conveyed and to any compensation for loss of that part, as required under Section 12(3).

Conclusion

The Court should decree specific performance of the contract to the extent of 9 acres of land in favour of Suresh, subject to payment of proportionate consideration. Suresh's claim over the 3 acres already acquired by the Government should stand relinquished, and no compensation should be awarded for the deficiency.

Thus, applying the above discussed provisions, the decree for partial specific performance is justified.

Question 2

X, the owner of an agricultural land, borrowed ₹ 5 lakh from Y. To secure the loan, X executed an Usufructuary Mortgage in Y's favour, putting Y in possession of the land with the right to collect rents and profits until repayment. After 7 years, X offered to repay the principal amount along with agreed interest and demanded back possession of his land. Y refused, claiming that unless X pays an additional sum for the improvements Y had made to the land, he is not bound to deliver possession. Y also claimed that since X had failed to repay the loan within 5 years (the time fixed in the mortgage deed), he had become the absolute owner of the property.

Based on the facts as above, answer the following :

- (i) What are the essential features of an Usufructuary mortgage under Section 58(d) of the Transfer of Property Act, 1882 ?
- (ii) Does X have the right of redemption even after the expiry of the time fixed in the mortgage deed ?
- (iii) Can Y refuse to deliver possession on the ground that he made improvements on the land ?

(5 marks each)

Answer 2(i)

The essential features of a usufructuary mortgage under section 58(d) of the Transfer of Property Act, 1882 are as follows:

Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage -money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Alternate Answer

The essential features of a usufructuary mortgage under section 58(d) of the Transfer of Property Act, 1882 are as follows:

- Possession of the mortgaged property is delivered by the mortgagor to the mortgagee, or the mortgagee is expressly or impliedly authorised to take possession;
- The mortgagee is entitled to retain possession until payment of the mortgage money;
- The mortgagee is authorised to receive rents and profits accruing from the property;
- Such rents and profits are to be appropriated towards interest, or in payment of the mortgage money, or both; and
- There is no personal liability on the mortgagor to repay the mortgage money unless expressly agreed.

Answer 2(ii)

According to section 60 of the Transfer of Property Act, 1882, at any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage - money, to require the mortgagee

- (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee,
- (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and
- (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

In the case of *Seth Ganga Dhar vs Shankar Lal & Others*, AIR 1958 SUPREME COURT 770, it was highlighted that the rule against clogs on the equity of redemption is that, a mortgage shall always be redeemable and a mortgagor's right to redeem shall neither be taken away nor be limited by any contract between the parties.

Mere expiry of the mortgage period does not extinguish the right of redemption, particularly in the case of a usufructuary mortgage. Time is not of the essence in a usufructuary mortgage unless expressly and validly made so by a registered instrument extinguishing the right of redemption. Therefore, even though the mortgage deed stipulated repayment within five years, X's right of redemption does not get extinguished merely due to lapse of time.

Answer 2(iii)

Section 63A of Transfer of Property Act, 1882(TPA), deals with improvements to mortgaged property, stating that (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the

absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in Sub-section (2), be liable to pay the costs thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent, per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

A mortgage is not a transfer of ownership, but only a transfer of interest. Ownership remains with the mortgagor unless foreclosure or sale is decreed by a court in specific types of mortgages (not in usufructuary mortgage).

In the case of *Narandas Karsondas v. S.A. Kamtam*, Supreme Court highlighted that the right to redeem a mortgage given to a mortgagor under section 60 of the Transfer of Property Act, is not extinguished by a contract of sale of the mortgaged property entered into by a mortgagee in exercise of the power of sale given to him under the mortgage deed. Until the sale is completed by a registered instrument, the mortgagor can redeem the mortgage on payment of the requisite amount.

In the case of *Chhedilal vs Babu Nandan* the Allahabad Court held that if a mortgagor has agreed to become liable for the cost of any improvement that the mortgagee might make he would be so liable even though the improvements are not of the nature mentioned in Sub-section (2).

In view of this discussion, it can be said that X can file a suit for redemption and recovery of possession under Section 60 of the Specific Relief Act, 1963. He will be required to deposit the mortgage money (principal and agreed interest) in court. The court can direct Y to deliver back possession of the property.

The transaction between X and Y is a usufructuary mortgage under Section 58(d) and X has an absolute right of redemption even after expiry of the mortgage period.

Y cannot claim ownership merely because the loan was unpaid or because he made improvements and he should deliver possession upon redemption; improvements do not justify refusal, though he may claim costs in specific cases under Section 63A TPA.

Question 3

- (a) Explain the points to be kept in mind while drafting agreements.
- (b) Discuss the important points for drafting a Circular. Draft a specimen of Circular. Assume facts.
- (c) What is a Show Cause Notice (SCN) ? Draft a specimen of Show Cause Notice.

(5 marks each)

Answer 3(a)

The points to be kept in mind while drafting agreements are:

- Prepare an outline.
- Establish a single principle of division and use that principle to divide the subject matter into major topics.
- Arrange the items in a logical sequence.
- Give appropriate headings.

- Remember the audience in mind when drafting a document.
- The text should be in clear writing.
- Use concrete words and be concise.
- Avoid gender-specific words as far as possible.
- Write in short sentences.
- Use proper punctuations.
- Avoid drafting in the passive voice and use active voice as it is more direct and vigorous than the passive voice.
- As far as possible put statements in a positive form and make definite assertions.
- Avoid unnecessary, hesitating and non-committal language.
- Express co-ordinate ideas in similar form.
- Keep related words together as the position of words in a sentence is the principal means of showing their relationship.
- In summaries, keep to one tense, especially the present tense.
- The emphatic words of a sentence should be placed at the end.

Answer 3(b)

The important points for drafting a circular are as follows:

1. **Issuing Authority:** It is important to mention the name of the issuing authority on the circular for communicating the position and authority of the addressor. It reduces the chance of confusion in addressees and increase the chances of observance.
2. **Details of Addressee:** It is essential to mention the details of addressees by name, designation etc. in circulars. The addressees are required to comply with the information specified a circular. Therefore, mentioning the details of addressees make the circulars effective.
3. **Subject:** The mention of subject in a circular ensures that the circular receives the required attention. This will make circular more effective and chances of avoidance gets reduced.
4. **Reference to Preceding information:** It is mandatory to mention the reference to the information already provided before the present circulars. It ensures the completeness of information and the addressee may understand the complete matter contained therein.
5. **Main Information:** The main purpose of the circular is to disseminate the information to selected group of individuals. The information should be complete and in understandable language leaving no chance of ambiguity.
6. **Source of Authority:** It is always preferable to mention the source of authority under which the signatory has issued the circular. This gives emphasis on observance of the circular and increases the chances of amenableness.
7. **Signature:** The signature on the circular makes it more reliable.

Specimen Circular
 General Circular No.....
 File No. Policy -.....
 Government of India
(Name of the Ministry)
(Address)

To
The DGCOA,
All Regional Director,
All Registrar of Companies,
All Stakeholders.

Dated:.....,

Subject: Clarification of holding of Annual General Meeting (AGM) Through Video Conference (VC) Or Audio Visual Means (OAVM)-reg.

Sir/Madam,

1. In continuation to this Ministry's General Circular No. 20/2020 dated 05.05.2020 and General Circular No. 02/2022 dated 05.05.2022 and after due examination, it has been decided to allow the companies whose AGMs are due in the year 2023, to conduct their AGMs on or before 30th September, 2023 in accordance with the requirements laid down in para 3 and para 4 of the General Circular No. 20/2020 dated 05.05.2020.

2. It is clarified that this General Circular shall not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act. 2013 (the Act...)

3. This issues with the approval of the Competent Authority.

Yours faithfully,

Answer 3(c)

SHOW CAUSE NOTICE (SCN)

A show cause notice is a document delivered to other party to represent the matter. It summarizes the alleged matter and grants the other party an occasion to explain themselves. SCN may be issued for varied reasons by various authorities such as by Courts, Government, Quasi-judicial Authorities, Employers, other authorities etc. The issuance of SCN is preferred by authorities due to the observance of the principle of Natural Justice. It is based on the principle *audi alteram partem* (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given opportunity to submit his explanation thereto. SCN provides an opportunity to the receiver to counter a potentially harming claim. SCN may be in any form depending upon the requirement for calling of the information and explanations.

Specimen Show Cause Notice

GOVERNMENT OF INDIA

MINISTRY OF-----

Tel-----

Address:-----

Fax:-----.

Email:-----

Dated-----

No-----

To,

M/s-----

Address-----

Subject: Violation of provisions of-----

Sir,

During the inspection of your registered office of your company on ----- (date) by the

undersigned, violation of provisions of Rule----- of----- (Rules), was observed. The details of violations are as under:

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

In this connection, it is brought to your notice that, the above violation of said rule constitutes an offence punishable under----- (Rules).

You are, therefore, show cause within a period of 30 (thirty) days from the date of issue of this notice as to why action should not be taken under the ----- Rules for the violation.

Please note that no further notice will be given to you in this regard.

Yours truly,

----- (Name)

----- (Designation)

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

Question 4

- (a) What is Company Secretaries Auditing Standard (CSAS-3) and what is the process of forming an opinion under this standard ?
- (b) Discuss the different types of document management systems used for maintaining contract documents. How does compliance with legal requirements impact contract management, and what are the key laws governing contract documentation in India ?
- (c) Draft a Deed of Mortgage by Deposit of Title Deeds under the Transfer of Property Act, 1882 ? Assume facts, as necessary.

(5 marks each)

Answer 4(a)

The Company Secretaries Auditing Standard (CSAS-3) is applicable to the Auditor undertaking Audit under any statute. The Standard deals with the basis and manner for forming Auditor's opinion on subject matter of the audit. The objective of CSAS-3 is to enable the Auditor to lay down the basis and manner for evaluation of the conclusions drawn from the Audit Evidence obtained and express an opinion through written report.

PROCESS OF FORMING AN OPINION UNDER CSAS-3

Step 1: Materiality

Principle of completeness	Principle of Objectivity
Materiality	
Principle of Timelines	Principle of a contradictory process

The Auditor shall consider Materiality while forming his opinion and adhere to:

- a. The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;

- b. The principle of objectivity that requires the Auditor to apply professional judgment and scepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner.
- c. The principle of timeliness that implies preparing the report in due time; and
- d. The principle of a contradictory process that implies checking the accuracy of facts and incorporating responses from persons concerned.

Note: The Auditor may consider various judgments, clarifications, opinion, conflicting interpretations while framing the opinion to the best of his professional acumen.

Step 2: Precedence and Practices

The Auditor shall adhere to generally accepted precedence and practices in relation to forming of an opinion as may be available from historical perspective of any kind of audit.

Step 3: Third Party Report or Opinion

The Auditor shall adhere to the following while forming an opinion based on Third Party reports or opinions:

- (a) The Auditor shall indicate the fact of use of Third Party report or opinion and shall also record the circumstances necessitating the use of third party report or opinion;
- (b) The Auditor shall indicate the fact if Third Party report or opinion is provided by the Auditee;
- (c) The Auditor shall consider the important findings/ observation of Third Party;
- (d) The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third Party report or opinion.

Step 4: Form of an Opinion

Form of an Opinion	
Unmodified Opinion	Modified Opinion
Limitation	

1. Unmodified Opinion

The Auditor shall express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

- a. there is due compliance with the applicable laws in terms of timelines and process; and
- b. the Records as relevant for the audit verified by him as a whole are free from Mis-statement and maintained in accordance with the applicable laws.

2. Modified Opinion

The Auditor shall express modified opinion when the Auditor concludes that:

- (a) based on the Audit Evidence obtained, there is non-compliance with the applicable laws in terms of timelines or process; or
- (b) based on the Audit Evidence obtained, the Records as a whole are not free from Misstatement; or are not maintained in accordance with applicable laws; or
- (c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or
- (d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the Records

as a whole are free from Misstatement; or are maintained in accordance with applicable laws.

Whenever the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

3. *Limitation*

If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.

If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:

- a. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be nonmaterial, the Auditor shall modify the opinion; or
- b. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

Step 5: Auditor's Responsibility

The Auditor's Report shall include a section with the heading "Auditor's Responsibility". Auditor's Report shall state that the responsibility of the Auditor is to express opinion on the compliance with the applicable laws and maintenance of records based on audit. The Auditor's Report shall also state that the audit was conducted in accordance with applicable Standards.

The Auditor's Report shall also explain that those Standards require that the Auditor comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of Records.

Auditor's Report shall also state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some Misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the Standards.

Step 6: Format of the Report

The report shall be addressed to the Appointing Authority unless otherwise specified in the Audit Engagement Letter or provided in the applicable law. The report shall be detailed enough to serve its intended purpose.

Where specific formats are prescribed, those formats shall be followed for reporting. If any information cannot be appropriately placed within the paragraphs of the report, it shall be given in form of annexure(s).

Signature block shall mention the name of the audit firm along with the registration number, if any, the name of the Auditor, certificate of practice number, the membership number of the Auditor, specifying whether associate or fellow member, as applicable. The Auditor shall clearly mention date and place of signing the report, in case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

Answer 4(b)

Types of Maintaining Contract Documents

Document management is the process of sourcing, organizing, storing, and analyzing documents.

When it comes to document management, there are two main types of systems: (a) manual and (b) electronic.

- (a) A manual document management system (DMS) is controlled by humans. This could involve a physical filing system where employees manually file documents or an online system where employees enter data into a database.
- (b) An electronic document management system (EDMS), on the other hand, is a system that is controlled by computers. This could involve an online system where employees access files remotely or an offline system where employees download files to their computers.

Compliance with Laws

It is a well settled principle of law that no contract between the parties can oust the application of law. In short, every contract is subject to applicable laws and parties to the contract are bound to comply with the laws applicable on them as well as on transaction. In almost all the contracts, there is a clause confirming compliance with laws.

Key Laws governing contract documentation in India

The laws which are generally required to be complied includes the following:

- 1. Indian Contract Act, 1872
- 2. Indian Stamp Act, 1899
- 3. Registration Act, 1908

However, in specific case the following laws *inter alia* are also required to be complied with:

- 1. Powers-of Attorney Act, 1882
- 2. Sale of Goods Act, 1930
- 3. Transfer of Property Act, 1882
- 4. Arbitration and Conciliation Act, 1996
- 5. Specific Relief Act, 1973

However, this list is not exhaustive. Many other laws may also be applicable along with the Law of Contracts.

Answer 4(c)

THIS DEED is executed this _____ day of _____ 20_____

BY

_____ a public company with limited liability incorporated under the Companies Act, _____, with corporate identity number: _____ and having its registered office at _____ (hereinafter referred to as the "Mortgagor", which expression shall, unless repugnant to the context or meaning thereof, deem to include its successors and permitted assigns).

IN FAVOUR OF _____ Bank, a Banking Company registered under the Companies Act, _____ having its registered office at _____ and Branch office among other places at _____ hereinafter called/referred as the MORTGAGEE (which expression shall unless repugnant to the meaning or context thereof shall include its successors and assings) in respect of the property mentioned hereunder in the Schedule to create a security for the Loan borrowed by M/s _____ on _____.

The Mortgagor/ s have on _____ deposited the following documents of title deeds relating to their properties listed hereunder with the Mortgagee at their _____ Branch with an intent to create an EQUITABLE MORTGAGE in favour of the Mortgagee over the property/ ies to which document relate to them described hereunder for the purpose of securing repayment to the Mortgagee of all the amounts owing to the Mortgagee under advances made and to be made by the Mortgagee to M/s _____ or to any one of us or to any concern, in which I am/ we are the owner(s) / partner(s)/ proprietor by way of loan of Rs. _____ (Rupees _____) and above together with interests and other charges thereon.

The Mortgagor/ s further declare that the documents deposited as _____ are all were in his/ her/ their possession and control and that the property/ ies is/ are not charged or encumbered in anyway whatsoever.

IN WITNESS WHEREOF the mortgagors have subscribed their signatures at _____ on the day, month and year first above mentioned.

WITNESSES :

MORTGAGOR/ S

- 1.
- 2.

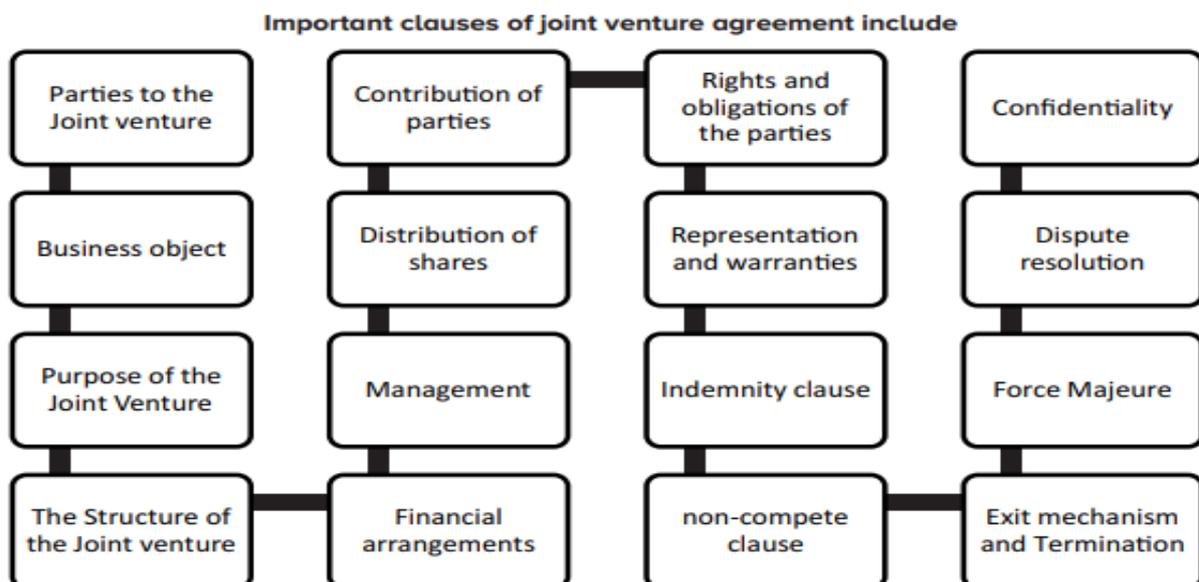
Or (Alternate to question to Q. No. 4)

Question 4A

- (a) Examine the key clauses in a Joint Venture Agreement and their role in mitigating disputes between parties.
- (b) Explain the process of preparing a legal opinion as per the Company Secretary Auditing Standard (CSAS-3), highlighting the importance of facts and legal research.
- (c) Outline the drafting requirements for a Debenture Trust Deed under the Companies Act, 2013, and explain its significance for debenture holders.

(5 marks each)

Answer 4A(a)



Role Key Clauses in a Joint Venture Agreement in Mitigating Disputes

- Clarity of Rights and Duties: Prevents ambiguity by clearly allocating responsibilities.
- Prevention of Deadlocks: Exit and dispute resolution clauses provide structured remedies.
- Protection of Investments: Capital, profit-sharing, and security provisions safeguard interests.
- Reduced Litigation: Alternative dispute resolution clauses promote amicable settlements.

Alternate Answer

Key Clauses in a Joint Venture Agreement

1. Object & Scope: Defines the business activity, purpose, and duration of the venture.
2. Capital Contribution & Shareholding: Specifies equity participation, funding obligations, and consequences of default.
3. Management Structure: Composition of the board, appointment of directors, voting rights, and quorum requirements.
4. Profit and Loss Sharing: Distribution ratio and accounting methods.
5. Intellectual Property Rights & Confidentiality: Ownership, licensing, and protection of Intellectual Properties developed or contributed.
6. Non-Compete & Exclusivity Clauses: Prevent partners from engaging in competing businesses.
7. Dispute Resolution Mechanism: Arbitration, mediation, or forum selection to avoid prolonged litigation.
8. Termination & Exit Mechanism: Buy-out, put/call options, and deadlock resolution provisions.
9. Governing Law & Jurisdiction: Identifies the applicable legal framework.

Role Key Clauses in a Joint Venture Agreement in Mitigating Disputes

- Clarity of Rights and Duties: Prevents ambiguity by clearly allocating responsibilities.
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- Reduced Litigation: Alternative dispute resolution clauses promote amicable settlements.

Answer 4A(b)

A legal opinion is a written statement by a professional based on legal expertise, intended to guide a client on a specific legal issue.

Process of Preparing a Legal Opinion

1. Understanding the Client's Query: Clearly identify the issue and the context in which advice is sought.
2. Collection and Verification of Facts: Examine documents, agreements, and background details provided by the client to ensure factual accuracy.
3. Legal Research: Study applicable statutes, rules, case law, circulars, and judicial precedents relevant to the issue.
4. Application of Law to Facts: Analyse how the law applies to the specific circumstances of the client's case.

5. Drafting the Opinion: Structure should include –

- *Facts* (as provided and verified),
- *Issues involved*,
- *Applicable legal provisions and case law*,
- *Analysis*, and
- *Conclusion/Advice*.

6. Disclaimers and Limitations: Specify assumptions, scope, and reliance on information provided to protect professional liability.

Importance of Facts and Legal Research

- **Facts:** Opinions are only as strong as the facts on which they are based. Incomplete or incorrect facts may lead to misleading advice.
- **Legal Research:** Thorough research ensures the opinion is accurate, up-to-date, and defensible before a court or regulator. It enhances credibility and reduces the risk of professional negligence.

Alternate Answer

PROCESS OF PREPARING A LEGAL OPINION UNDER CSAS-3

Step 1: Materiality

Principle of completeness	Principle of Objectivity
Materiality	
Principle of Timelines	Principle of a contradictory process

The Auditor shall consider Materiality while forming his opinion and adhere to:

- a. The principle of completeness that requires the Auditor to consider all relevant Audit Evidence before issuing a report;
- b. The principle of objectivity that requires the Auditor to apply professional judgment and scepticism in order to ensure that all reports are factually correct and that findings or conclusions are presented in a relevant and appropriate manner.
- c. The principle of timeliness that implies preparing the report in due time; and
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Step 4: Form of an Opinion

Form of an Opinion	
Unmodified Opinion	Modified Opinion
Limitation	

1. Unmodified Opinion

The Auditor shall express an unmodified opinion when based on Audit Evidence, the Auditor concludes that:

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- (c) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that there is due compliance with the applicable laws in terms of timelines and process; or
- (d) he is unable to obtain sufficient and appropriate Audit Evidence to conclude that the Records as a whole are free from Misstatement; or are maintained in accordance with applicable laws.

Whenever the Auditor expresses a modified opinion or disclaims an opinion, the text of the opinion shall be either in italics or bold letters.

3. Limitation

If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.

If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.

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The Auditor's Report shall include a section with the heading "Auditor's Responsibility". Auditor's Report shall state that the responsibility of the Auditor is to express opinion on the compliance with the applicable laws and maintenance of records based on audit. The Auditor's Report shall also state that the audit was conducted in accordance with applicable Standards.

The Auditor's Report shall also explain that those Standards require that the Auditor comply with statutory and regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of Records.

Auditor's Report shall also state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some Misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the Standards.

Step 6: Format of the Report

The report shall be addressed to the Appointing Authority unless otherwise specified in the Audit Engagement Letter or provided in the applicable law. The report shall be detailed enough to serve its intended purpose.

Where specific formats are prescribed, those formats shall be followed for reporting. If any information cannot be appropriately placed within the paragraphs of the report, it shall be given in form of annexure(s).

Signature block shall mention the name of the audit firm along with the registration number, if any, the name of the Auditor, certificate of practice number, the membership number of the Auditor, specifying whether associate or fellow member, as applicable. The Auditor shall clearly mention date and place of signing the report, in case report is signed by two different persons on different dates or different places; same shall be mentioned in the report.

Importance of Facts and Legal Research

- Facts: Opinions are only as strong as the facts on which they are based. Incomplete or incorrect facts may lead to misleading advice.
- Legal Research: Thorough research ensures the opinion is accurate, up-to-date, and defensible before a court or regulator. It enhances credibility and reduces the risk of professional negligence.

Answer 4A(c)

Debenture Trust deed is a written instrument legally conveying property to a trustee often for the purpose of securing a loan or mortgage. It is the document creating and setting out the terms of a trust. It will usually contain the names of the trustees, the identity of the beneficiaries and the nature of the trust property, as well as the powers and duties of the trustees. It constitutes trustees charged with the duty of looking after the rights and interests of the debenture holders. A trust deed in Form No. SH. 12 or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees within three months of closure of the issue or offer.

The debenture trust deed shall, *inter alia*, contain the following:-

1. Description of Debenture Issue:
2. Details of Charge Created (in case of secured debentures)
3. Particulars of the Appointment of Debenture Trustee(s)
4. Events of Defaults
5. Obligations of Company
6. Miscellaneous

The primary purpose of the Debenture Trust Deed is to safeguard the interests of debenture holders, who are creditors and do not have voting rights in the company. The deed provides a layer of security, transparency, and legal oversight by establishing clear terms and outlining the rights and remedies available to the debenture holders. The key benefits for debenture holders include:

- Provides independent supervision by a trustee over the company's obligations.
- Ensures asset protection through creation and monitoring of charges.
- Facilitates collective action by debenture holders instead of individual litigation.
- Enhances investor confidence and acts as a safeguard against mismanagement or default.
- Protection of Interests
- Security for Repayment
- Timely Payments
- Representation and Action in Default
- Information and Transparency.

Alternate Answer

The drafting requirements of Debenture Trust Deed is outlined in FORM NO. SH-12, Debenture Trust Deed [Pursuant to sub-section (13) of section 71 of the Companies Act, 2013 and rule 11 of the Companies (Share Capital and Debentures) Rules 2014:

The debenture trust deed shall, *inter alia*, contain the following:-

1. DESCRIPTION OF DEBENTURE ISSUE:

- (a) Purpose of raising finance through the debenture issue;
- (b) Details of debenture issue as regards amount, tenure, interest/coupon rate, periodicity of payment, mode of payment and period of redemption;
- (c) An undertaking by the company to pay the interest and principal amount of such debentures to the Debenture holders as and when it becomes due, as per the terms of offer;
- (d) The terms of conversion/redemption of the debentures in terms of the issue to the debenture holders, options available, and debt equity ratio and debt service coverage ratio, if applicable.

2. DETAILS OF CHARGE CREATED (in case of secured debentures):

- (a) Nature of charge created and examination of title;
- (b) Rank of charge created viz. first, second, *pari passu*, residual, etc;
- (c) Minimum security cover required;

- (d) Complete details of the asset(s) on which charge is created such as description, nature, title, location, value, basis of valuation etc.;
- (e) Methods and mode of preservation of assets charged as security for the debentures;
- (f) Other particulars of the charge, e.g., time period of charge, rate of interest, name of the charge holder;
- (g) Provision for subsequent valuation;
- (h) Procedure for allowing inspection of charged assets and book of accounts by debenture trustee or any person or person authorized by it;
- (i) Charging of future assets;
- (j) Time limit within which the future security for the issue of debentures shall be created;
- (k) Circumstances specifying when the security may be disposed of or leased out with the approval of trustees;
- (l) Enforceability of securities, events under which security becomes enforceable;
- (m) Obligation of company not to create further charge or encumbrance of the trust property without prior approval of the trustee.

3. PARTICULARS OF THE APPOINTMENT OF DEBENTURE TRUSTEE(S):

- (a) The conditions and procedure for the appointment of the debenture trustee;
- (b) Procedure for resignation by trustee including appointment of new trustees;
- (c) Provision that the debenture trustee shall not relinquish his office until another debenture trustee has been appointed;
- (d) Procedure to remove debenture trustee by debenture holders providing for removal on a resolution passed by the holders of not less than three fourth in value of debentures;
- (e) Fees or commission or other legal travelling and other expenses payable to the trustee(s) for their services;
- (f) Rights of the trustee including the right to inspect the registers of the company and to take copies and extract thereof and the right to appoint a nominee director;
- (g) Duties of the trustee.

4. EVENTS OF DEFAULTS:

- (a) Events under which the security becomes enforceable which shall include the following events:
 - (i) When the company makes two consecutive defaults in the payment of any interest which ought to have been paid in accordance with the terms of the issue;
 - (ii) When the company without the consent of debenture holders ceases to carry on its business or gives notice of its intention to do so;
 - (iii) When an order has been made by the Tribunal or a special resolution has been passed by the members of the company for winding up of the company;
 - (iv) When any breach of the terms of the prospectus inviting the subscriptions of debentures or of the covenants of this deed is committed;
 - (v) When the company creates or attempts to create any charge on the mortgaged

premises or any part thereof without the prior approval of the trustees/debenture holders;

- (vi) When in the opinion of the trustees the security of debenture holders is in jeopardy.
- (b) Steps which shall be taken by the debenture trustee in the event of defaults;
- (c) Circumstances specifying when the security may be disposed off or leased out with the approval of trustees;
- (d) A covenant that the company may hold and enjoy all the mortgaged premises and carry on therein and therewith the business until the security constituted becomes enforceable.

5. OBLIGATIONS OF COMPANY:

This section shall state the company's duty with respect to-

- (a) maintaining a Register of debenture holders including addresses of the debenture holders, record of subsequent transfers and changes of ownership;
- (b) keeping proper books of accounts open for inspection by debenture trustee;
- (c) permitting the debenture trustee to enter the debenture holder's premises and inspect the state and condition of charged assets;
- (d) furnishing information required by the debenture trustee for the effective discharge of its duties and obligations, including copies of reports, balance sheets, profit and loss account etc.;
- (e) keeping charged property/security adequately insured and in proper condition;
- (f) paying all taxes, cesses, insurance premium with respect to charged property/security, on time;
- (g) not declaring any dividend to the shareholders in any year until the company has paid or made satisfactory provision for the payment of the installments of principal and interest due on the debentures;
- (h) creating the debenture redemption reserve;
 - (i) converting the debentures into equity in accordance with the terms of the issue, if applicable;
 - (j) informing the debenture trustee about any change in nature and conduct of business by the company before such change;
- (k) informing the debenture trustee of any significant changes in the composition of its Board of Directors;
- (l) informing the debenture trustee of any amalgamation, merger or reconstruction scheme proposed by the company;
- (m) keeping the debenture trustee informed of all orders, directions, notices, of court/tribunal affecting or likely to affect the charged assets;
- (n) not creating further charge or encumbrance over the trust property without the approval of the trustee;
- (o) obligation of the company to forward periodical reports to debenture trustees containing the following particulars:
 - (i) updated list of the names and addresses of the debenture holders;
 - (ii) details of interest due but unpaid and reasons thereof;

- (iii) the number and nature of grievances received from debenture holders and (a) resolved by the company (b) unresolved by the company and the reasons for the same;
- (iv) a statement that the assets of the company which are available by way of security are sufficient to discharge the claims of the debenture holders as and when they become due.
- (p) complying with all directions/guidelines issued by a Regulatory authority, with regard to the debenture issue;
- (q) submitting such information, as required by the debenture trustee.

6. MISCELLANEOUS:

- (a) The conditions under which the provisions of the trust deed or the terms and conditions of the debentures may be modified;
- (b) The mode of service of notices and other documents on the company, the trustee and the holders of the debentures;
- (c) The company to be responsible for paying any stamp duty on the trust deed or the debentures (if applicable);
- (d) Provisions regarding meetings of the debenture holders;
- (e) Provisions for redressal of grievances of debenture holders.

Significance for Debenture Holders

- Provides independent supervision by a trustee over the company's obligations.
- Ensures asset protection through creation and monitoring of charges.
- Facilitates collective action by debenture holders instead of individual litigation.
- Enhances investor confidence and acts as a safeguard against mismanagement or default.
- Protection of Interests
- Security for Repayment
- Timely Payments
- Representation and Action in Default
- Information and Transparency.

Part-II

Question 5

- (a) Vaishnavi Enterprises Limited, a family-owned company, is in possession of a disputed piece of immovable property in Coimbatore, which is reflected in its assets. The Company Secretary, A, has strong apprehension that a former shareholder, B, who is claiming ownership rights over the said property, is likely to file a case in the Court. A, as the Company Secretary, wants to ensure that no interim order or injunction is passed by the Court in favour of B against the company without giving Vaishnavi Enterprises Limited an opportunity of being heard.

On the basis of the facts as above attempt the following questions :

- (i) What is the legal remedy available under the Code of Civil Procedure, 1908 ?

- (ii) Draft a format of the petition to be filed before the competent authority to safeguard the company's interests.

(5 marks each)

- (b) Vidyadheesha has filed a suit for recovery of money against his debtor in a civil court. The Court has directed him to submit an affidavit-in-evidence to support his pleadings. However, Vidyadheesha is uncertain about the procedure, the kind of evidence he should include, and the precautions he must take while preparing such an affidavit. As an expert, explain the important considerations for drafting an affidavit-in-evidence.

(5 marks)

Answer 5(a)(i)

Legal Remedy Available under the Code of Civil Procedure, 1908

Caveat is a Latin term which means, '(let a person) beware' originated in the mid-16th century. In law, it may be understood as a notice, especially in probate, that certain actions may not be taken without informing the person who gave the notice. It may simply be understood as a warning. In the Civil Procedure Code of 1908 (hereinafter, the Code) it was inserted under section 148A by the recommendations of the Law Commission of India's 54th Report and was inserted by the Civil Procedure Code (Amendment) Act 104 of 1976.

Section 148A of Civil Procedure Code, 1908

- (1) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.
- (2) Where a caveat has been lodged under sub-section (1), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been, or is expected to be, made, under sub-section (1).
- (3) Where, after a caveat has been lodged under sub-section (1), any application is filed in any suit or proceeding, the Court, shall serve a notice of the application on the caveator.
- (4) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.
- (5) Where a caveat has been lodged under sub-section (1), such caveat shall not remain in force after the expiry of ninety days from the date on which it was lodged unless the application referred to in sub-section (1) has been made before the expiry of the said period.

Vaishnavi Enterprises Limited may avail the remedy of Caveat provided under section 148A of Civil Procedure Code, 1908.

Answer 5(a)(ii)

IN THE COURT OF THE [Name of Competent Civil Court], Coimbatore

CAVEAT PETITION UNDER SECTION 148A OF THE CODE OF CIVIL PROCEDURE, 1908

Caveator:

Vaishnavi Enterprises Limited,

[Registered Office Address],

Through its Company Secretary, A

VERSUS

Respondent:

B

[Address]

MOST RESPECTFULLY SHOWETH:

1. That the Caveator is the owner and possessor of the property situated at [property details].
2. That the Caveator has strong apprehension that the Respondent, B, is likely to file a suit/ application before this Hon'ble Court claiming ownership rights and seeking interim relief against the Caveator.
3. That the Caveator seeks to ensure that no *ex parte* order or injunction is passed against it without being heard.
4. That this Caveat is being lodged under Section 148A of the Code of Civil Procedure, 1908.

PRAYER

In view of the above, the Caveator most respectfully prays that:

- a) This Hon'ble Court be pleased to serve a notice of any application filed by the Respondent before passing any order.
- b) The Caveator may be given an opportunity to be heard before passing any interim relief in the matter.

Place: Coimbatore

Date: [DD/MM/YYYY]

(Signature of Company Secretary/Authorized Representative)

A, Company Secretary
Vaishnavi Enterprises Limited
Through Counsel

Answer 5(b)

Vidyadheesha must prepare an affidavit in evidence under Order XIX of Civil Procedure Code, 1908 (CPC). The following must be kept in mind while preparing the affidavit-in-evidence by the parties –

- (i) The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.
- (ii) In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in evidence.
- (iii) The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence. It may be noted that in the affidavit in evidence, the position of law or legal provisions or principle of law are not reproduced because the position of law or settled principles of law are not required to be proved by any party and they are deemed

to exist and any party can argue and take help of those settled position of law while arguing their case before the Court or Tribunal or Forum and need to be proved by filing an evidence. (Section 3 of Bharatiya Sakshya Adhiniyam, 2023)

- (iv) In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.
- (v) Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.
- (vi) It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.
- (vii) At the time of tendering affidavit-in-evidence, the party must bring along with it either the original of papers, documents, books, registers relied upon by it or bring with it the copy of the same.

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

Question 6

The appellant company faced a penalty imposed by the NSE and BSE due to non-compliance with Regulation 17(1) of the Listing Obligation and Disclosure requirement (LODR) Regulations, 2015 following the demise of a non-independent, non-executive director, Ravindra Upadhyya, on 10 August 2020. The strength of the Board of Directors was reduced from six to five members, and the vacancy was filled on 15 March 2021. The stock exchanges imposed a fine at the rate of ₹ 5,000 per day for the period from 10 November 2020, citing non-compliance with the required board composition. The appellant's request for a waiver of the fine was rejected by SEBI. The appeal challenged the legality of the fine, arguing that Regulation 17(1) does not specify a timeline for filling vacancies. The adjudicating authority ruled in favour of the appellant, holding that the fine was imposed without statutory authority.

In light of the above explain the following :

- (a) What was the basis for the fine imposed by BSE and NSE on the appellant company ?
- (b) Why did the appellant argue that the fine was wrongly imposed under Regulation 17(1) of the Listing Obligation and Disclosure Requirement (LODR) Regulations ?
- (c) How does Regulation 25(6) of the LODR Regulations differ from Regulation 17(1) in terms of vacancy timelines ?

(5 marks each)

Answer 6(a)

The fine was imposed by BSE and NSE for non-compliance with Regulation 17(1) of the LODR Regulations, 2015 which mandates that a company's board of directors must comprise at least six members. Following the demise of Ravindra Upadhyya on 10 August 2020, the board strength was reduced to five, leading to an alleged violation of this regulation. The exchanges imposed a fine of ₹5,000 per day starting from November 10, 2020, after granting a three-month period for compliance, as per their internal interpretation of vacancy-filling timelines.

Answer 6(b)

The appellant contended that Regulation 17(1) of SEBI (LODR) Regulations, 2015 does not prescribe any specific timeline for filling vacancies caused due to resignation, death, or removal of a director. Unlike Regulation 25(6), which specifies a timeline for replacing independent directors, Regulation 17(1) remains silent on when the vacancy must be filled. Hence, the imposition of the fine lacked statutory backing. Additionally, the appellant argued that the exchanges arbitrarily imposed the fine by assuming a three-month timeline that was not provided in any law.

Answer 6(c)

Regulation 25(6) of SEBI (LODR) Regulations, 2015 explicitly states that if an independent director resigns or is removed, the vacancy must be filled by the next board meeting or within three months, whichever is later. This provision ensures a clear deadline for compliance. However, Regulation 17(1) merely prescribes the minimum board composition without stipulating any timeframe for filling vacancies. This fundamental difference indicates that, in cases under Regulation 17(1), no automatic penalty should arise unless a prescribed timeline is established.

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

- (a) Discuss the key provisions related to Appearance under the Companies Act, 2013.
- (b) Discuss the Procedure for Holding of Inquiry under SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995.
- (c) Define a Resolution and explain the different types of Resolutions under the Companies Act, 2013.

(5 marks each)

Answer 6A(a)

Under the Companies Act, 2013 (the Act), the right to legal representation is recognized and protected in certain situations. The Act allows for companies to be represented in legal proceedings by authorized representatives such as Company Secretaries, who are appointed by the Company.

Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

However, it is important to note that the right to legal representation under the Companies Act, 2013, is limited in certain respects. For example, the Act does not provide for the appointment of legal representatives for Individual directors or officers of the company who may be named as parties in legal proceedings. In such cases, individual directors or officers may need to seek their own legal representation.

Under the Companies Act, 2013, there are various situations where a person may be required to appear before regulatory or quasi-judicial authorities. These appearances may be required in the context of compliance and enforcement proceedings, such as investigations, inspections, and adjudication of disputes.

Some of the key provisions related to appearance under the Companies Act, 2013, are as follows:

1. Appearance before the Registrar of Companies (ROC) and Regional Directors

The ROC is a regulatory authority responsible for administering the provisions of the Companies Act, 2013. Companies and their officers may be required to appear before the ROC in relation to

various compliance matters, such as filing of returns and other documents, inspection of books and records, and verification of registered office address.

Further, in certain situations the appearance before Regional Directors may also be warranted.

2. Appearance before the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT)

The NCLT is a quasi-judicial body that adjudicates disputes and grievances related to companies and their affairs. Parties may be required to appear before the NCLT in various types of proceedings, such as merger and acquisition approvals, insolvency and bankruptcy proceedings, and disputes related to the interpretation of the Companies Act, 2013.

Any person aggrieved by an order of NCLT may prefer an appeal to the NCLAT.

3. Appearance before the Serious Fraud Investigation Office (SFIO)

The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies. Parties may be required to appear before the SFIO in connection with investigations related to corporate fraud, money laundering, and other financial crimes.

In conclusion, under the Companies Act, 2013, there are various situations where a person may be required to appear before regulatory or quasi-judicial authorities. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

Answer 6A(b)

Procedure for Holding of Inquiry - Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

(1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15HA and 15HB whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15HA and 15HB the Board (SEBI) or the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If, after considering the cause, if any, shown by such person, the Board or the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the Board or the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The Board or the adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the Board or the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872) :

Provided that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(5A) The Board may appoint a presenting officer in an inquiry under this rule.

(6) While holding an inquiry under this rule the Board or the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Board or the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

Answer 6A(c)

“RESOLUTION”:- Resolution as per Cambridge Dictionary means “an official decision that is made after a group or organization has voted”. It is a decision or agreement made by the directors and shareholders of the company. When a resolution is proposed it is called motion. After passing a resolution company is bound to act according to it.

A company is an artificial judicial person created by law having its own distinct entity form and capable of entering into contracts. Though company is bestowed with the characteristic of separate legal entity but it cannot take decision on its own. It is capable of acting in its own name, entering into contracts. It is capable of owning and holding property in its own name, sue others and to be sued by others in its name. Despite all these powers, since it is not a natural person, it expresses its will or takes its decisions through natural persons (i.e. directors or members) collectively which is known as “resolution.”

There are two collective bodies in the company which take decision through resolutions:

- (i) Board of Directors:- who manage, control and direct the business of the company (A document in writing created by Board of Directors certifying a binding corporate action is called a Resolution), and
- (ii) General body of members:- who ultimately own the company.

Types of Resolutions

Board Resolution: Any important decisions taken by the Board of Directors of the Company in Board Meeting and in writing is known as Board Resolution. It's a Formal and a Legal document binding on the Company.

Ordinary Resolution: According to Section 114 (1) of the Companies Act, 2013, a resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any of the Chairman, by members who, being entitled so to do, vote in person, where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by or members, so entitled and voting. Broadly. Ordinary Resolutions are required to be passed by simple majority.

Special Resolution: According to Section 114(2) of the Companies Act, 2013, a resolution shall be a special resolution when-

- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) the notice required under this Act has been duly given; and
- (c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a

poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting. Thus, Special Resolutions are required to be passed by three-fourth (3/4th) majority.

Unanimous Resolution- It requires the approval of all the members present and voting without a single vote cast against it.

Passing of Resolution by Circulation-As per Section 175(1) of the Companies Act, 2013, a Company may pass resolution through circulation. The said resolution may be circulated in draft, together with necessary papers, if any, to all the directors or members of the Committee at their address registered with the Company in India by hand delivery or courier/ post or through e-mail/fax. The same must be approved by majority of directors or members, who are entitled to vote on the resolution.

A resolution passed through circulation shall be noted at a subsequent meeting and made part of minutes of such meeting.

Further, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

COMPLIANCE MANAGEMENT, AUDIT AND DUE DILIGENCE

GROUP 1 PAPER 3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

(a) Citing the relevant provision as per SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 (December 12, 2024) {SEBI notification dated December 12, 2024 vide No. SEBI/LAD-NRO/GN/2024/218} answer the questions below ;

- (i) Bhola is a CS and proprietor of Bhola and Company a leading Company Secretarial Peer Reviewed Firm. What will be the Maximum date up to which Bhola can be appointed as Secretarial Auditor of XYZ Limited.
- (ii) What will be the maximum date, up to which Guru Bhola and Company, Company Secretarial partnership firm, can Maximum Serve XYZ Limited, as Secretarial Auditor ?
- (iii) CS (P) Sonam Bhojwani was already working as Secretarial Auditor with MNC Limited for the Financial Year 2023-24 and 2024-25. Now MNC limited wanted to reappoint her Once again as Secretarial Auditor. Advise MNC Limited that up to What Maximum date they can reappoint Sonam Bhojwani as Secretarial Auditor.
- (iv) Out of following Unlisted subsidiary companies, how many companies will be counted as Material subsidiary for JKT Limited (Listed Entity) for the Financial Year 2024-25.

JKT Limited Consolidated Turnover-550 Crore (₹)

Turnover of Subsidiary Companies :

A Limited-45 Crore (₹)

B Limited-54 Crore (₹)

C Limited-70 Crore (₹)

Your answer should be based on the provision of the law.

(v) As per newly inserted Regulation 24A(1) (a), Secretarial Audit by a Secretarial Auditor who shall be a Peer Reviewed Company Secretary and shall annex a Secretarial Audit Report in such form as specified, with the annual report of the listed entity will not be applicable on which of the following Unlisted Material Subsidiary of PQR Limited with appropriate reasoning. Consolidated Turnover of PQR Limited- 480 Crore

M Limited having turnover 58 Crore (Incorporated in India)

N Limited 65 Crore (Incorporated in Spain)

O Limited 50 Crore (Incorporated in India)

(1×5=5 marks)

(b) ABC Limited was engaged in financing and developing infrastructure projects but now defaulted on several debt repayments due to the mismanagement and undisclosed

liabilities in ABC group companies. It has triggered a systemic crisis, exposing deep-rooted governance, risk, and compliance failures. As a result, there was a poor board governance, no proper risk management framework and ignorance of statutory and internal Audit flags. State how Corporate Compliance framework can help ABC Limited to serve as a supporting system of risk management system to reduces risk associated with non-compliance. Elucidate the three key components of corporate compliance framework.

(5 marks)

- (c) Management of XYZ Ltd. was worried because it was observed that in the organization, good documentation was neglected and poorly executed. There was no system to update its Documents, Statutory registers and training records. You have recently joined the Secretarial department of XYZ Limited. Management of XYZ Ltd wanted to know what is Good Documentation Practice. Clarify them what is Good Documentation Practice, along with the Do's and Don'ts of Good Documentation.

(5 marks)

- (d) As per Companies Act, if the Certification of Annual Return U/Section 92 is wrongly certified by the Company Secretary, state the consequences he has to face. Describe the action taken by Disciplinary Committee of the ICSI on PCS if any report, return, certificate, financial statement, prospectus, statement or any other document has been falsely represented by him. Specify the authority to initiate action against the professional in the cases of submission of false or misleading or incorrect information by the professional.

(5 marks)

Answer 1(a)

- (i) As per regulation 24A(1)(b)(i) of the SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015, on the basis of recommendation of board of directors, a listed entity shall appoint or re-appoint an individual as Secretarial Auditor for not more than one term of five consecutive years with the approval of its shareholders in its Annual General Meeting.

As per the relevant provision, Bhola can be appointed as Secretarial Auditor for the maximum one term of five consecutive years i.e. up to Financial Year 2029-2030/(maximum date 31.03.2030) in the XYZ Limited.

- (ii) As per regulation 24A(1)(b)(ii) of the SEBI (LODR) Regulations, 2015, a Secretarial Audit firm as Secretarial Auditor for not more than two terms of five consecutive years, with the approval of its shareholders in its Annual General Meeting.

Hence, Up to Financial Year 2034-35/(maximum date 31.03.2035), Guru Bhola and Company can serve the XYZ Limited as Secretarial Auditor Firm.

- (iii) As per regulation 24A(1C) of the SEBI (LODR) Regulations, 2015, with effect from April 1, 2025, every listed entity shall ensure compliance with sub-regulation (1), (1A) and (1B) for appointment, re-appointment or continuation of the Secretarial Auditor of the listed entity:

Provided that any association of the individual or the firm as the Secretarial Auditor of the listed entity before March 31, 2025 shall not be considered for the purpose of calculating the tenure under clause (b) of sub regulation (1).

Hence, period served as secretarial auditor for the MNC company before April 2025 will not be counted for the calculation of five- year period. Hence, she can be the secretarial auditor for the said company for the maximum term of five years up to financial year 2029-30/(maximum date 31.03.2030).

- (iv) According to Regulation 16(1)(c) of SEBI (LODR) regulations, 2015; Material Subsidiary' means a subsidiary, whose Turnover or net worth exceeds ten per cent (10%) of the consolidated Turnover or net worth, respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

Hence, C Limited will be counted as Material Subsidiary because 10% of the Consolidated Turnover will be Rs. 55 Crore & Only C Limited has Turnover Rs. 70 Crore.

- (v) The aforesaid provision has been substituted by the SEBI vide amendment dated 13.12.2024 which reads as under:

Regulation 24A (1) (a) of the SEBI (LODR) Regulations, 2015, Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit by a Secretarial Auditor who shall be a Peer Reviewed Company Secretary and shall annex a Secretarial Audit Report in such form as specified, with the annual report of the listed entity.

Consolidated Turnover of PQR Limited- Rs. 480 Crore

M Limited having turnover Rs.58 Crore (Incorporated in India)

N Limited Rs.65 Crore (Incorporated in Spain)

O Limited Rs.48 Crore. (Incorporated in India)

This rule will not apply to N Limited although it is material subsidiary and its turnover is Rs. 65 Crore which is more than 10% of the Consolidated Turnover of the Listed entity but since it is incorporated in Spain so, the above mentioned regulation is not applicable on the N Limited. Hence, Regulation 24A(1)(a) does not apply to the N Limited (Unlisted Material Subsidiary Incorporated outside India.)

Answer 1(b)

Compliance or Corporate Compliance, is the set of processes and procedures that a company has in place in order to make certain that the company and its employees are conducting business in a legal and ethical manner.

Compliance refers to adhering with the mandated boundaries (laws and regulations) and voluntary boundaries (company's policies, procedures, etc.). Compliance means conforming to the stated requirements. At an organizational level, it is achieved through management processes which identify the applicable requirements (defined for example in laws, regulations, contracts, strategies and policies), assess the state of compliance, assess the risks and potential costs of non-compliance against the projected expenses to achieve compliance, and hence prioritize, fund and initiate any corrective actions deemed necessary.

Fulfilling these compliance requirements requires a complex mechanism that includes policies and procedures, training, whistleblowing channels, internal audit, escalation, response and disclosure.

The corporate compliance framework consists of **three key components**:

Compliance Chart: The Chart provides an overview of the applicable local, state, central and international laws, regulations and standards relating to a business' operations. The compliance chart also outlines how compliance risk mitigation activities are embedded in business processes. In other words, how compliance with the laws, regulations and standards is embedded and ensured. The compliance chart help business in meeting its compliance obligations towards the customers, regulators, shareholders and employees. The compliance chart also reflects the key activities and compliance calendar which is to be followed and performed by a business unit to manage its compliance risks.

Compliance Advisory: It advises on compliances of applicable laws and effect of non-compliances. Compliance advisory helps organisation to evaluate their compliance functions, prevent compliance breaches and respond quickly and effectively when a breach occurred.

Compliance Scorecard: It is a tool to analyse the position of an organisation in compliance.

A compliance scorecard must be set up by organizations. The scorecard is not to be used as a mere reporting but as a compliance management tool. It enables the reported compliance breaches' immediate remediation by informing a predefined responsible person in the case of a violation. Thus, this employee can directly start remediation activities. The tracking of the remediation activities' status is again included into the scorecard. An integrated escalation structure, predefined by organizational hierarchies ensures timely remediation. Also, the possibility of classifying a rule breach according to its level of risk must be included into the scorecard. So, a risk-prioritized remediation of violations can be ensured.

Conclusion: The Corporate compliance management involves a full process of research and analysis as well as investigation and evaluation. Such an exercise is undertaken in order to determine the potential issues and get a realistic view about how the entity is performing and how it is likely to perform in the future. Corporates which ensure compliance are rewarded with positive public image and customer trust. Company Secretaries with core competence in compliance and corporate governance play a crucial role in the corporate compliance management in an organisation.

Answer 1(c)

Good Documentation Practice- Good documentation practices is a set of best practices for documentation and recordkeeping. It aims to preserve the data integrity of important documents and records and can also serve as guidelines for how to record information and store data appropriately.

Good Documentation Do's:

- (a) Do record the data/document as soon as it is generated
- (b) Do add the reference notes (if possible) to provide the context
- (c) Do validate your computerised system or document software
- (d) Do limit document access to authorised personnel
- (e) Do specify when the data/document was recorded, reviewed and approved
- (f) Do keep data back-up, either automatically or by storing the true copy in separate location

Good Documentation Don'ts:

- (a) Don't delay in data/document recording
- (b) Don't make the data confusing, vague and unreadable
- (c) Don't encourage handwritten documentation
- (d) Don't intentionally falsify the record/document
- (e) Don't pre-date or back-date the data/document
- (f) Don't archive data/documents unless explicitly authorized to do so.

Answer 1(d)

Under Section 92(6) of the Companies Act, 2013, if a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a penalty of Rs.2,00,000.

A Practicing Company Secretary will be liable for disciplinary action under Clause 7 of Part I of the Second Schedule to the Company Secretaries Act, 1980 by the Disciplinary Committee of the ICSI under the provisions of the Company Secretaries Act, 1980. Further, Section 448 of Companies Act, 2013 also imposes a penalty if any return, report, certificate, financial statement, prospectus, statement or any other document makes a false statement or omits any material fact.

Further, Company Secretary in practice may also attract the provisions of Section 447, sections 448 and 449 of the Companies Act, 2013.

MCA vide its circular no. 10/2014 dated 07.05.2014 has clarified that Regional director/ ROC would initiate action under section 448 and 449 of the Act in the cases of submitting false or misleading or incorrect information.

Further, the cases u/s 448 and 449 of the Companies Act, 2013, may also be referred to the concerned Institute for conducting disciplinary proceedings against the errant member and the MCA may debar the concerned professional from filing any document on the MCA portal in future.

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

Question 2

- (a) These days doing business is full of temptations and distractions driven by greed to earn unlimited profits, market share, market-standing (in terms of numbers), performance, etc., coupled with tremendous pressure & compulsion to remain ahead; wherein organizations alluring individuals working therein to ignore or lose hold on ethical aspects of a business. Social life is dominated by numerical success where "the ends justify the means". Of late, this attitude and temperament believing the philosophy "the ends justify the means" has led to a substantial depletion of good character, ethical standards, practices and good governance. This has led to loss of humanity, and ultimately, happiness of self and society. Discuss this statement in the context of ethics.

(5 marks)

- (b) The object of Securities Contracts (Regulation) Act, 1956 (Act) is to provide for the regulation of stock exchanges, and of transactions in securities dealt on them with a view to prevent undesirable speculation. The Act prescribes various penalties against persons who might be found guilty of offences under section 23 of the Act. State the procedure of Appeal to Securities Appellate Tribunal as per Section 23L of the Act.

(5 marks)

- (c) The Company Secretary can represent before various regulators and other authorities in connection with discharge of various duties under the Companies Act, 2013. The NCLT being a quasi-judicial authority the Company Secretary can very well do the same'.

Discuss this statement in regards to the case of Mayank Agarwal (Applicant) Vs. M/s. Technology Frontiers (India) Private Limited (Respondent Company) National Company Law Tribunal (Chennai Bench) IA/2/2021 in CP/75/CHE/2021.

(5 marks)

- (d) The management of PKG Ltd., has decided to go for an independent audit assessment of whether a given subject matter of the management is in compliance with applicable authorities identified as criteria. Further, it has to carry out by assessing whether activities, financial transactions and information comply in all material respects, with the authorities who govern the audited entity. Explain about the type of audit along with its objectives that PKG Ltd. should carry out.

(5 marks)

Answer 2(a)

Yes, the statement is correct as in the world of intense competition, every professional work on certain principles and beliefs which are nothing but the values. Likewise, ethics is implemented in the organisation to ensure the protection of the interest of stakeholders like customers, suppliers, employees, society and government.

The term "ethics" is derived from the Greek word "ethos" which refers to character or customs or accepted behaviours. The Oxford Dictionary states ethics as "the moral principle that governs a person's behaviour or how an activity is conducted". The synonyms of ethics as per Collins Thesaurus are – conscience, moral code, morality, moral philosophy, moral values, principles, rules of conduct, standards.

These types/branches of ethics can be defined as under:

Descriptive Ethics deals with what people actually believe (or made to believe) to be right or wrong and accordingly holds up the human actions acceptable or not acceptable or punishable under a custom or law. Descriptive Ethics is also called comparative ethics because it compares the ethics or past and present; ethics of one society and other.

Normative Ethics deals with "norms" or set of considerations how one should act. Thus, it is a study of "ethical action" and sets out the rightness or wrongness of the actions. It is also called prescriptive ethics because it rests on the principles which determine whether an action is right or wrong.

Meta-Ethics or "analytical ethics" deals with the origin of the ethical concepts themselves. It does not consider whether an action is good or bad, right or wrong. Rather, it questions – what goodness or rightness or morality itself is. It is basically a highly abstract way of thinking about ethics.

Applied Ethics deals with the philosophical examination, from a moral standpoint, of particular issues in private and public life which are matters of moral judgment. This branch of ethics is most important for professionals in different walks of life including doctors, teachers, administrators, rulers and so on. There are six key domains of applied ethics viz. Decision ethics {ethical decision making process}, Professional ethics {for good professionalism}, Clinical Ethics {good clinical practices}, Business Ethics {good business practices}, Organizational ethics {ethics within and among organizations} and social ethics.

Conclusion: Business Ethics is one of the branches of Applied Ethics which is mostly used in various organizations & Corporates. It can be defined as, "The application of a moral code of conduct to the strategic and operational management of a business."

Answer 2(b)

Appeal to Securities Appellate Tribunal Section 23L of the Securities Contracts (Regulation) Act, 1956:

- Any person aggrieved, by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under or sub-section (3) of section 23-L, may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.
- Every appeal made above shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed:
- Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

- On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.
- The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Answer 2(c)

In the case of *Mayank Agarwal (Applicant) VS. M/s. Technology Frontiers (India) Private Limited (Respondent Company) National Company Law Tribunal (Chennai Bench) IA/2/2021 in CP/75/CHE/2021*.

Facts of the case;

- In this case, the Company Secretary of the respondent company had sent the notice to the applicant under Section 90(5), (who is nominee director of the Respondent Company) on May 3rd, 2021 along with the form to disclose their Ultimate Beneficial Ownership of the shares held.
- However, the applicant alleged that the company alone is empowered to apply to NCLT under Section 90(7) of the Companies Act, 2013 and Company Secretary has not taken approval from Board of directors to file the present petition.
- The Company Secretary of Respondent Company in his written submission stated that he has the locus standi as per the board resolution passed for his appointment which clearly states that "he can perform any duties as required under Companies Act, 2013" and
- The Company Secretary have the authority to enter into pleadings on behalf of company even in absence of formal board authorization.
- Further, he referred to the provisions of section 205 of the Companies Act 2013, under which he is authorized to represent and that it is his duty to do so.

Order: The usage of the words "Company shall give notice" under Section 90(5) makes it amply clear that the Key Managerial Personnel have to do this activity of seeking information; in order to find out the Ultimate Beneficial Owners. The Company Secretary has acted diligently and promptly to ensure compliance of the mandatory provisions. Hence, the application stand dismissed.

Conclusion; Hence, the Company Secretary can represent before various regulators and other authorities in connection with discharge of various duties under the Act.

Answer 2(d)

In the given case PKG Ltd. should carry out the Compliance audit.

Compliance audits may be planned, performed and reported separately to the Board, senior management or Regulators. The compliance audit is completely different from the audit of financial statements and from performance audits. The compliance audits may be conducted separately on a regular basis, as distinct and clearly-defined audits each related to a specific subject matter.

As per Comptroller and Auditor General of India (CAG) Auditing Standards, the Compliance audit is the independent assessment of whether a given subject matter is in compliance with applicable authorities identified as criteria. Compliance audits are carried out by assessing whether activities,

financial transactions and information comply in all material respects, with the authorities who govern the audited entity. Compliance auditing may be concerned with:

- Regulatory - adherence of the subject matter to the formal criteria emanating from relevant laws, regulations and agreements applicable to the entity.
- Propriety - observance of the general principles governing sound financial management and the ethical conduct of public officials.

Objectives of Compliance Audit

- Contracting and Procurement
- To verify whether procurement was carried out as per extant rules and in accordance with delegated financial powers.
- To verify whether financial propriety was ensured during the stages of tendering, evaluation and award of contract.
- In case of Plant efficiency:
 - To verify whether the usage of power, fuel are as per approved norms.
 - To verify whether plant shutdowns are as per approved norms.
 - To verify whether the production is as per the prescribed scale.
 - To verify whether the installed capacity of the plant is designed as per regulatory approvals.
 - To verify whether the operation of plant complies with environmental norms
- Corporate social responsibility
 - To verify whether corporate social responsibility framework is as per regulatory approvals
 - To verify whether activities of corporate social responsibility are as per corporate policy.
 - To verify whether the corporate policy is in consonance with relevant regulations and DPE guidelines.

OR (Alternate Question to Q. No. 2)

Question 2A

- (i) Rashmi Goel is a Practising Company Secretary having firm name as Rashmi Goel and Company based at Mumbai. However, she resides at Bhopal. Manmohan her old classmate who could not complete his CS but having very sharp mind and professionally competent person living at Mumbai manages the office of Rashmi Goel and Company. Basically, she allows Manmohan to practise in her name.

He brings the Professional work through his contact and liaisoning with the client is also done by him. All the Secretarial audit work is done by Manmohan and his team. Manmohan charges 50% of the Secretarial Audit fees collected by Rashmi Goel and Company as his share. Moreover, in other compliance related work, he charges 75% as his fees. Rashmi has blind faith on his friend and only signature is done by Rashmi Goel.

This arrangement was going very smooth until Manmohan demanded 80% of the Secretarial Audit fee from Rashmi Goel. Kindly advise Rashmi Goel PCS with regard to the code of conduct of ICSI.

(5 marks)

(ii) SRP Ltd committed an offence under the General Clauses Act, 1897 for which investigation is initiated. Managing Director (MD) of the company called a meeting of Key Personnel Officers for immediate resolving the issue. During the meeting Key Personnel Officers except the Company Secretary in full time employment suggested to the MD to resolve the issue by a settlement mechanism (Compounding of Offence). The Company Secretary in employment countered the suggestion and argued that in the prevailing situations the company cannot be allowed to go for the settlement mechanism. Referring the relevant provisions of the Companies Act, 2013 examine and explain the settlement (Compounding) mechanism and its exceptions in the implementation. And discuss whether the Company Secretary in Employment is correct ?

(5 marks)

(iii) The Companies Act, 2013 casts responsibility on each and every director to apply their judgment in preparation of annual accounts according to applicable accounting standards and accounting policies, preparing accounting records on going concern basis. How are the Directors of VKJ Ltd., a company incorporated under the Companies Act, 2013 and having annual turnover of INR 2,000 crore are responsible in this regard ?

(5 marks)

(iv) Pre-certification of forms is, not a routine or mechanical exercise but is a serious and involved work calling for sound application of mind in verifying the averments made in the respective forms after due consideration of the provisions of the Act read with the relevant rules. Comment.

(5 marks)

Answer 2A(i)

Professional misconduct in relation to Company Secretaries in Practice (Part I of the First Schedule to the Act)

Clause (1): Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he -

“allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in Practice and is in partnership with or employed by him.”

This rule is intended to ensure that the professional work is done by a qualified professional so as to protect the client's/public interest. The rule permits another person to practice in the name of a Company Secretary in Practice provided such other person is also a Company Secretary in Practice and is in partnership with or is employed by the Company Secretary in Practice in whose name the work is to be carried out.

This clause read with clause 11 of Part I of the First scheduled does not permit PCS to allow any person to practice in his name as a Company Secretary or to allow any person to sign as PCS, unless such person is also a Company Secretary in Practice or is in partnership with or employed by him.

Clause (II): Provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he—

“pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional business to any person other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner or a member of any other professional body or with such other persons having such qualifications as may be

prescribed, for the purpose of rendering such professional services from time to time in or out side India.

In e-governance era, a PCS on many occasions attaches his Digital Signature to various forms / statements. Due care has to be taken that such digital signature is attached only by the PCS himself. It would be the exclusive duty and obligation of PCS to prevent any unauthorized use of his Digital signature. PCS is not expected to part with the password of his Digital signature.

Hence, Rashmi Goel PCS does only the signature and she does not even check the accuracy of documents. She shares the major part of her fees which is not allowed. The office of PCS is run by person who is not her partner nor her employee. This is serious concern and she has violated code of conduct of ICSI. Rashmi Goel PCS shall be deemed to be guilty of professional misconduct, and she should neither allow anyone to practice in her name nor she can share part of her fees. Hence, she shall be liable for disciplinary action as per ICSI code of conduct.

As per sub-section (3) of Section 21A of the Company Secretaries Act, 1980:

Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him/her and may thereafter take any one or more of the following actions, namely:—

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

Answer 2A(ii)

Compounding of an offence is a settlement mechanism, by which, the offender is given an option to pay money in lieu of his prosecution, thereby avoiding a prolonged litigation. There is no definition of the word "compounding" in the Companies Act 2013, however, the legal meaning of compounding is "doing good the default/non-compliance".

In simple words, we can define that Compounding of offence is a process whereby the person or entity committing default will file an application to the compounding authority accepting that he/ it has committed an offence. The compounding authority (RD/NCLT) in case of the Companies Act, 2013 (the Act) may compound the offence and ask the defaulter to deposit fee which is compounding fees as decided by it on case to case basis.

Which offences can be compounded?

Not all offences under the Companies Act, 2013 can be compounded. Only the following offences (whether committed by a company or any officer thereof) as mentioned below, can be compounded under Section 441 of the Companies Act, 2013:

1. Offences punishable with "fine only".
2. Offences punishable with "fine or imprisonment or both" or "fine or imprisonment".

Exceptions: Which offences cannot be compounded?

No compounding shall be done in the following cases:

1. Offence punishable with "imprisonment only"; or
2. Offence punishable with "imprisonment and fine"; or
3. Where investigation has been initiated or is pending against the company;

4. An offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

When compounding can be done?

Certain offenses committed by a company or its officers that are punishable with a fine may be compounded. Third proviso to Section 441(1) of the Companies Act, 2013 states that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

Conclusion: In view of above details, as in the given case the investigation is initiated, it can't be compounded. Hence, the Company secretary in employment is correct.

Answer 2A(iii)

Directors Responsibility Statement

Section 134(5) of the Companies Act, 2013 casts responsibility on each and every director to apply their judgment in preparation of annual accounts according to applicable accounting standards and accounting policies, preparing accounting records on going concern basis. The directors are responsible to devise a proper system to ensure compliance with all applicable laws.

The Directors' Responsibility Statement is required under Section 134(5) of the Act to state as under:

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

Answer 2A(iv)

Yes, the statement is absolutely correct as Pre-certification is important not only from the Company's perspective but also from regulators standpoint. A Practicing Company Secretary (PCS) while exercising due diligence need to be keen and alert while certifying the forms with their eyes wide open. They should not merely restrict themselves to the content of the form and along with mandatory attachments they need to focus whether substantial laws were complied or not. They should exercise vigilance in circumstances such as management disputes, Regulatory complaints, investor complaints etc. It is important to:

1. Ensure correctness:

The professional checks the correctness of the particulars stated in the prescribed forms after due consideration of the provisions of the Act and the Rules made thereunder. He also

ensures that the particulars stated in the Forms are in agreement with the books and records of the company. If he notices any defect or finds that the information provided in the form is incomplete or defective, he appropriately advises/provides guidance for completion of document/rectification of defect and makes pre-certification only after completion of documents/ rectification of such defects.

2. Pre-emptive step:

Pre-certification acts as a pre-emptive check to ensure that the particulars stated in the form or return are as per the books and records of the company and are true and correct. This would mean that the Registrar can rely on the certification of the Company Secretary in Practice and may take the document on record without further examination. Thus, Pre-certification by a Company Secretary in Practice ensures that no form or return filed with the Registrar of Companies is defective or incomplete

3 Aids good governance:

Disclosure of information to shareholders is a critical requirement of good governance mechanism with a view to protect the interests of the shareholders and other stakeholders and to ensure better governance.

Accordingly, the Act has stipulated stringent measures and requirements for disclosure, included in financial statements, Board's report and annual return. The Act has also prescribed onerous duties and responsibilities on the Director of a company as well as the Company Secretaries. The punishment for violation of provisions of the Act has also been enhanced under the Act, to ensure the correctness of information filed by the corporates.

4 Self-regulation:

The introduction of pre-certification by an independent professional in the e-form was aimed at self-regulations of companies and to reduce the involvement of government machinery, i.e. the Registrar of Companies. Once any form has been pre-certified by a professional based on the particulars contained in the books of accounts and records of the company, same can be taken on record without further examination.

If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under the provisions of the Act as well as liable for professional or other misconduct under Company Secretaries Act, 1980.

PART-II

Question 3

- (a) Following are the financials of GKV Limited a Public Company for the Financial year 2024-25. (₹ in Crores)

Particulars	Figures as on 30th September 2024	Figures as on 31st December 2024	Figures as on 31st March 2025
Paid up share capital	35	45	45
Turnover	180	265	240
Outstanding loans from banks and financial institutions	75	75	95

You are the Chief Financial Officer of the GKV Limited and your directors are of the view that Secretarial Audit is applicable on your company as per Section 204(1) of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 which provides that it shall annex with its Board's report made in terms of sub-section (3) of section 134 of the Act, a Secretarial Audit report given by a Practising Company Secretaries., in form No. MR-3, as attached as Annexure-A. You have to advise your director regarding the applicability of Secretarial Audit on GKV Limited.

(5 marks)

- (b) The Directors of RKG Ltd., a company incorporated under the Companies Act, 2013 suspects that there are many instances into the practices of corruption and misappropriation of assets in the working of their company. It has been decided by the Board to undertake an audit in order to assess the overall position of the company. Advise as a PCS the audit giving its details and purpose.

(5 marks)

- (c) Due diligence" is an analysis and risk assessment of an impending business transaction. It is the careful and methodological investigation of a business or persons, or the performance of an act with a certain standard of care to ensure that information is accurate, and to uncover information that may affect the outcome of the transaction. Give an illustrative list of any six transactions that require proper Due Diligence. Also give any four advantages of Due Diligence.

(5 marks)

Answer 3(a)

Applicability of Secretarial Audit

Section 204(1) of the Companies Act, 2013 read with rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that;

- (a) Every Listed Company;
- (b) Every public company having a paid-up share capital of 50 crore rupees or more; or
- (c) Every public company having a turnover of 250 crore rupees or more;
- (d) Every company having outstanding loans or borrowings from banks or public financial institutions of 100 crore rupees or more.

shall annex with its Board's report made in terms of sub-section (3) of section 134 of the Act, a Secretarial Audit report given by a Practicing Company Secretaries., in form No. MR-3, which is as attached as Annexure -A.

Explanation to this sub-rule clarifies that the paid-up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.

Facts of the case: Since, GKV Limited turnover as on March 31, 2025 was less than 250 crore and all its other criteria were within limit specified as per the Act. Hence, Secretarial Audit is not applicable on GKV Limited for the Financial Year 2024-25. Although, the companies which are not covered under section 204 may opt for conducting Secretarial Audit voluntarily as it provides an independent assurance of the compliances of applicable laws by the company.

The directors may be advised accordingly.

Answer 3(b)

Forensic Audit

RKG Ltd. should carry the Forensic audit. Forensic Audit is a dynamic and strategic tool in combating corruption, financial crimes and frauds through investigations and resolving allegations of fraud and embezzlement. It may be conducted to determine negligence. Forensic is the application of science to crime concerns. Forensic science is science applied to legal matters especially criminal matters.

Forensic audits are highly specialized, and the work requires detailed knowledge of fraud investigation techniques and the legal framework. Forensic accountants are trained to look beyond the numbers and has necessary skills and experience to accept the work. Highly specialized and the work requires detailed knowledge of fraud investigation techniques and the legal framework (civil, criminal laws and human psychology) and to identify substance over form when dealing with an issue.

Forensic audit is done in two-phases:

- **Investigation Services** – At first the auditor begins with an investigation; looking into the accounts and statement, and identifying defects in it. It then moves on to find ways to deal with such defects, which is a reactionary function.
- **Litigation Services** – It is entirely possible the frauds detected be resolved within the company itself. However, there are times when they need to be resolved through legal channels. During such situations, forensic auditors give litigation support to the advocates.

Their advice and consultation about the legalities of commercial disputes are very essential. Moreover, they also provide research assistance by giving relevant documents and facts to support a legal claim, and also help decide the extent of damage that is required. They are also called up by the Court as an expert witness for further investigation.

Purpose of Forensic Audit

I. Corruption

In Forensic audit, while investigating fraud, auditor would look out for:

Conflicts of interest – When fraudster used his/her influence for personal gains detrimental to company. For example, if a manager allows and approves inaccurate expenses of employee with whom he has personal relations. Even though the manager is not benefitted from this approval but he is likely to receive personal benefits after making such inappropriate approvals.

Bribery – As the name suggest offering money to get things done or influence a situation one's favor would be bribery.

Extortion – In above example, if someone demands money so as to award Tender to other party then it would amount to extortion.

II. Asset Misappropriation

This is the most common and prevalent fraud carried out by fraudsters. Misappropriation of cash, raising fake invoices, payments made to non-existing suppliers or employees, misuse of assets or theft of Inventory are few examples of such asset misappropriation.

III. Financial statement fraud

Companies get into such type of frauds so as to show a better performance of the company

than what it is actually. This is done so as improve liquidity or ensure top management keep earning the bonuses or due to market pressure on performance.

Answer 3(c)

The statement is absolutely correct. Due diligence refers to investigation into the affairs of an entity prior to its acquisition, restructuring, fund raising or other similar transaction. Due Diligence is not restricted to check the facts but also to evaluate, interpret and communicate the facts so as to ensure that prospective investors make an informed investment decision.

It is process of gathering information about the target company, its business and the environment in which it operates.

Transactions that require proper Due Diligence:

- Joint Enterprise Collaborations;
- Partnerships;
- Mergers and Acquisitions;
- Strategic Alliance;
- Business Coalition;
- Outsourcing Agreement;
- Technology or Product Licensing;
- Joint venture through
 - Technical or Financial Collaboration;
 - Venture Capital Investment;
 - Public Issue etc.

Advantages of Due Diligence:

- It analyses who administers, owns and run the organisation.
- It examines the company and the market in a contrast way to assess the volatility of the market.
- It researches about the competitors of the target company existing in the market.
- It reviews the financial statements of the company such calculating debt equity ratio, etc.
- It examines the rise or fall in revenue/profits of the company.
- It expects the growth of the company with maximization of the profits of the organization.

Question 4

(a) What factors impair the independence of internal auditors ?

(3 marks)

(b) The Auditor shall plan the audit with professional scepticism so that it is possible to exercise professional judgment in an objective manner. The application of professional scepticism enhances the effectiveness of applied audit procedures and reduces the risk and possibility that the Auditor will reach an inappropriate conclusion when evaluating the results of audit procedures. How does an auditor develop an audit plan ?

(3 marks)

(c) An information systems audit performed in an organisation is a comprehensive examination of a given targeted system. The audit consists of an evaluation of the components which comprise that system, with examination and testing in the various areas. Explain Information Systems Audit and various areas of Information System Audit.

(3 marks)

(d) Suggest an Audit technique which can be used in many areas where information needs to be connected or verified without repeating content. It saves time during report drafting (just refer to Working Paper code instead of re-describing evidence). And it makes the audit trail very strong in case of future disputes. It also helps in peer review and when the same audit file is reviewed next year. Moreover, when the audit findings are reviewed by the Board or Statutory Auditors, it can be used to quickly locate supporting records without searching the entire audit file. Identify, define and discuss this Audit technique.

(3 marks)

(e) Identify the formal evaluation/review method/process where the work, performance, or compliance of a professional or firm is examined by another qualified and independent professional. Specify the points on which the review shall focus. Specify when once a practice unit is selected for review, its engagement records pertaining to which financial year shall be subject to review.

(3 marks)

Answer 4(a)

Achieving independence and objectivity in work is one of the critical preconditions that internal auditors need to meet to serve the purpose. Independence means ensuring the possibility of objective performance of internal auditor's duties, and is linked to the organizational positioning of internal audit in the company, reporting relationships with boards of directors, audit committee, or other governing bodies separated from the management, authority for the evaluation of information, reports, and the like.

The following factors impairing the independence of internal auditors:

- 1. Business relationship:** involves common commercial or financial interest between the auditor and client. This shall create self-interest or advocacy threats towards audit independence. Therefore, the business relationship shall be restricted as much as possible. Let's take an example: The wife of auditor is the supplier of the client. The auditor here has indirectly created business relationship between him and the client.
- 2. Employment with audit client:** Any kind of employment relationship with the Auditee Client gives the impression that the audit is not performed independently. Such relationships create self-review threats, familiarity threats, and intimidation threats.
- 3. Prior work with audit client:** The senior personnel may have had prior work experience with the audit client. This ought to create familiarity and self-interest threats if the work experience resulted in good relationships between them. Such association may create or help in the longer audit tenure of the audit function. This will in turn impact the audit independence and objectivity.
- 4. Gift and hospitality:** The auditors should not accept any gifts (or kind) from the auditee. The acceptance of such gifts may impair the auditor's objectivity. The internal auditors are also required to immediately report any such offer to their supervisors if any. Such gift and hospitality ought to create familiarity and self-interest threats.

5. **Family and personal relationships:** There may exist family and personal relationships between member of audit team and audit client. This creates self-interest and familiarity threats towards audit independence.
6. **Non-audit services to audit clients:** Offering non audit services to audit clients creates self-review threats to auditor's independence inherent in the model of business of audit firms.

Answer 4(b)

Developing the Audit Plan

Yes, the statement is correct as the Auditor establishes the overall audit strategy, which sets out the scope, timing and direction of the audit and guides the development of the more detailed audit plan which should include the following:

1. Introduction – a short introduction about the audit;
2. Audit field – A description of the audit field, including the regulatory framework for the audit where relevant and recent significant changes and developments that may affect the audit;
3. Audit objectives – The audit objectives depend on the type of audit to be conducted;
4. Audit coverage – The audit coverage periods to be covered and locations to be visited; control systems to be tested and sample to be audited;
5. Materiality – Identification of materiality in terms of value, nature and context;
6. Risks – A preliminary assessment of risks (e.g. changes in the regulatory environment or internal control systems and evaluation of inherent and control risk);
7. Audit approach – The audit approach, including the audit procedures to be carried out in order to provide the necessary audit evidence. This identifies the extent of planned reliance on control systems and the extent of substantive procedures;
8. Organisation – Organisation of audit work: resources (including recourse to the work of other Auditor and experts), timetable (including the reporting objectives of the audit), documentation in electronic audit support system.

The Auditor shall adhere to the audit plan. The audit plan may be modified, if circumstances so warrant. The audit plan should be documented in audit file, including significant changes made during the course of the audit and the reasons for such changes. The audit plan should be updated and modified as may be necessary during the course of the audit, whether due to unexpected events, changes in conditions or audit evidence obtained. This may have an impact on the planned nature, extent and timing of planned audit procedures. Updation of audit plan may be carried out in the circumstances such as change in business plan, changes in the regulatory environment, changes in management, etc.

Answer 4(c)

Information Systems Audit

Information systems auditing or systems audit is an ongoing process of evaluating controls, collecting and evaluating evidence to determine whether a computer system safeguards assets, maintains data integrity, allows organizational goals to be achieved effectively, and uses resources efficiently. Thus, information systems auditing supports traditional audit objectives; attest objectives (those of the external auditor) that focus on asset safeguarding and data integrity, and management objectives (those of the internal auditor) that encompass not only attest objectives but also effectiveness and efficiency objectives.

An information systems audit performed in an organization is a comprehensive examination of a given targeted system. The audit consists of an evaluation of the components which comprise that system, with examination and testing in the following areas:

- High-level systems architecture review
- Business process mapping (e.g. determining information systems dependency with respect to user business processes)
- End user identity management (e.g. authentication mechanisms, password standards, roles limiting or granting systems functionality)
- Operating systems configurations (e.g. services hardening)
- Application security controls
- Database access controls (e.g. database configuration, account access to the database, roles defined in the database)
- Anti-virus/Anti-malware controls
- Network controls (e.g. running configurations on switches and routers, use of Access control lists, and firewall rules)
- Logging and auditing systems and processes
- IT privileged access control (e.g. System Administrator or root access)
- IT processes in support of the system (e.g. user account reviews, change management)
- Backup/Restore procedures.

Yes, it is absolutely correct that during the System audit, the auditors are required to understand and evaluate the overall control environment. The control environment reflects the overall attitude of, awareness of, and actions by the board of directors, management, and others concerning the importance of internal controls in the enterprise.

Answer 4(d)

Cross referencing (Audit technique);

It is an audit technique used to compare and match data from different sources to ensure accuracy and completeness.

Working papers should be prepared using the appropriate cross referencing. A cross reference from the Audit Procedures to the primary working paper provides a reference to where the work was performed. It is not necessary to cross refer all work papers to the Audit Procedures - only the primary work paper should be cross referred. The primary work paper will then contain cross-references to other, supporting working papers, which provide additional information regarding the audit procedures performed, results and conclusions reached.

Cross-references should be used to refer information useful in more than one place or to other relevant information including the source of information, composition of summary totals, or other documents or examples of transactions. To encourage conciseness, documents/information only single copy of the working papers should be placed in working file for cross referencing.

Answer 4(e)

Peer Review:

The formal evaluation/review method/process where the work, performance, or compliance of a professional or firm is examined by another qualified and independent professional is the Peer Review Process.

The points on which Review shall focus are:

- 1) Compliance with ICSI Guidance on Office Administration and Systems in the Office of PCS, ICSI Auditing Standards, Guidance Notes, Manuals, References and advisories issued by the Institute;
- 2) Quality of Reporting;
- 3) Office systems and procedures; and
- 4) Training Programs for staff (including trainees), including appropriate infrastructure.

When once a practice unit is selected for review, its engagement records pertaining to the immediately preceding financial year shall be subject to review.

Question 5

- (a) Briefly discuss the main purposes for an interview in context of an Audit. Can an interview have all those purposes at the same time. The interview techniques can be gainfully used in a structured or unstructured manner to elicit information from the entity both in the planning phase as well as in execution phase, explain.

(5 marks)

- (b) After the exit meeting and the completion of the audit procedures, the auditor should prepare an executive summary, of audit findings. Comment. Elucidate what is included in the executive summary.

(5 marks)

- (c) A change may not be considered reasonable if it appears that the change relates to information that is incorrect, incomplete or otherwise unsatisfactory. Justify your answer with an example and explaining when there should be changes in terms of engagement. Elucidate what precautions, the Auditor should take while accepting the change in terms of engagement ?

(5 marks)

Answer 5(a)

The main purposes for an interview in context of an audit are orientation, examination and confirmation. An interview can have one or two of these purposes, but normally not all three at the same time.

Orientation is normally part of the audit team's learning process during the planning phase. It aims at exploring and giving an overview of a specific area or function, e.g., by asking for presentations of activities, explanations of formal or informal networks or interpretation of documents (reports, instructions or, budgets). The objective could be to identify possible audit subjects or to find out about other available sources of information, such as key persons or documentation.

Examination aims at more specific issues with a view to establishing new information, often to be used as audit evidence. In some cases, such information has not been previously recorded at all but is embodied in the interviewee through personal experiences, particular references, opinions, etc. In other cases, the knowledge can be retrieved for example by (joint) interpretation of internal documents, reports or records. It should be noted that evidence obtained from interviews often needs to be corroborated, i.e. supported by evidence from other data collection methods.

Confirmation, finally, often goes together with either orientation or examination, but deserves to be mentioned as a separate purpose because of its fundamental importance. Confirmation,

by definition, is typically based on information that has already been gathered. However, in this context the information can also be gathered and confirmed simultaneously.

The interview techniques can be gainfully used in a structured or unstructured manner to elicit information from the entity both in the planning as well as execution phase. The Auditor can use the interview mode to obtain both qualitative and quantitative information.

The aim in the planning phase is to develop a comprehensive and correct understanding of the audited activity or the auditee's business in order to facilitate the identification of significant audit issues, there is therefore a need to get orientation as well as confirmation. An interview can very well be justified by a combination of these purposes. Orientation requires a more unstructured approach, with the auditor having maximum flexibility where necessary to explore themes that have not previously been considered and to deeply probe the responses that are given. In this phase, the auditor generally does not have a prior hypotheses or deep knowledge of the project or activity. Confirmation, on the other hand, needs a fairly structured approach in order to have important facts and conditions verified.

In the execution phase of the audit, when the objective is often a more focused examination of an area, in order to capture simple, factual data, to document or clarify certain points or to test hypotheses, interviews will typically have a more structured form. The aim is often to obtain evidence (documents, opinions and ideas) that relate to the audit's objectives, to confirm facts and to collaborate data from other sources. The auditor should have a firm grasp of the issues he wants to cover and should know in advance what type of data he wants.

Answer 5(b)

Yes, after the exit meeting and the completion of the audit procedures, the auditor should prepare an executive summary of audit findings. The summary explains the key audit issues, the category of risk, their resolution, agreed adjustments. After discussing the executive summary the audit certificate should be signed by the auditor and by the management or person authorized by the management of the company.

The executive summary is a high-level summary, which explains audit findings, while it is a concise document; it should contain sufficient information to stand alone as a summary of the evidence which supports audit team's conclusion on the appropriate form of audit certificate. The executive summary should include:

- (i) a summary of the auditee's operations and purpose;
- (ii) a summary of the regularly framework within which the auditee operates;
- (iii) an explanation of the audit approach and the balance between test of controls and substantive procedures;
- (iv) a summary of the key risk identified;
- (v) a commentary on key balances;
- (vi) a commentary on the accounting policies and significant account areas;
- (vii) a summary of the result of audit procedures;
- (viii) details of areas where difficult questions of principle or judgement were involved;
- (ix) matters brought forward from previous year audit;
- (x) a summary of other important matters for attention;
- (xi) outstanding matters, for example, outstanding reappointment orders or letter authorizing agreed amendments to the financial statement;

- (xii) a summary of matters carried forward to the next years audit; and
- (xiii) a conclusion on the appropriate form of audit certificate.
- (xiv) the report should clearly mention the process name; significant findings with respect to the criteria; analysis of the consequences of the findings; and recommendations of the auditor. Each observation should be supported by a set of facts and each recommendation to the management should be supported by a business reasons for implementation.
- (xv) further, the replies on the auditor's observations and recommendations/comments of the management of the Auditee's company should be obtained and should be recorded in the audit file. Also, in case where the auditor opinion is other than the unmodified opinion, the full rationale should be given in the executive summary.'

Answer 5(c)

A change may not be considered reasonable if it appears that the change relates to information that is incorrect, incomplete or otherwise unsatisfactory.

For example, where the Auditor is unable to obtain sufficient appropriate audit evidence regarding labor law compliance by the company and the Appointing Authority asks for the Audit Engagement to be changed to a review engagement to avoid a modified opinion or a disclaimer of opinion.

The Auditor shall not agree to a change in the terms of the Audit Engagement where there is no reasonable justification for doing so. If the terms of the Audit Engagement are changed, the Auditor and the Appointing Authority shall agree on the new terms of the engagement by way of a supplementary/revised engagement letter or any other suitable form in writing signed by the Appointing Authority with justification for the change.

A request from the Appointing Authority to change the terms of Audit Engagement may result from a change in circumstances affecting the need for the service or a restriction on the scope of Audit Engagement, whether imposed by Management or caused by other circumstances. The Auditor shall consider the justification given for the request, particularly the implication of a restriction on the scope of the Audit Engagement.

A change in circumstances that affects the Auditee's requirements may be considered a reasonable basis for requesting a change in the Audit Engagement. With mutual consent the terms of the Audit Engagement may be changed. When such changes are there, the Auditor shall obtain the supplementary/revised engagement letter with a justification for the change and it shall be duly signed by the Appointing Authority. The impact of such change on the level of assurance shall be ascertained before accepting the same. If change in the terms of Audit Engagement is likely to result in a lower level of assurance, then the Auditor may accept such change only if such change can adequately be covered by way of modified report.

The Auditor should take the following precautions while accepting the change:

- (1) The Auditor should not agree to a change in the terms of the Audit Engagement which restricts the scope of audit provided under any statutes.
- (2) If the term of the Audit Engagement is changed when it is expected that Auditor may have to issue a modified report, such type of changes should be resisted.
- (3) Any request to change to avoid or circumvent unfavourable Auditor's report is also unjustified and should not be accepted.
- (4) If the terms of the Audit Engagement are changed before the completion of the audit, the Auditor should not disregard the evidences obtained prior to the change in scope of audit.

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

Question 6

(a) The four Labour Codes envisage strengthening the protection available to workers, including unorganized workers in terms of statutory minimum wage, social security and healthcare of workers. Explain some of its important provisions.

(5 marks)

(b) Where a dispute arises over the powers of Reviewers or the process or conclusions reached after the review or to any other matter related to the review, the Practice Unit, the Reviewer or both may refer the dispute to which Authority and how this process takes place. Explain.

(5 marks)

(c) An auditor is required to submit the audit report and sign it as per norms. Explain the Auditor's responsibility and signing of audit report.

(5 marks)

Answer 6(a)

Labour Code: The Government has formulated four Labour Codes, namely, the Code on Wages, 2019, the Industrial Relations Code, 2020, the Code on Social Security, 2020 and the Occupational Safety, Health and Working Conditions Code, 2020.

The four Labour Codes envisage strengthening the protection available to workers, including unorganized workers in terms of statutory minimum wage, social security and healthcare of workers.

Some of the important provisions are as follows:-

- A statutory right for minimum wages and timely payment of wages has been made available to all workers to support sustainable growth and inclusive development.
- To avoid multiple interpretations and litigations, uniform definition of 'wages' across all the four Labour Codes has been provided that is simple, coherent and easy to enforce.
- Provision for annual health check-up and medical facilities has also been made which enhances labour productivity and increases life expectancy.
- Statutory provision has been made for the first time to issue appointment letter to every employee of the establishment which leads to formalized contract of employment that increases job security and enables a worker to claim statutory benefits such as minimum wages, social security etc .
- Provision of Re-skilling Fund for skill development of workers.
- The gig worker and the platform worker have been defined for the purpose of formulating schemes to provide social security benefits. Social security schemes can be formulated from the contribution of aggregators and the other sources can include funds from the Central and State Governments.
- A worker engaged under Fixed Term Employment (FTE) is entitled for all the benefits which are available to permanent employees and has also been made eligible for gratuity if he renders service for a period of one year.
- Every worker is entitled to annual leave with wages after working for 180 days in comparison to 240 days at present. Provision for encashment of leave on demand by a worker while in service at the end of calendar year.

- Applicability of Employees' Provident Fund has been extended to all industries as against scheduled industries at present.

Answer 6(b)

Referral of Dispute and Appeal in case of Peer Review:

Where a dispute arises over the powers of Reviewers or the process or conclusions reached after the review or to any other matter related to the review, the Practice Unit, the Reviewer or both may refer the dispute, in writing, to the Board.

Such referral shall have to be made within 2 (two) months of occurrence of the issue in dispute, in such manner as may be prescribed by the Board in this regard.

Where a dispute is referred, after considering any submissions or representations (which shall be made in writing) made by the relevant Practice Unit and/or the relevant Reviewer, the Board

- Shall decide the dispute within 6 (six) months of the reference and communicate such decision to each of the parties to the dispute, simultaneously;
- May issue directions relating to the matter in dispute to such Practice Unit or the Reviewer concerned and require such Unit or Reviewer to comply with them within 30 (thirty) days and send a report to the Board of the said compliance within 15 (fifteen) days of such compliance;
- Shall convey its decision in these regards to each of the parties within 15 days from the date of the decision.

Where either of the parties are dissatisfied with the decision of the Board, it may refer the matter to the Council within 2 (two) months in such manner as may be prescribed.

Answer 6(c)

The Auditor's Report shall include a section with the heading "Auditor's Responsibility". Auditor's Report shall state that the responsibility of the Auditor is to express the opinion on the compliance with the applicable laws and maintenance of Records based on audit. The Auditor's Report shall also state that the audit was conducted in accordance with applicable Standard. The Auditor's Report shall also explain that those standards require that the Auditor comply with Statutory and Regulatory requirements and plan and perform the audit to obtain reasonable assurance about compliance with applicable laws and maintenance of Records.

Auditor's Report shall state that due to the inherent limitations of an audit including internal, financial and operating controls, there is an unavoidable risk that some misstatements or material non-compliances may not be detected, even though the audit is properly planned and performed in accordance with the standards.

The Auditor has a responsibility to perform procedures to identify, assess and respond to the risks of material misstatement or non-compliance arising from the Auditee's failure appropriately to account for or disclose an event or transaction.

Auditor's Report includes a separate section with heading "Auditor's Responsibility" that will state or express the opinion of the Auditor about the following:

- Whether the audit has been conducted as per the applicable Auditing Standards.
- Whether the Auditor has obtained reasonable assurance about whether the statements prepared, documents or records maintained by the Auditee are free from misstatement.
- That Auditor has the responsibility to only express his opinion on the evidences collected, information received and records maintained by the Auditee or given by the Management.

- Whether the Auditee has followed applicable laws, act, rules or regulations in maintaining their records, documents, statements, or have complied with applicable laws or rules while performing any corporate action.

Signing of Audit Report

The auditor's signature is either in the name of the audit firm, the personal name of the auditor or both, as appropriate for the particular jurisdiction. In addition to the auditor's signature, in certain jurisdictions, the auditor may be required to declare in the auditor's report the auditor's professional accountancy designation or the fact that the auditor or firm, as appropriate, has been recognized by the appropriate licensing authority in that jurisdiction.

However, in case of secretarial audit report the report should be signed by the secretarial auditor who conducted or under whose supervision the secretarial audit was conducted indicating his FCS/ACS number along with certificate of practice number issued by the Institute of Company Secretaries of India.

In case of PCS firm, the secretarial audit report may be signed by the partner who conducted or under whose supervision the secretarial audit was conducted indicating his FCS/ACS number along with his certificate of practice number. The secretarial audit report cannot be signed by an employee of the PCS firm even if he/she may be a member of the ICSI holding certificate of practice number.

OR (Alternate Question to Q. No. 6)

Question 6A

- (i) The Quality Reviewer is responsible to evaluate whether the evidence obtained during the review is sufficient to support the report to be issued pursuant to the review engagement. Indicate the general deficiencies which the review may indicate. When the Reviewer has collated the findings which are required to be evaluated, what should he do. In evaluating the findings of Quality Review, some material deficiencies were noticed that there were Independence & Ethical Breaches, deficiencies in Engagement Performance, Quality Control Leadership & Responsibility Failures. Elucidate the presence of which other events would indicate existence of material deficiency in policies/ procedures.

(5 marks)

- (ii) A Non-Disclosure Agreement is defined as a legally enforceable contract that creates a confidential relationship between a person who holds some kind of trade secret and a person to whom the secret will be disclosed. Give the contents of Non-Disclosure Agreement under Due Diligence.

(5 marks)

- (iii) Audit sampling is an investigative tool in which less than 100% of the total items within the population of items are selected to be audited. It is an auditing technique that provides supporting evidence that allows auditors to issue audit opinions without having to audit every single item and transaction. Give the purpose and form of Audit Sampling.

(5 marks)

Answer 6A(i)

The Reviewer is responsible to evaluate whether the evidence obtained during the review is sufficient to support the report to be issued pursuant to the review engagement.

The review may indicate the following general deficiencies:

- a. deficiencies in the policies and procedures instituted by the PU; or
- b. the procedures performed by the PU were not designed or performed appropriately to provide it with sufficient appropriate evidence that the PU has complied with the applicable technical standards ; or
- c. deficiencies in the procedures performed by PU to ensure that the services rendered by the PU were appropriate in the circumstances.

As and when the Reviewer has collated the findings which are required to be evaluated, they should communicate those findings to the PU and allow reasonable time to respond to the queries. It is essential for the review team to consider the information and explanations made available by the PU in response to the findings.

The presence of one or more of the following other events would indicate possibility of existence of a material deficiency in policies/ procedures:

- a) Identification of non-compliances, whether or not material, on the part of the senior management of PU;
- b) Non-compliances with the established policies/procedures in previous periods;
- c) Identification by the review team of a material noncompliance in the current period in the circumstances that indicate the non- compliance would not have been detected by the PU's systems of control; and
- d) Ineffective oversight by the senior management of the PU's external reporting on compliances with all or some elements of the systems of control.

Answer 6A(ii)

Contents of the Non-Disclosure Agreements

1. Definitions and exclusions of confidential information;

Definitions of confidential information spell out the categories or types of information covered by the agreement. This specific element serves to establish the rules-or subject/consideration-of the contract without actually releasing the precise information.

2. Obligations from all involved people or parties; and time periods.

At the same time, nondisclosure agreements often exclude some information from protection. Exclusions might comprise information already considered common knowledge or data collected before the agreement was signed. Additionally, Time periods are also commonly addressed in NDAs and usually require that the party receiving the information stays mum for a number of years. This specific information is usually up for negotiation.

Answer 6A(iii)

Yes, the statement is correct because, when auditing financial statements, it is not feasible to audit and check every single item within the financial statements. It will be very costly and will take a lot of resources and time to do so.

Audit sampling enables auditors to make conclusions and express fair opinions based on predetermined objectives without having to check all of the items within financial statements. The auditors will only verify selected items, and through sampling, can infer their opinion on the entire population of items.

Purpose of Audit Sampling:

No matter what kind of audit is being performed – internal, external, or government – audit sampling needs to be used so that auditors can complete their audits without wasting resources in checking

every single item. The objectives of audit sampling are as follows:

- Gather enough evidence to conclude an audit opinion
- Reduce the number of resources used
- Provide the basis for auditors to issue a conclusive audit opinion
- Detect any errors or fraud that can occur
- Prove that auditors have completed their audit fully in accordance with auditing standards
- Used as a tool for investigating
- Audit Sampling Importance.

There are two forms of sampling:

1. Statistical audit sampling

Statistical audit sampling involves a sampling approach where the auditor utilizes statistical methods such as random sampling to select items to be verified. Random sampling is used when there are many items or transactions on record.

Consider a company with more than 100 inventory transactions on its records. Using statistical sampling is recommended due to the high number of transactions.

For example, with statistical sampling, ten items are selected from the total population randomly. Every single item within the 100 has an equal probability of being selected and tested for accuracy as a result. Again, it benefits auditors since they can still make an audit opinion but do not have to check all 100 transactions.

2. Non-statistical audit sampling

In contrast to statistical audit sampling, non-statistical audit sampling items are not chosen randomly. Instead, they are chosen based on the auditor's judgment, and the result of the testing from the selections is not used to infer the conclusion for the entire population.

In the example earlier, ten inventory transactions can be used to infer the opinion on all 100 transactions. In non-statistical audit sampling, the auditors may choose to select items based on criteria such as:

The value of items (e.g., items greater than Rs 10 lacs)

Items with specific information (e.g., items related to a certain company)

CORPORATE SOCIAL RESPONSIBILITY AND SOCIAL GOVERNANCE

GROUP 1 ELECTIVE PAPER 4.1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

YUVA Ltd. is a textile manufacturing company based in Gujarat, with an annual turnover of ₹ 250 crore and net profit of ₹ 15 crore. Though the company was promoter owned, compliance with laws and regulations were given prime importance and the promoters themselves in their personal capacity supported various charitable causes. 'The Board of Directors also had independent directors and industry experts to guide the management. Meenu, a Company Secretary was recently appointed as compliance officer of the company and was asked to ensure compliance with the applicable laws and regulations in true letter and spirit.

As a part of transitioning and succession, Grega, son of the Promoter director was appointed as Director of the Company. He brought a new perspective to the Board and emphasized that the company needs to adopt a structured approach to create genuine value for society and the communities surrounding its operations. In this context, Meenu mentioned that, Corporate Social Responsibility (CSR) has emerged as a vital aspect of modern corporate governance and ethical business conduct. It reflects the responsibility of organizations not just to generate profits, but also to contribute to the welfare of society and the protection of the environment. In India, CSR received a statutory framework through the Companies Act, 2013, which mandates that companies meeting specified financial thresholds to spend at least 2% of their average net profits of the last three years on CSR activities.

The Board of Directors constituted a CSR committee, which after due consideration of the CSR activities allowed under the Act, identified three major focus areas : education, health and sanitation and environmental protection. These areas were selected because they were socially relevant, legally permissible and closely connected to the needs of the local community, where most of the Company's workforce resided. The Company allocated an annual CSR budget of ₹ 24 lakh, with ₹ 10 lakh earmarked for education initiatives, ₹ 8 lakh for health and sanitation and ₹ 6 lakh for environmental projects. This strategic allocation ensured both diversity and depth in CSR activities, allowing the Company to make a measurable difference across multiple sectors. By integrating CSR into its business philosophy, YUVA Ltd. showcased that social responsibility and profitability can go hand in hand.

To achieve its CSR goals, YUVA Ltd. was evaluating to appoint an agency to support them in execution of CSR activities and collaborate with local authorities. The Board had a broad plan for each of the activities - in the education sector, the Company would distribute free books, uniforms, and learning materials to government school students, set up digital classrooms by donating computers and introduce scholarships for talented but financially weak students. In the health and sanitation sector, the Company would conduct quarterly health camps, distribute free medicines and build toilet facilities in five nearby villages under the Swachh Bharat Mission, thereby addressing both preventive healthcare and sanitation needs. In the environmental domain, a tree plantation drive would be launched, planting over 10,000 saplings.

The Board viewed that these CSR initiatives will create significant social and economic impact. Incidentally, with these activities, employees and their extended families will also benefit. Environmental projects will not only promote ecological balance, but also demonstrate the Company's commitment to sustainability and clean energy. Internally, CSR will enhance employee morale, as workers will feel proud of their Company's contribution to their own communities.

Externally, YUVA Ltd. will gain a positive reputation among investors, customers, and regulators. However, the management was of the view that, there will be certain challenges as well, like selecting reliable NGOs and ensuring effective utilization of funds. There could also be resistance from some villagers, who may be skeptical of the Company's intentions. Furthermore, measuring the long-term sustainability of projects such as health camps and scholarships required continuous monitoring and follow-up. However, these challenges would encourage the Company to adopt stronger monitoring mechanisms, build deeper partnerships with stakeholders and design CSR projects that had both immediate impact and long-term benefits.

In the background of above facts, answer the following :

- (i) 'Expenditure on activities which predominantly benefit persons associated with Company cannot be treated as CSR.' Can employees of YUVA Ltd. be beneficiaries ? Explain.
- (ii) Prepare a brief note on the points to be considered while finalizing an implementation agency.
- (iii) As a Consultant of the Company, outline the general recognition and measurement criteria for CSR.
- (iv) 'CSR is a key to brand building and value creation'. Elucidate with an example. (5 marks each)

Answer 1(i)

Expenditure on activities that directly benefit the Company or persons associated with the Company (employees/other stakeholders) cannot be considered as CSR activities. The following activities are: specifically excluded:

- (i) Activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

 - (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Companies Act; (e.g., Govt funded universities, projects, Govt undertakings like DRDO, DBT, AYUSH and the like)
 - (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;
- (ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;
- (iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;
- (iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019;

- (v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- (vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India.

It may be noted that in common parlance 'normal course of business' refers to things which are routine in nature for business like sale, purchase etc. It refers to the usual course and routine of business activities. In the context of CSR, any activity which is part of core business of the company would not constitute CSR. Thus, employees of Yuva Ltd. cannot be beneficiaries.

Answer 1(ii)

Identifying an appropriate Implementing Agency for undertaking CSR activities is an important task as proper utilisation of funds allocated depends on how capable the Implementing Agency is. While finalizing the Implementing Agency, the following points should be kept in mind:

- The Implementing Agency should have well established track record of 3 years or more;
- The Implementing Agency should not have any association with any political party – directly or indirectly. Otherwise, the whole purpose may deviate;
- The Implementing Agency should not have any conflict of interest with the employees of the company. There should be no direct or indirect benefit to any of the employees of the company or their family members;
- Due diligence is being complied with by the Implementing Agency;
- The Implementing Agency should have registration under section 12A and section 80G of the Income Tax Act and from 1st April, 2021 onwards such agency should also be registered with the MCA for undertaking CSR activities;
- The antecedents of the Implementing Agency, its past reputation, the reputation of persons associated with the same should also be subjected to scrutiny before selection;
- Any other requirement as may be prescribed by Government / Regulatory Authorities is being followed by the Implementing Agency.

Answer 1(iii)

The general recognition and measurement criteria for CSR are as follow:

i. Amount of spending

The Company shall spend, in every financial year, at least 2% of the average net profits made during the immediately preceding three financial years.

ii. Mode of Spending

- List of programs and activities specified in Schedule VII of the Act, as amended
- Preference to the local area where it operates
- Programs and activities should be undertaken in India only
- Programs and activities should not be exclusively for employees & their families.

iii. Medium of Spending

- a. Self
- b. Through a registered trust or a registered society or a company established under Section 8 of the Act by the Company, either singly or along with its Holding or Subsidiary

or Associate Company, or along with any other Company or Holding or Subsidiary or Associate Company of such other Company or otherwise.

- c. Through a registered trust or a registered society or a Section 8 company not established by the Company, either singly or along with its Holding or Subsidiary or Associate Company, or along with any other Company or Holding or Subsidiary or Associate Company of such other Company provided it shall have an established track record of 3 years in undertaking similar programs or activities.
- d. Collaboration or pool resources with other companies

CSR expenditures are normally debited to the Statement of Profit and Loss at the time when they are incurred.

Answer 1(iv)

The importance of public and their respective targets is the key to building a strong brand and value creation and in today's economic scenario businesses are well aware of the importance of the public, especially their target audience, having a positive perception of them. Of course, their social responsibility, first and foremost, is to deliver value for money goods/services, followed by providing perfect after-sales support, customer service, involvement in civic causes, and generally performing acts that demonstrate that company cares about their customers, the environment, and the society as a whole.

Organisations with good and strong Corporate Social Responsibility policies get more & better media coverage and are able to garner more customer confidence which is considered to be one of the best ways to create the brand image of the company. The brand value of the organisation is built not only through offering value good and services to its customers and other stakeholders, but one of the strong pillars of building strong brand value and creating trust amongst stakeholders is how the organisation is catering to the needs of the society at large through its social responsibility policies and projects.

A company demonstrates by being socially responsible, by incorporating ethical practices in conducting itself, and how it does the business. Customers are becoming more aware about the local, national and global issues, and there is no denying that their decisions are now being greatly influenced by these matters. Therefore, they tend to avail the goods & services from the companies that show their concern and their action over issues that also resonates greatly with the customers. Businesses regard their name and their brand to be one of their most valuable assets and by showing that they take their social responsibility seriously, they are also encouraging the public to take them seriously. Consumers are willing to spend more money on the products and services of a company that has proven itself to be socially responsible.

A company's workforce, for example, is inclined to feel more motivated to put in their best at work when they know they are contributing to a cause which helps the society as a whole the greater good. Social responsibility definitely helps in boosting the morale of employees, in turn, does wonders in increasing their productivity. It is a foregone conclusion that everyone – individuals and entities alike – have a responsibility to society.

There is a moral obligation inherent in everyone, and companies are not exempt from doing their part. Potential investors also look into a company's social responsibility, using it as one of their criteria in deciding whether to put money into the company or not. It is also instrumental in improving companies' stock prices, since it inspires confidence among associates and business partners.

Example - When Starbucks entered the Chinese market, they confronted strong hostility among Chinese consumers who are proud of their traditional tea culture and against the Western, especially

the American, culture. Starbucks actively implemented CSR programs (e.g. charity projects to areas with poor education, improve benefits for the local employees, various activities for local communities, development of the first China-source coffee) and successfully built up their brand image to be more favourable to local consumers and became the dominant market leader in the Chinese market (Ferrell and Hartline, 2011). CSR became the core branding strategy for Starbucks worldwide and it is the key driver that makes Starbucks the most recognizable and respected global brand.

Question 2

Glipco Manufacturing Ltd., a large multinational company, which is well known for the charitable activities it takes up as part of its CSR programme, has experienced increasing pressure from stakeholders to formalize its commitment to sustainability as more than a regulatory obligation. The Company annually spends around ₹ 18 crores towards CSR activities. As the world moves towards focus on the United Nations Sustainable Development Goals (SDGs), the Company's top management understood the need to connect operational functions and reporting to a framework of the SDGs. In the second quarter of the fiscal year, Alisha, Company Secretary, was given the responsibility of starting and leading the conversation about integrating the SDGs at the board level. She was also entrusted with the responsibility of supporting the CSR committee and liaising with NGOs, which the company engaged to execute its CSR projects.

She began with a concise overview of the global relevance of the SDGs and emphasized the role of corporate governance in promoting sustainable practices. The Sustainable Development Goals (SDGs) are the world's best plan to build a better world for people and our planet by 2030. She also addressed ISO 26000 in her discussion. In the modern business landscape, organisations are increasingly expected to take responsibility for their social, environmental and economic impacts. Alisha further informed the Board that the Company is in the process of aligning with the United Nations Sustainable Development Goals and relevant CSR projects have been taken up by the Company to achieve a few SDG goals like distribution of sanitation kits and installation of toilets in identified villages, installation of a system that clean and reuse water to save freshwater, etc. In its meeting, the Board appreciated Alisha's inputs, but wanted to understand the impact of the CSR activities of the Company and improvements in the process, if any. Alisha informed the Board that the CSR impact assessment is not mandatory, considering the amount they spend.

- (a) Explain the inter-linkage between Corporate Social Responsibility and Sustainable Development Goals.
- (b) Is CSR impact assessment mandatory for Glipco Manufacturing Ltd. ? Comment.
- (c) As a consultant, outline the principles of impact assessment and the main questions which it addresses.

(5 marks each)

Answer 2(a)

The inter-linkage between Corporate Social Responsibility (CSR) and Sustainable Development Goals (SDGs) lies in the fact that the 17 Sustainable Development Goals were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet and ensure that by 2030 all people enjoy peace and prosperity. The 17 goals are integrated and recognises that development must balance social, economic and environmental sustainability. CSR regulations in India require companies to spend 2% of their average profits of the previous three financial years on specified activities that promote the social good.

SDGs and the Indian CSR regulations both were implemented around the same time and seemingly

have a tremendous potential to develop a cohesive sustainable growth model. Moreover, SDGs and CSR thematic development areas share a lot of overlap in terms of activities needed to achieve either. CSR plays a vital role in attaining sustainable development. The Company has a social and moral responsibility towards protecting the environment. Recently this social and moral responsibility has been backed by rules and regulations. Many companies are focusing on environmental issues for their CSR activities. In the Indian context, the CSR leadership can quite easily correlate the prescribed areas of CSR spending with the 17 SDGs. Each of the areas prescribed for CSR expenditure enlisted in Schedule VII of the Companies Act, 2013 are coherent with SDGs.

For example, CSR on eradicating hunger, poverty, malnutrition and promoting healthcare and sanitation may be linked to SDG goals 1 (No Poverty), 2 (Zero Hunger), 3 (Good Health & Well Being) and 6 (Clean Water & Sanitation). Also, CSR on promoting education including special education and employment enhancing vocation skills and livelihoods enhancement projects, could be correlated with SDGs 1 (No Poverty), 2 (Zero Hunger), 4 (Quality Education) and 8 (Decent Work and Economic Growth). It is the need of the hour that the Companies need to broaden the horizon of their CSR policies and activities to align with global or national priorities and goals. Aligning CSR activities with global sustainability goals encapsulated within the 17 UN SDGs provide businesses the opportunity to achieve these social and business objectives as also meet international requirements.

Few of the benefits of aligning CSR actions to SDG goals are as below:

- Aligning CSR activities with SDGs establish direct contributions to national and global targets of social, environmental and economic development/growth. A good economy or socially developed communities expand the market and people's purchasing power increases, which ensure further growth of markets.
- The measurable contribution with larger goals can enhance corporate reputation, which can add great value to help establish a responsible brand. The socially conscious millennial consumer is vying for responsible brands and do not hesitate to spend extra bucks to buy the product with such a reputation.
- Sustainable business practices and ethical business are increasingly becoming mandatory requirements to enter and grow in the mature markets globally. Adopting sustainability practices aligned with CSR initiatives can help grow business globally.

Answer 2(b)

According to the Companies (Corporate Social Responsibility Policy) Rules 2014, impact assessment is mandatory for companies with a CSR obligation of Rs.10 crores or more in the three immediately preceding financial years for all projects with outlays of INR 1 crore or more and which have been completed not less than one year before undertaking the impact study. Since Glipco Manufacturing Ltd. spends around Rs. 18 Crores towards CSR activities, impact assessment is mandatory.

These impact assessments must be undertaken by an independent agency.

Timelines for Conducting Impact Assessment

- Companies falling in above criteria must undertake Impact Assessment at least one year after programme implementation is complete.
- As per Rule No. 8, if companies have multi-year programmes (say 3 years), impact assessment needs to be conducted at the end of the programme.. Additionally, a follow up assessment needs to be conducted one year after the completion of the programme to better understand the programme's after effects.

CSR Impact Assessment Expenditure

- Impact assessment related expenditure may be booked as a CSR expense as long as it does not exceed 2% of the total CSR spending or INR 50,00,000, whichever is higher.
- The limit of expenditure is applicable on the total CSR budget of the financial year.

Answer 2(c)

The main questions addressed through the process of CSR Impact Assessment are as under: -

- What benefits and impacts does CSR actually bring to the economy and society outside the company?
- How can all stakeholders better measure and evaluate the impacts arising from CSR?
- How can such assessments be used for integrating the public policies with corporate strategy?

Following principles should be followed and adhered to while conducting Impact Assessment of any project:

- The focus area of Impact Assessment study should be to carve out significant impact rather than common impact of proposed project on the target stakeholders.
- The impact assessment study should incorporate appropriate measures and information to drive unambiguous results.
- Impact assessment study should provide for quantification wherever feasible and possible.
- The study should present data in the form which can be easily understood by the decision makers and common layman to take informed decisions.

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

Question 3

- (a) Alpha Ltd., a company manufacturing turbines, had a net profit of ₹ 6 crores in the second year of its business. Aruno, the Company Secretary of the company informed the Board, that the company has to spend 2% of its average net profits on CSR activities. The Board constituted a CSR committee and Aruno, was tasked to find a credible and suitable agency to implement CSR projects. While Aruno was trying to find such agencies, he spoke to one of his friends, who suggested him to check the National CSR Exchange portal.

Discuss the way in which the National CSR Exchange Portal can help Alpha Ltd. in CSR implementation.

(5 marks)

- (b) 'Enlightened shareholders approach is different from shareholder inclusive approach.' Elucidate.

(5 marks)

- (c) 'Donations are different from Corporate Social Responsibility'. Comment in the background of guiding principles issued by Reserve Bank of India (RBI) in 2005, for donations by banks in India.

(5 marks)

Answer 3(a)

National CSR Exchange Portal was launched in 2022. National CSR Exchange Portal is an initiative by Ministry of Corporate Affairs, Government of India to establish an interactive platform for CSR Stakeholders. The National CSR Exchange Portal shall serve as an e-marketplace hosting pan

India social welfare projects where stakeholders such as Implementing agencies can put up their ongoing projects and companies can select projects for CSR Spending as per their preferences and vice versa.

The Exchange Portal has been developed on the basis of the recommendations of the High-Level Committee on Corporate Social Responsibility 2018. An Advisory cum Technical Committee was formed for the development of the portal. The Committee was represented by different CSR Stakeholders, CSR Practitioners, Technical Experts and Civil Society Organizations. The Committee was apprised of BSE Sammaan which was an initiative of the MCA Think Tank: Indian Institute of Corporate Affairs, Confederation of Indian Industry and Bombay Stock Exchange which offered similar functionalities as envisaged for the National CSR Exchange Portal.

Social development is not a core expertise for most Corporates, most of the companies choose an implementing agency for executing projects. One of the recurring issues for companies to carry out CSR activities has been the identification of suitable Implementing Agencies (IAs). This Exchange Portal will help Corporates identify suitable Implementing Agencies for successful implementation of their CSR Projects reducing their transaction cost.

National CSR Exchange Portal also helps overcoming a common challenge cited by Corporates for failing to fulfil their CSR obligations "inability to find suitable projects" based on their CSR Policy. CSR Exchange Portal resolves this issue by providing a platform to view projects proposed by various implementing agencies (IAs). It will allow them to list their CSR projects for raising funds from corporates.

There are a large number of Non-Government Agencies (NGOs) that are scouting for funds for their projects that could fit in the domain of CSR. National CSR Exchange Portal will help in connecting the Corporates and Implementing Agencies to work for the betterment of the country.

Alpha Ltd, can therefore, use the National CSR Exchange Portal not only to find credible Implementing Agencies but also suitable projects that suit their CSR orientation.

Answer 3(b)

Enlightened Shareholders' approach is different from stakeholders' inclusive approach. This concept was propounded while laying down the principles of Corporate Social Responsibility in South Africa.

The guiding principles governing CSR are summarised in The King Report on Governance for South Africa 2009 ("The King Report"). This Report promotes good social and environmental practices as part of good corporate governance, which is closely oriented to the standards of international corporate governance. The King Report applies to "all entities regardless of the manner and form of incorporation or establishment and whether in the public, private or non-profit sectors."

Sustainability is the primary moral and economic imperative of the 21st century. It is one of the most important sources of both opportunities and risks for businesses. Nature, society, and business are interconnected in complex ways that should be understood by decision-makers. Most importantly, current incremental changes towards sustainability are not sufficient – we need a fundamental shift in the way companies and directors act and organize themselves

This Report seeks to emphasise the inclusive approach of governance. It is recognised that in what is referred to as the 'enlightened shareholder' model as well as the 'stakeholder inclusive' model of corporate governance, the board of directors should also consider the legitimate interests and expectations of stakeholders other than shareholders.

The way in which the legitimate interests and expectations of stakeholders are being treated in the two approaches is, however, very different. In the 'enlightened shareholder' approach the

legitimate interests and expectations of stakeholders only have an instrumental value. Stakeholders are only considered in so far as it would be in the interests of shareholders to do so. In the case of the 'stakeholder inclusive' approach, the board of directors considers the legitimate interests and expectations of stakeholders on the basis that this is in the best interests of the company including the shareholders, and not merely as an instrument to serve the interests of the shareholders.

Answer 3(c)

The Companies Act, 2013 has introduced the concept of CSR by mandating companies to set aside 2% of their net profits and utilize the same for approved CSR Activities. The private sector banks incorporated as companies under the Companies Act, 2013 are covered by the provisions of section 135 of the Act, and accordingly required to ensure the compliance of CSR provisions. Since the Nationalized Banks are not incorporated as a company under the Companies Act, 2013, they are not covered under section 135 of the Act and accordingly, the requirement to spend 2% of net profits on CSR activities remains voluntary for such banks.

However, they are required to spend 1% of net profits through donations as specified by the Reserve Bank of India (RBI). In terms of RBI circular no. RBI. No./ 2005-06/ 237, DBOD. No. Dir. BC 50/13.01.01/2005-06 dated 21st December, 2005, donations by Banks are capped at 1% of the published net profit. Donations are plain contributions as opposed to CSR which is a collaborative and monitored exercise. The said circular set the following guiding principles for donations by banks in India:

- i. The profit-making banks may make donations during a financial year aggregating upto 1% of the published profit of the banks for the previous year. In some cases, banks create funds for specific purposes to encourage research and development in fields related to banking. The Board of the banks may determine the amount of contribution to be made to such funds. The contribution made to such funds in a year will be reckoned for computation of the 1% ceiling.
- ii. The donations out of the research and development funds should normally be made for setting up professional chairs, granting fellowships/scholarships for studies and research at universities and approved institutions and for commissioning special projects for investigation, analysis and research for areas pertaining to banking, finance, statistics, management, and economics, etc.
- iii. The donations to Prime Minister's National Relief Fund and subscriptions / contributions to professional bodies / institutions related to banking industry like Indian Banks' Association, National Institute of Bank Management, Indian Institute of Banking and Finance, Institute of Banking Personnel Selection and Foreign Exchange Dealers' Association of India may be excluded from the limit indicated in para (i) above.
- iv. Loss-making banks can make donations totaling Rs.5 lakh only in a financial year including donations to exempted entities / funds indicated in para (iii) above.
- v. Unutilised portion of the limit of 1% should not be carried forward to the next year.
- vi. The banks may continue to submit annual review of donations to their Boards of Directors.

OR (Alternative Question to Q. No. 3)

- (i) Manimekhala Industries Ltd. is company based in Kochi, manufacturing rubber and allied products. It has a flourishing business with an increasing growth trajectory and is covered under the ambit of CSR requirements as per the Companies Act, 2013. As a part of CSR activities, the Company spends towards providing medical and educational facilities in rural areas. As advised by its tax consultants, the Company claimed input credit of GST on

the amount spent towards CSR activities. Subsequently, the GST Officer raised an objection saying the Company cannot claim the GST input on CSR activities, as it does not directly relate to its business.

With reference to a case-law, comment whether the contention of the GST Officer is justified.

(5 marks)

- (ii) "Life cycle assessment is often called a 'cradle-to-grave' approach to sustainability." Elucidate in the background of life cycle assessment framework.

(5 marks)

- (iii) Fursch Ltd., a pipes manufacturing company is based in Pune. The Company has been regularly contributing to CSR activities over and above the statutory requirements. During one of the meetings, Shyla, the Managing Director of the Company suggested that the Company should get the CSR audit done to understand, if there are any issues which need to be addressed. One of the Director asked, what is the CSR audit about, as he had heard only of statutory audit and internal audit. The Managing Director asked the Company Secretary to provide a brief note to the Board members about the CSR audit for their information and understanding.

Draft a brief note about the various elements which a CRS audit examines.

(5 marks)

Answer 3A(i)

As per Section 17(5) (fa) of the CGST Act, 2017 Input Tax Credit is blocked for goods or services received by a taxable person which is used or intended to be used for activities relating to his obligations under Corporate Social Responsibility referred to Section 135 of the Companies Act 2013. This amendment is effective 1st October 2023.

The position is clear that from 1st October 2023 no ITC can be claimed for CSR expenses. The question now remains whether for a prior period ITC can be claimed. There are both favorable and adverse judgements on the same.

In the case of *Essel Propack Ltd. Vs Commissioner of CGST, Bhiwandi* (CESTAT Mumbai) dated August 31, 2018, CESTAT observed that CSR is not in the nature of charity as it has got a direct bearing on the manufacturing activity of the company which is largely dependent on smooth supply of raw materials. The Tribunal thus held that such expenses are incurred to win the confidence of the stakeholders and shareholders. It also noted that CSR which was a mandatory requirement for the public sector undertakings, has been made obligatory also for the private sector and unless the same is to be treated as input service in respect of activities relating to business, production, and sustainability of the company itself would be at stake. Hence, Cenvat credit was allowed to the appellant.

However, in another judgement in *Polycab Wires Pvt Ltd*, it was held that the applicant is not entitled to Input Tax Credit in respect of CSR expenses.

Hence for the period prior to 1st October 2023, Input Tax Credit has been allowed and denied in respect of CSR expenses. Legal opinion is not fully crystallised for the earlier period.

Manimekhala Industries Ltd can therefore approach Appellate Authorities should the GST officer reject their Input Tax Credit claim provided the transactions relate prior to 1st October 2023.

Answer 3A(ii)

Life Cycle Impact Assessment is a technique adopted to assess the environmental impacts associated with all stages of a product's life cycle from cradle to grave. The primary aim of this

Assessment is to compare the full range of environmental effects assignable to products and services so as to improve processes, support policy and provide a sound basis for informed decisions.

Life Cycle Assessment (LCA) is a multi-step procedure for calculating the lifetime environmental impact of a product or service. The complete process of LCA includes goal and scope definition, inventory analysis, impact assessment, and interpretation. The process is naturally iterative as the quality and completeness of information and its plausibility are constantly being tested.

Life cycle impact assessment framework:

- Goal and scope definition
- Inventory analysis
- Impact assessment
- Interpretation

It is to be taken care of that while choosing the correct mix of impact assessment techniques, consideration should be given to transparency and public accountability, stakeholder involvement, reliability of the information obtained, reliability of inference for policy improvement, cost and skills requirements. Also, the decision makers should concentrate on facts & figures derived out of impact assessment study and take well-informed decision in regard to implementation of proposed CSR project and should remain accountable for their decision.

Answer 3A(iii)

A Corporate Social Responsibility Audit is important because it can increase a company's responsibilities to the community. This assessment holds businesses accountable and ensures they only engage in practices that benefit all stakeholders who aren't necessarily shareholders, like employees, customers and business partners. A corporate social responsibility audit examines the following elements of a company:

- Transparency with financial and accounting practices: A corporate social audit can determine how transparent a company is with its financial and accounting practices. It ensures that all staff members report information accurately and that the company files its taxes according to state and federal regulations. It also ensures that the company shares as much financial information as possible with the public in the form of financial reports.
- Transparency with product defects or other issues: A corporate social audit reports if a company has been transparent with any issues in its products or other offerings. For example, imagine a consumer goods company unknowingly sold a laundry detergent that contained harmful phosphates. If the company recalled the product, issued a public apology, and distributed proper compensation after realizing the error, it may still receive a satisfactory audit rating because of its transparency.
- Fair hiring practices and employee treatment: A corporate social audit can also determine if a company participates in fair hiring practices. This can include hiring employees without discriminating against them because of their gender, race, sexuality, religion or any other basis. It can also include making reasonable accommodations for potential employees with disabilities and giving them a fair chance to secure available positions.
- Participation in charitable giving: A corporate social audit assesses how much a company participates in charitable giving. The audit may evaluate what percentage of its profits it donates to worthy causes. It may also check to see if the company offers incentives for its employees to volunteer, like offering a paid day off of work to volunteer at a local food bank or another organization.

- According to the Companies (Company Social Responsibilities Policy) Rules 2014, monitoring CSR activities and reporting on them are required. Additionally, it is the obligation of the Company (through the CSR Committee) to oversee the use of company money in accordance with its CSR Policy. Impact Assessment is also required in certain specific projects. There is no requirement to acquire a report of the contribution made when the company complies with its CSR requirements by only contributing that which is specifically permitted by Schedule VII of the Act.

PART-II

Question 4

- (a) Vrina, a Senior Company Secretary, is a seasoned professional and is part of Board of Directors of many listed companies. Vrina has philanthropic interests and is part of CSR activities of few such companies. She was invited to be a Panel member for 'CSR & Social Impact – Conclave', wherein she was addressing a gathering of professionals across industry on the emerging concepts like social governance, social stock exchanges, its framework, etc. Excerpts from her address – "The idea of a Social Stock Exchange (SSE) in India was first proposed by the finance minister in the Union Budget 2019-20. The objective was to create a dedicated platform under SEBI where non-profit organizations (NPOs) and for-profit social enterprises (FPEs) could raise funds transparently and efficiently. Unlike traditional stock exchanges that cater to wealth maximization, SSEs focus on social impact, accountability, and sustainability, enabling investors to support initiatives aligned with societal development. To implement this vision, SEBI introduced a framework under two major regulatory guidelines: ICDR Regulations (Issue of Capital and Disclosure Requirements, 2018) and LODR Regulations (Listing Obligations and Disclosure Requirements, 2015). Together, these provide a structured pathway for social enterprises to list, disclose and report their activities.

The ICDR framework was amended to include specific norms for social enterprises intending to raise funds through SSE. These enterprises must establish a clear social intent and impact, with focus areas such as eradicating hunger, promoting education, healthcare, environment sustainability, gender equality and rural development.

For non-profits, the ICDR regulations allow them to raise securities, which are unique and represent social investments. The regulations also require annual impact reports, certified by social auditors, which document the outcomes of funds raised. This ensures that every rupee mobilized translates into visible progress toward Sustainable Development Goals (SDGs).

The LODR framework was extended to SSE listings to strengthen transparency and trust. Under these rules, listed social enterprises must comply with periodic disclosures, including governance practices, financial statements, utilization of funds and social impact reports and are different from commercial entities. One unique feature is the requirement of a Social Impact Scorecard, a reporting mechanism that ensures stakeholders can measure how effectively the enterprise achieves its stated objectives. Additionally, SSE listed entities must appoint a Social Auditor from SEBI registered institutions.

The establishment of a Social Stock Exchange under ICDR and LODR regulations marks a milestone in institutionalizing social finance in India. By bringing transparency, accountability and innovation into social funding, SSE can help achieve India's developmental priorities and SDGs. However, its success will depend on effective implementation, investor participation and building the capacities of smaller social enterprises to comply with regulations."

Based on the above, answer the following questions :

- (i) Explain the approach for implementation of social governance within a Company.
- (ii) 'Social enterprise may raise funds through various means.' Explain with reference to SEBI (ICDR) Regulations.
- (iii) Outline the issues which must be addressed by a social auditor.

(5 marks each)

- (b) Ruchir, a retired teacher in Bhimwadi village wanted to create a trust which would financially support the poor students in his village. He informed his nephew Suchir about his wish to create a trust with the house and 10 acres of agricultural land he owned. He wrote a hand written note to Suchir stating 'it is my wish that you support the object of needy students with my house, and I hope it continues after my lifetime'. Suchir suggested that it would be appropriate to create a valid trust for this purpose. Ruchir said, the hand written note will be sufficient.

With reference to Indian Trusts Act, 1882, comment whether Ruchir created a valid trust.

(5 marks)

Answer 4(a)(i)

The formation and implementation of social governance within a company requires a deliberate and systematic approach. Here are some key steps in the process:

- Identify and prioritize social issues: Companies should conduct a social risk assessment to identify and prioritize social issues that are relevant to their operations and stakeholders. This can involve consulting with stakeholders, analyzing data and trends, and reviewing regulations and industry standards.
- Develop policies and standards: Once social issues have been identified, companies should develop policies and standards that outline their commitments to addressing these issues. This can involve consulting with stakeholders, benchmarking against industry peers, and aligning with relevant regulations and international standards.
- Communicate policies and standards: Companies should communicate their social governance policies and standards to employees, suppliers, and other stakeholders. This can involve training programs, supplier codes of conduct, and other communication mechanisms.
- Implement policies and standards: Companies should implement their social governance policies and standards, which may involve changes to their operations, supply chain management, and other business processes. This can involve establishing performance indicators and targets, monitoring progress, and integrating social governance into decision-making processes.
- Monitor and report on performance: Companies should monitor their social governance performance and report on their progress to stakeholders. This can involve collecting and analyzing data, conducting audits, and reporting through sustainability reports, annual reports, and other communication channels.
- Continuously improve: Companies should continuously improve their social governance practices over time, based on feedback from stakeholders, changes in social and regulatory environments, and emerging best practices. This can involve regular reviews of policies and standards, engagement with stakeholders, and ongoing monitoring and reporting.

- Overall, the formation and implementation of social governance within a company requires a comprehensive and ongoing effort involving stakeholder engagement, policy development, communication, implementation, monitoring and continuous improvement.

Answer 4(a)(ii)

According to Regulation 292G of the SEBI (ICDR) Regulations a Social Enterprise may raise funds through following means: -

(a) A Not-for-Profit Organization may raise funds on a Social Stock Exchange through:

- (i) issuance of Zero Coupon Zero Principal Instruments to institutional investors and/or non-institutional investors in accordance with the applicable provisions of Chapter XA;
- (ii) donations through Mutual Fund schemes as specified by the Board;
- (iii) any other means as specified by the Board from time to time.

(b) A For Profit Social Enterprise may raise funds through:

- (i) issuance of equity shares on the main board, SME platform or innovators growth platform or equity shares issued to an Alternative Investment Fund including a Social Impact Fund;
- (ii) issuance of debt securities;
- (iii) any other means as specified by the Board from time to time.

Securities issued by For Profit Social Enterprises shall be listed and traded under the applicable segment of the stock exchange with an identifier stating that the scrip is that of a For Profit Social Enterprise and such For Profit Social Enterprises shall meet the eligibility criteria for the main board, SME Platform or innovators growth platform, as applicable, in addition to the criteria provided in Chapter XA.

Answer 4(a)(iii)

Different projects may have a very different list of social issues. The Social Auditor is to exercise his own technical judgement to determine which issues should be subject to inquiry. The minimum issues which must be addressed by the Social Auditor are enumerated as under:

- Will the project significantly impact the economic, environment and social condition of the local community?
- Will there be a significant change in the general access that the communities have to natural resources, such as drinking water and energy?
- Does the local community have effective governance mechanisms to deal with the long-term effects of the project?
- Are there groups (indigenous groups, women, ethnic minorities, LGBTQIA+ and so on) who will be differentially impacted by the project?
- Will the project increase or decrease the demand for services, such as education or health?
- Will the project produce any population or demographic movement, such as the change in size of the communities affected by the project?

The above questions can help the auditor and the Enterprise to determine the extent of the impact, as well as any unmanageable social obstacles ahead of the project. This allows for the anticipation of any adverse significant social effects of the infrastructure and for avoiding, minimizing, or offsetting them.

Answer 4(b)

Section 6 of the Indian Trusts Act 1882 lays down provisions for creating a trust. It provides that subject to the provisions of Section 5 a trust is created when the author of the trust indicates with reasonable certainty by any words or acts:

- (a) an intention on his part to create thereby a trust;
- (b) the purpose of the trust;
- (c) the beneficiary, and
- (d) the trust property;

and transfer the trust property to the trustee except where a trust is declared by Will or the author of the trust is himself to be the trustee.

If a trust is to be valid and enforceable, it is material to ascertain the author of the trust. Next the intention to create a trust, the purpose of the trust, the trust-property and the beneficiaries must be indicated and in such a way that the trust could be administered by the Court if the occasion arose.

For creating a trust, the author of the trust should indicate with reasonable certainty the following:

- (1) Certainty in words: The words used to create a trust must be clear and certain so as to explain a clear intention to create a trust. Recommendatory words like "I hope" "I wish" are not sufficient.
- (2) Certainty in the object of the trust: The beneficiary, for whose benefit the trust is created, must be shown clearly.
- (3) Certainty in the subject-matter of the trust: The subject matter of the trust must be clear, i.e., the property, in respect of which a trust is created, must be shown clearly.

Purpose of the trust should be certain. If the trust instrument is lacking in first and third certainties, no trust is created but if the second certainty is absent, resulting trust will be created in favour of the author of the trust.

In the case under reference, Mr. Ruchir's handwritten note cannot be considered as a trust document for the reason there is no certainty in words. The words "it is my wish" and "I hope" are not sufficient to create a trust.

Question 5

- (a) Dhani was one of five partners in the M/s Bright Light House, a partnership firm. In 1995, the partners signed a partnership deed outlining their responsibilities and rights. Each partner received 20% of the firm's assets and earnings. According to clause 18 of the deed, any partner who retired would be eligible to receive the amount standing to his credit in the capital account, his share of goodwill and profits up to the date of retirement, all of which were to be paid within six months of retirement. He later decided to leave the firm, giving the required notice in accordance with the deed's provisions. The remaining partners continued the business without him. However, they did not pay Dhani, his share of goodwill, arguing that since the business was not dissolved and the firm continued, goodwill was not payable.

Dhani filed a suit claiming his right to goodwill, as per the partnership deed. Can a retiring partner claim goodwill if the firm continues with other partners ? Explain the rights and obligations of the buyer and seller in the sale of goodwill.

(5 marks)

- (b) Methani, a village in Karnataka was known for the hand-woven cotton garments and unity amongst the villagers. It was all due to the efforts of Sarpanch and his emphasis on governance at grass root level, taking care of infrastructural requirements, etc. A Gram Panchayat meeting was regularly held by the elected representatives and residents of a village to discuss and make decisions on local issues. In these meetings, mainly local governance and issues related to local development were discussed and decided upon. Hence, for planning and the social inclusion, all villagers were asked to equally take part in these gram panchayat meetings. A Gram Panchayat meeting is an ideal place for pursuing the implementation of government schemes. The presence of members of the Gram Panchayat also serves as effective real-time communication. The Sarpanch said that it is crucial to prepare the attendance register for these meetings in order to ensure efficient recording of member's presence. However, one of the persons present, mentioned that it is not needed as it is a meeting between villagers. The Sarpanch explained him the importance of having an attendance register.

Outline the key points that should be considered while preparing the attendance registers for Gram Panchayat meetings.

(5 marks)

- (c) Mitra for Aged, an NGO based in Nagpur, was set up by Miraj, to take care of aged and elderly destitute. Though Miraj had been funding the NGO with his sources, he was now exploring if he could get some funds, given the medical and other expenditure for aged and elderly. He tried reaching out to various sources including his friends and acquaintances. One such contact, assured him that he can speak and can arrange some donations from Netherlands where his employer is based. When Miraj told this to his friend Varuna, a Company Secretary, he advised him to be cautious about few aspects before accepting foreign contribution. Advise Miraj.

(5 marks)

Answer 5(a)

Goodwill is a partnership asset and means the benefit arising from a firm's business connections or reputation. "It is the advantage which is acquired by a business, beyond the mere value of the capital, stock fund and property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers".

Though an intangible asset, it has value; and unless otherwise agreed in the partnership articles, upon dissolution it must be sold and the proceeds of sale distributed as capital. Where dissolution is caused by death, the estate of the deceased partner is entitled to share in the proceeds of the sale. If the goodwill is sold and there is no agreement as to its disposal, any partner can carry on the business, provided that by doing so he does not expose former partners to liability. But if by agreement the goodwill is assigned to any person, he can restrain partners.

Similarly, a retiring partner is entitled to his share of the goodwill of the firm on his retirement. In the instant case, the partnership deed entitles Dhani to his share of goodwill of the firm on his retirement and to be paid within six months thereof.

The payment of goodwill cannot be stopped just because the partnership is continuing with the other four partners. They will now be enjoying a higher share of partnership profits consequent to the retirement of Mr. Dhani. Goodwill of the firm needs to be valued on the date of retirement and Dhani's share of the overall goodwill (which is his profit-sharing ratio) will have to be paid to him and the other partners gaining on account of his retirement will bear the cost basis the share they gain in profits sharing.

Sale of Goodwill

Where goodwill is sold, either to a partner or to an outsider, the value is divisible among the partners in the same manner as they share profits and losses, unless otherwise agreed.

The rights of the buyer and seller of the goodwill are as follows:

- (a) Buyer's rights: On the sale of goodwill the buyer may, unless the terms in the contract of sale provide otherwise:
 - (i) represent himself in continuing the business,
 - (ii) maintain his exclusive rights to the use of the firm name, and
 - (iii) solicit former customers of the business and restrain the seller of the goodwill from doing so.
- (b) Seller's rights: The vendors may enter into competition with the purchaser unless he is prevented by a valid restraint clause in the contract of sale.

Answer 5(b)

The Institute of Company Secretaries of India has prescribed a Model Governance Code for meetings of the Gram Panchayats. With reference to preparation of attendance registers, the Code prescribes the following:

- Every Gram Panchayat shall maintain a separate attendance register for the Meetings of the Gram Panchayat.
- The attendance register shall contain the following particulars: Serial number and date of the Meeting; place of the Meeting; time of the Meeting; name and signature of the Members, the Secretary and of other person(s) attending the Meeting by invitation.
- The attendance register shall be maintained at the Office of the Gram Panchayat or such other place as may be approved by the Gram Panchayat
- The attendance register shall be open for inspection by the Members.
- Entries in the attendance register shall be authenticated by the Secretary or in his absence, by the person authorised by the Government.
- Attendance register shall be kept in the custody of the Secretary or a person authorised by the Government.
- The attendance register shall be preserved for a period of at least five years from the date of the last entry therein or for such other higher period as may be specified by the Government.
- The attendance registers or any other records of the Panchayat shall not be destroyed except in accordance with the policy approved by Government.

Answer 5(c)

While accepting foreign contributions, NGOs/Trusts/Societies may note the following:

- Do not mix Foreign Contribution with Domestic Receipts
- Do not transfer funds from FC Bank to Non-FC (even Direct Bank Transfer)
- Books of Accounts must be separate for foreign and domestic contribution.
- Keep separate Cash Box (it shows good cash control system)
- Do not deviate from the Purpose of the Grant

- Make sure while getting FC funds that the purpose is crystal clear for what purpose it is received
- Make sure that you used these funds for the very specific purpose
- Avoid Cash Payments. This requires extra efforts on the part of the organization to develop Financial Control System in such a way to encourage Bank Payments through "Account Payee" cheques only.
- Do not invest FC funds in Mutual Funds or Speculative Investments
- Do not receive foreign contribution directly in the utilization account(s) of the association/ NGO/Society/Trust
- Do not mix foreign contribution with domestic funds
- Do not hide amount, source and manner in which the foreign contribution/remittance was received
- Do not avoid filing mandatory FC annual returns in electronic form
- Do not indulge in making of false statement, declaration or delivering false accounts
- Do not act in contravention of any provision of the FCRA, 2010

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

Question 6

- (a) Vindha was partner in VRV & Associates, partnership firm, which was into logistics business. The revenue of the firm had crossed ₹ 40 crores, but no proper accounting and reporting was done. Records were maintained only for the purposes of tax filings. The consultant advised Vindha, to appoint an accountant, who would maintain the books of accounts and prepare financial statements as per the applicable standards. Vindha told the consultant, that accounting standards would not apply to them as they are a non-corporate entity.

In this background, comment about the applicability of accounting standards.

(5 marks)

- (b) Neel and Sheel, both practicing Company Secretaries were close friends. One of their friends, Heel was a Chartered Accountant, handling small and medium size businesses, especially non-corporate entities. During one of the conversations between the three friends, Heel shared that there has been a dispute in one of his clients between the partners. The matter is likely to reach Court and there is no documentary evidence of meetings being held. He further added, as this was a non-corporate entity, he did not insist on notice and meetings in such entities. He further asked Neel and Sheel to guide him about the notice and other requirements relating to meetings for non-corporate entities.

Briefly explain the requirements of Notice of the meeting for non-corporate entities.

(5 marks)

- (c) Prapti and Param, both close friends, constituted a partnership firm for construction of a shopping complex on Prapti's land and executed a deed of partnership. Clause 5.2 of the partnership deed envisaged that the Prapti's share in the profits would be 40% and she would receive a monthly amount. Prapti was receiving ₹ 2 lakhs per month as per the deed. However, Param did not disclose to her, the amount which was due on settling the annual accounts of the firm. He neither furnished the statement of accounts to Prapti, nor disclosed the profitability of the firm. Meanwhile, there was a dispute with a tenant and the matter

went to Court. While all this was not informed to Prapti, Param wanted to resolve the dispute through arbitration.

Can the matter be resolved through arbitration ? Comment in the background of the Indian Partnership Act, 1932.

(5 marks)

Answer 6(a)

Accounting Standards contain wholesome principles of accounting and can be viewed as standardised language of business to communicate high quality information in financial statements based on principles of transparency, consistency and also comparability and reliability. Accounting standards are a set of principles which entities follow while preparing the financial statements providing a standardised way of describing the entity's financial position and financial performance.

Applicability of Accounting Standards:

Accounting Standards apply in respect of any entity engaged in commercial, industrial or business activities. It is not a necessity that the entity must be a corporate entity.

Exemption from complying Accounting Standards:

Exclusion of an entity from the applicability of the Accounting Standards is permissible only if no part of the activity of such entity is commercial, industrial or business in nature.

Applicability of AS if only a small portion of business is commercial, industrial or business in nature. Even if where a very small proportion of the activities of an entity were considered to be commercial, industrial or business in nature, the Accounting Standards would apply to all its activities including those, which are not commercial, industrial or business in nature.

Hence relevant accounting standards will apply to VRV & Associates

Answer 6(b)

Non-Corporate Entities are usually incorporated in the form of societies, clubs, trusts, welfare associations, etc. The affairs of Non-corporate Entities are normally managed by a Governing Body/Council consisting of elected members or nominees from the Government. The legal principles and procedures governing such Entities including those that relate to meetings of the Governing Body/Council are enshrined in the applicable laws or in the Bye-laws of the particular entity. In addition, the Institute of Company Secretaries of India has developed a model code for meetings of Non-Corporate Entities to harmonise prevalent diverse practices. The Code lays down the following with regards to notice of meetings:

- Notice of the Meeting shall be served within such clear days as prescribed under the applicable laws or in the Bye-laws of the Non-corporate Entity or at least seven days before the date of the Meeting.
- For considering any urgent matter as decided by the Chairman, a Meeting may be convened at any time, subject to consent of the majority of the Members.
- The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.
- The Notice shall specify the serial number, date, day, time and full address of the venue of the Meeting.
- Notice of the Meeting shall be issued by the Secretary or by such other officer as may be

prescribed in the Bye-laws of the Non-corporate Entity for this purpose and in their absence, the Chairman or any other Member, authorised by the Non-corporate Entity for this purpose may issue the notice of the Meeting.

- Notice in writing of every Meeting shall be given to every Member and such other officer as may be prescribed by the Government, either by hand or by post or by e-mail or by any other mode as may be prescribed.
- In order to facilitate effective and timely communication, the notice of a Meeting may also be given through SMS or other software/ telecommunication means, if any, used by the Non-corporate Entity, followed by a copy of the Notice in writing as stated above.
- The Notice shall also be affixed on the notice board, if any, of the Non-corporate Entity. In case of pre-determined dates, a general notice specifying the serial number, date, day, time and full address of the venue of the Meetings shall be kept affixed during such period.
- The Notice shall be sent on the letter head of the Non-corporate Entity containing the contact details and authority of the person issuing the Notice.
- Notice shall be sent at the registered address of the Member or such other address, if any, provided by the Member for the purpose.
- The Non-corporate Entity shall maintain proof of sending notice and its delivery for such period as may be decided by the Non-corporate Entity, which shall not be less than three years from the date of the Meeting.
- In case of delivery of notice by hand, the signature of the recipient should be obtained and be kept as record of proof of delivery.
- In case of notice sent through e-mail, the proof of sending may be maintained in soft copy

Answer 6(c)

The authority of a partner relates to his ability to bind the firm by his acts. This could be express or implied.

Authority is said to be express when it is given by words spoken or written. The firm is bound by all acts of a partner done within his express authority even if the acts are not within the scope of the partnership business. The partner also has certain implied authority also known as ostensible or apparent authority because of he/she being a partner. Section 19 and Section 22 of the Indian Partnership Act define the scope of such implied authority subject to the following:

- The action must be done in the usual way;
- The action must be to do business of the kind carried on by the firm;
- The action must bind the firm

Section 19(2) also dealing with details activities which do not form part of such implied authority subject of course to usage or custom or trade indicating the contrary. One of the activities is submitting a dispute relating to the business of the firm to arbitration.

In the instant case, Param has not kept Prapti informed of the dispute with a tenant which has now gone to Court. He has no implied authority to refer the dispute to arbitration on his own. Should Prapti be advised of the same and she also desires arbitration (she being the only other partner and interestingly the shopping complex is coming up on land owned by her), then the dispute could be referred to arbitration.

OR (Alternative Question to Q. No. 6)**Question 6A**

- (i) Aranya and her family owned a temple in the Mantravanam, a village in interiors of Andhra Pradesh. The temple was family owned and was an ancestral property. Aranya wanted to renovate the temple and also allow other villagers to visit the temple. In one of the family gatherings there was a discussion between the family members and they all agreed to contribute for renovation of the temple. Aranya suggested to register a Trust to take care of the temple related activities. One of her cousins asked if they can avail any tax benefits for the Trust. In this background, explain the regulatory framework for registration of Trust and its taxation.

(5 marks)

- (ii) Perar IT Solutions Ltd. is a fast-growing IT solutions company in Kochi. The Company's head count has been on an increasing trend and is expected to cross 2,500 by the end of next year. As a part of its strategy, the company appointed, Varada, a seasoned Human Resources (HR) professional, to head its payroll and talent team. Varada was asked to make a presentation to the Board about the action plan to demonstrate the company's commitment to employment equality.

Outline the actions through which the company can demonstrate its commitment to employment equality.

(5 marks)

- (iii) Krupalu Heights, a gated community had more than 200 flats, with necessary amenities. However, the builder had moved out of the country without setting up any association or society to take care of the maintenance and amenities. To address this situation, the residents convened a meeting and decided to register a society or an Association, for managing the maintenance and amenities of the community. Mural, one of residents reached out to Kural, a Company Secretary and close friend, to help them understand the registration and reporting obligations of a society.

With reference to Societies Registration Act, 1860, explain the reporting obligations of society.

*(5 marks)***Answer 6A(i)**

Registration of a trust is not mandatory, but it provides legal recognition and benefits to the trust and its beneficiaries. Therefore, it is generally recommended to register a trust to avail of the benefits and legal protections that come with registration. Different laws regulate trusts in India. The primary regulatory Authority for trust registration is the Registrar of Trusts. The Registrar of Trusts maintains all the information on the trusts which have been registered in India. Different states in India have different Trusts Acts in force, which govern the trusts in the state; in the absence of a Trusts Act in any particular state or territory the general principles of the Indian Trusts Act 1882 are applied. Registered trusts enjoy certain benefits, including tax exemptions under certain conditions.

Income of a charitable and religious trust is exempt from tax subject to certain conditions. The exemptions are provided to the trusts under various provisions of the Income Tax Act, inter-alia, Section 10, Section 11, Section 12 etc. Some of the exemptions allowed to a trust are as under:

- Section 11 provides exemption for income derived from property held under trust wholly for charitable or religious purposes to the extent such income is applied for charitable or religious purpose in India. However, this exemption shall be subject to certain conditions.

- In view of Section 12, income in the form of voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes shall also be exempt from tax (subject to certain conditions).
- Any voluntary contributions received by an electoral trust shall not be included in its total income (subject to certain conditions).
- Income of an educational institute is subject to exemption under Sections 10(23C) (iiiab)/(iiiad)/(vi).
- Income of a hospital or other institution shall be eligible for exemption if it satisfies the conditions prescribed under Sections 10(23C) (iiiab)/(iiiad)/(vi).

Answer 6A(ii)

Equality in the workplace means equal job opportunities and fairness for employees and job applicants. The most basic form of equality in the workplace is a lack of discrimination.

When equality in the workplace is being discussed, diversity in the workplace often comes up at the same time. Is there a difference? Technically, yes, but for a workplace to be truly equal, it must also remember diversity. Diversity acknowledges peoples' differences, so instead of being ignored or used as a justification for discrimination, the differences are celebrated. Workplaces that value diversity understand that a variety of backgrounds, experiences, and skills improve work teams and business. Diversity expands the workplace's collective mindset and philosophy, making the environment more creative and productive. True equality embraces diversity as much as it stands against discrimination

Companies can demonstrate their commitment to employment equality through a variety of actions, including:

- Diversity and inclusion policies: Companies can develop policies and practices that promote diversity and inclusion in the workplace, such as recruiting from diverse talent pools, providing training on unconscious bias, and creating employee resource groups.
- Equal pay policies: Companies can ensure that all employees are paid fairly and equally for comparable work, regardless of their gender, race, or other personal characteristics.
- Non-discrimination policies: Companies can establish policies that prohibit discrimination in hiring, promotions, and other employment practices, and provide training to managers and employees on these policies.
- Flexible work arrangements: Companies can offer flexible work arrangements, such as remote work, flexible schedules, and job sharing, to support employees with caregiving responsibilities and other personal needs.
- Social impact initiatives: Companies can support social impact initiatives that address employment equality, such as providing job training and support to disadvantaged communities or partnering with non-profit organizations that focus on workforce development.

Answer 6A(iii)

A society is a nonprofit membership organization formed by seven or more members for a literary, scientific, or charitable purpose. The definition of "society" and the scope of its permissible purposes may vary somewhat based on the relevant state law, though most state laws are based on the Societies Registration Act of 1860. Section 20(1) of the Societies Registration Act provides that it applies to: "Charitable societies, the military orphan funds, societies established for the promotion of science, literature, or the fine arts, for instruction, the diffusion of useful knowledge, the diffusion

of political education, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of paintings and other works of Art, collections of natural history, mechanical and philosophical inventions, instruments, or designs."

Reporting Obligations:

List of governing body to be filed with the Registrar. Annual list of managing body to be filed once in every year, on or before the fourteenth day succeeding the day on which, according to the rules of the society, the annual general meeting of the society is held, or, if its rules do not provide for an annual general meeting, in the month of January, list shall be filed with the Registrar. The names, addresses and occupations of the governors, council, director, committee, or other governing body then entrusted with the management of the affairs of the society to be filed with the Registrar.

Every registered non-profit Society is required to keep proper financial records and have them audited annually.

INTERNAL AND FORENSIC AUDIT

GROUP 1 ELECTIVE PAPER 4.2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

Case Study :

ABC Co. Ltd. is a steel manufacturing company having its registered office in NOIDA (UP) and its main plant facilities at Raipur (CG) and several other plants at various locations in India. Company's business has increased manifold in last two years. All purchases are centralized and orders are placed by the MD office and payments are also made by head office. It results in delays in ordering and delivery of goods and payments to suppliers and also resulting into delays in project completions. Company's main customers are Public Sector Undertakings. Timely supply of materials and execution of projects are critical not only to avoid cost and time overruns but to avoid huge penalties and fines. Therefore, now company wants to decentralize its processes and to get studied and evaluated all the processes. Company wants to get implemented sound internal control systems and risk management in its all-critical processes.

Company's statutory auditors in their recent audit report, have raised serious concern that has caught attention of lenders and other stakeholders. Statutory Auditors have pointed out lack of segregation of duties, lack of periodical verification of assets and non-reconciliation of debtors and creditors, amongst other missing operational controls.

Risk management relates to how an organization sets objectives, then identifies, analyses, and responds to those risks that could potentially impact its ability to realize its objectives. Management performs risk assessment activities as part of the ordinary course of business in each of these categories. Examples include strategic planning, marketing planning, capital planning, budgeting, hedging, and incentive pay out structure.

Internal controls are measures, put in place by management to ensure reliability of financial reporting, promote efficiency and effectiveness in operations and compliance with laws.

The objective of an internal audit is to evaluate compliance with company's laid down procedures, applicable laws, and international standards. Data and reports are reviewed to assure consistency and compliance. Thus, internal audit provides a value-added service to management and to the board of directors by detecting and correcting weaknesses in a process before external audits discover them. This can protect the organization from loss of reputation and regulatory fines.

Company has engaged you, as an Internal Auditor. In the light of the above, answer the following questions :

(a) What key steps you would take to establish internal controls in the company ?

(5 marks)

(b) Narrate the key aspects you would examine to evaluate effectiveness and efficiency of internal controls.

(5 marks)

(c) Explain the role of internal audit in internal control and in risk management.

(5 marks)

Answer 1(a)

Steps for Establishing Internal Control:

- i. Identify the key areas where the internal control system is to be established.
- ii. Work flow should be designed in such a way that it is not complete if another person has not checked it. (Maker/ Checker concept)
- iii. Establishing of surprise check mechanism where money plays a significant role.
Example cash verification, inventory and other high value documents like title deeds.
- iv. Review of units and facilities which are in remote locations.
- v. Reporting mechanism for non-adherence of key compliance areas.
- vi. Vigil mechanism for larger entities as applicable.

Answer 1(b)

Examining the Effectiveness and Efficiency of Internal Controls:

Internal controls are measures put in place by organizations to ensure the reliability of financial reporting, promote efficiency and effectiveness in operations, and compliance with laws and regulations. The effectiveness and efficiency of internal controls can be evaluated by examining several key aspects:

1. Design: The design of internal controls must be appropriate to address specific risks and must be able to effectively mitigate those risks. The controls should be designed in a way that does not create unnecessary complexity, which could lead to inefficiencies in the operations of the organization.
2. Implementation: The internal controls must be properly implemented and be an integral part of the organization's operations. This means that employees must be trained on the controls and be familiar with the procedures they need to follow.
3. Monitoring: The internal controls must be regularly monitored to ensure they are functioning as intended. This includes regular audits and reviews of the control environment to identify any weaknesses and make improvements as needed.
4. Documentation: Proper documentation of internal controls is essential to ensure that they are consistently followed and that any changes to the controls are properly recorded.
5. Evaluation: Periodical evaluation of the effectiveness and efficiency of internal controls is critical to ensuring they remain relevant and effective in mitigating risks. This includes ongoing monitoring and assessment, as well as periodic internal audits or external reviews.

By regularly evaluating and improving the controls, organizations can ensure that they are able to operate effectively and efficiently, while minimizing risks to the organization and its stakeholders.

Answer 1(c)

Role of Internal Audit in Internal Control

The Internal auditor should examine and contribute to the ongoing effectiveness of the internal control system through evaluation and recommendations. However, the internal auditor is not vested with management's primary responsibility for designing, implementing, maintaining and

documenting internal control. Internal audit functions add value to an organization's internal control system by bringing a systematic, disciplined approach to the evaluation of risk and by making recommendations to strengthen the effectiveness of risk management efforts. The internal auditor should focus towards improving the internal control structure and promoting better corporate governance.

The role of the internal auditor encompasses:

- Evaluation of the efficiency and effectiveness of controls
- Recommending new controls where needed or discontinuing unnecessary controls
- Using control frameworks
- Developing Control self-assessment.

Role of Internal Audit in Risk Management

Internal auditing professional standards require the function to monitor and evaluate the effectiveness of the organization's Risk management processes. Risk management relates to how an organization sets objectives, then identifies, analyzes, and responds to those risks that could potentially impact its ability to realize its objectives. Under the COSO Enterprise Risk Management (ERM) Framework, risks fall under strategic, operational, financial reporting, and legal/regulatory categories. Management performs risk assessment activities as part of the ordinary course of business in each of these categories. Examples include: strategic planning, marketing planning, capital planning, budgeting, hedging, incentive payout structure, and credit/lending practices. Sarbanes-Oxley regulations also require extensive risk assessment of financial reporting processes. Corporate legal counsel often prepares comprehensive assessments of the current and potential litigation a company faces. Internal auditors may evaluate each of these activities, or focus on the processes used by management to report and monitor the risks identified. For example, internal auditors can advise management regarding the reporting of forward-looking operating measures to the Board, to help identify emerging risks.

In larger organizations, major strategic initiatives are implemented to achieve objectives and drive changes. As a member of senior management, the Chief Audit Executive (CAE) may participate in status updates on these major initiatives. This places the CAE in the position to report on many of the major risks the organization faces to the Audit Committee, or ensure management's reporting is effective for that purpose.

Question 2

- (a) You are in the process of evaluating the internal controls of a company by focusing on controls operating for creditors from whom various goods are being purchased by the company. In this respect, you want to collect information about existence, operation and efficiency of internal controls in the company. You plan to prepare a set of questions to be circulated amongst the executives and employees of the company for their response. Which method is being contemplated by you for evaluating internal controls ?

Prepare a set of few questions regarding controls operating for creditors.

(5 marks)

- (b) Planning is not a discrete phase of an audit, but rather a continual and iterative process that often begins shortly after the completion of the previous audit and continues until the completion of the current audit engagement. Planning includes the need to consider certain matters prior to the auditor's identification and assessment of the risks of material misstatement. Explain and discuss the key matters that need to be considered by the auditor prior to the identification and assessment of the risks of material misstatement.

(5 marks)

- (c) (i) After an illustrious career in Indian Audit & Accounts Service for about 25 years, Parth, a postgraduate in law, has taken voluntary retirement from government service. Being in fine spirits, he wants to take responsibility as Chief Internal Auditor in the corporate sector. On looking at attractive compensation packages, he applied for such position in a leading listed company engaged in oil refining business. The Board of company is keen on him due to his impressive credentials.

Can he be appointed in this leading position of said company ? Explain with reference to the legal provisions of the Companies Act, 2013.

(2 marks)

- (ii) D, is an internal auditor of a listed company. The company wants to make sure that it is in compliance with SEBI requirements at all times and it is never on the wrong side of the law. It asks its internal auditor to manage its compliance tracking system including directly corresponding with regulator in this regard. The profile and scope of internal audit agreed at time of appointment included “compliance with laws and regulations.”

Can he perform such type of activities in capacity of internal auditor of company ?

(3 marks)

Answer 2(a)

You are contemplating using internal control questionnaire as method for evaluating internal controls.

The internal auditor considering the size and nature of its business and based on the discussions with the management designs a set of questions, which when answered will document a number of aspects of the internal control system. This questionnaire is popularly known as internal control questionnaire (ICQ) and can be very useful in documenting and assisting the evaluation of controls.

A set of questions regarding controls operating for creditors are given below:

- i. Is there a proper segregation of duties among employees receiving the goods, preparing vouchers, approving vouchers and authorizing the payment?
- ii. Are purchase order issued by accounts department on the requisition of goods from the various department?
- iii. Are suppliers' invoices routed direct to the Accounts Department? Are they entered in a Bill register before submitting them to other departments for check and/or approval? Are advance and partial payments entered on the invoices before they are submitted to other departments?
- iv. Does the system ensure that all suppliers invoices received in original are duly processed only after proper approvals?
- v. In respect of raw material and supplies, are reconciliations made of quantities and/ or values received as shown by purchase invoices with receipt into stock records?
- vi. Does the Accounts Department match the invoices of supplies with Goods Received Notes and purchase orders?
- vii. Do all invoices bear evidence of being checked for prices, freight, terms, etc.?
- viii. Are all advance payments duly authorized by persons competent to authorize such payments and old advances are reviewed and action taken regularly either to get back the advance or get the materials supplied?
- ix. Are duplicate invoices marked immediately on receipt to avoid payment against them?

- x. Are all supplier's statements compared with ledger accounts?
- xi. Is there any follow-up action to investigate difference, if any, between the suppliers' statements and the ledger accounts?
- xii. Is a list of unpaid creditors prepared and reconciled periodically and reasons obtained for non-payment which are outstanding to be paid for a long time?
- xiii. Are all statutory requirements in the form of TDS and GST has been complied with?
- xiv. Are retention money has been deducted as per the terms of purchase order?

Answer 2(b)

As per Standards of Auditing SA 300 issued by the Institute of Chartered Accountants of India, "Planning an Audit of Financial Statements", planning is not a discrete phase of an audit, but rather a continual and iterative process that often begins shortly after (or in connection with) the completion of the previous audit and continues until the completion of the current audit engagement. Planning, however, includes consideration of the timing of certain activities and audit procedures that need to be completed prior to the performance of further audit procedures. E.g. planning includes the need to consider, prior to the auditor's identification and assessment of the risks of material misstatement, such matters as:

- (i) The analytical procedures to be applied as risk assessment procedures.
- (ii) Obtaining a general understanding of the legal and regulatory framework applicable to the entity and how the entity is complying with that framework.
- (iii) The determination of materiality.
- (iv) The involvement of experts.
- (v) The performance of other risk assessment procedures.

Planning an audit involves establishing the overall audit strategy for the engagement and developing an audit plan.

Answer 2(c)(i)

As per section 138 of the Companies Act, 2013 the internal auditor shall either be a chartered accountant or a cost accountant (whether engaged in the practice or not), or such other professional as may be decided by the Board to conduct an internal audit of the functions and activities of the company.

The Board can appoint any professional as may be decided by it. The applicant in question is a law postgraduate and he has spent 25 years of his career in Indian Audit & Accounts Service. Therefore, he has got the necessary experience and skills required for the said vacancy. The Board would be in a position to appoint such a competent and experienced person in the field of auditing as its Chief Internal auditor.

Answer 2(c)(ii)

At times, the Internal Auditor is exposed to a different type of risk to independence, whereby management seeks active business support from the Internal Auditor. Apart from providing basic assurance and advisory inputs, the Internal Auditor is assigned certain responsibilities (such as risk management, system automation, process reengineering, etc.). Although some limited operational role may be acceptable with due approvals, and for a short duration, the Internal Auditor shall do so only after communicating his limitations along the following lines:

- (a) Unable to assume ownership or accountability of the process; and
- (b) Inability to take operational decisions which may be subject to an internal audit later on.

The Internal Auditor does not assume responsibility to manage or operate the compliance framework or to take compliance-related decisions. It is not responsibility of the Internal Auditor to execute or resolve compliance related risks (e.g., engaging directly with regulators, etc.).

Although internal audit function provides independent assurance to enhance governance (which includes compliance with laws and regulations), it does not assume operational responsibility of its compliance framework. It is the responsibility of the management. Internal auditor is responsible for auditing the compliance framework and not managing it.

Similarly, he does not accept compliance related risks like directly engaging with regulator which is outside his scope and responsibility.

If the management asks internal auditor to assume additional roles and responsibilities that may impair, or appear to impair, the organizational independence of the internal audit activity, the same should be reported to the audit committee and board as well.

Question 3

G N & Company, a newly established firm of Company Secretaries, has been appointed as internal auditors of a large manufacturing company. Partners of the firm have no prior experience of handling such large internal audit assignment independently. They are keen to know how to proceed for audit. G, Partner in Charge of the Internal Audit has undergone his practical training with you and has approached you for your invaluable guidance and mentoring in this regard.

You, a senior partner of a well-established firm of Company Secretaries, told him that internal auditors should possess certain skills and competence, in addition to being independent and objective in their assessments. You advised him that effective planning is key to success for every project by quoting a well-known saying that if you fail to plan, you plan to fail. You also advised that internal auditors must plan and conduct meetings with various stakeholders including board of directors, senior management and others, to understand the business environment and their requirements.

Answer the following questions of G, Partner of the G N & Company :

- (a) Explain what skills and competence internal auditors must possess ?
(5 marks)
- (b) Mention the sources wherefrom G N & Co. would obtain knowledge about company's business and its environment ?
(5 marks)
- (c) Emphasize in brief why assessment of internal control environment is so important and advise the factors to be kept in mind while assessing the control environment of the company.
(5 marks)

Answer 3(a)

Internal Auditor Skills and Competence:

- i. The Internal Auditor shall have sound knowledge, strong interpersonal skills, practical experience and professional expertise in certain areas and other competence required to conduct a quality audit. He shall undertake only those assignments for which he has the requisite competence.

- ii. The Internal Auditor shall either have, or shall obtain, such skills and competencies, as necessary for the purpose of discharging his responsibilities. Continuing Professional Education is a key part of this exercise.
- iii. Internal Auditor shall have the softer skills (such as interpersonal and communication skills) required to engage with a multitude of stakeholders.
- iv. Internal auditor should have IT skills, interviewing skills, documentation skills, reporting skills etc. in order to discharge his responsibility effectively.
- v. Internal auditor should also possess specific skills such as planning an audit engagement, team building, managing audit engagement, presentation skills etc.
- vi. Where the Internal Auditor lacks certain expertise, he shall procure the required skills either through in-house experts or through the services of an outside expert, provided independence is not compromised.

The objective is to ensure that the audit team, as a whole, has all the expertise and knowledge required for the area under review.

Answer 3(b)

Obtaining Knowledge of the Client's Business and its Environment

Effective planning is the key to success for every project. It is essential for every Internal Auditor to prepare an effective audit scope and plan to focus on most essential activities and transactions, which is not possible without obtaining a good understanding of the business strategy, its operations, its organization structure, locations and offices, product and business segments, financial overview of the business, applications statutory compliances and various other internal and external factors impacting the organization.

Internal Auditor must plan and conduct meetings with various stakeholders including Board of Directors, Senior management person, Head of Departments and other business associates and partners to obtain understanding of the organization's business environment, organization's vision, mission and top management's expectations from the audit functions.

Following steps may be followed for obtaining the knowledge of the Business and its environment. The internal auditor should obtain a level of knowledge of the entity sufficient to enable him to identify events, transactions, policies and practices that may have a significant effect on the financial information. Following are some of the sources wherefrom the internal auditor can obtain such knowledge:

- Organization's policy and procedures manual & its ownership and governance structures.
- The entity's structure and how it is financed. - Annual financial statements and annual report.
- Minutes of the meetings of the shareholders, board of directors, and important committees of the board such as the audit committee, remuneration committee, shareholders' grievances committee.
- Legislation and regulations that significantly affect the entity.
- Management reports/ internal audit reports of prior periods.
- Newspaper/ industry journals & Discussion with client's management and staff.
- Visits to entity's plant facilities etc. to obtain firsthand information regarding the production processes of the entity.
- Visits to the entity's department where the accounting and other documents are generated, maintained, and the administrative procedures followed.

- Internal auditor must also obtain understanding of the underlying Information Technology landscape, various applications and ERP systems of the organization and Management Information System of the organization.

Answer 3(c)

Objective of Assessment of Internal control Environment

The main objective of Assessment of Internal control Environment is to assess the criticality of the process / auditable entity at inherent level. However, internal auditor should arrive at the residual risk after factoring the controls established by the organization to mitigate such risks. Internal Auditor must assess the controls environment and provide control environment rating to each of the auditable entity.

Factors to be considered: Following factors need to be kept in mind while performing the assessment of control environment:

1. Preventive or detective controls in place.
2. Strong monitoring of Legal compliance.
3. IT enabled controls and IT security initiatives.
4. Corporate governance structure.
5. Documented Policy and Procedures.
6. Organization's sensitivity towards Health, Safety & Environment.
7. Fraud detection mechanism.
8. Governance over decentralized operations.

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

Question 4

- (a) ABC Foundation, a registered NGO based in Mumbai, launched a nationwide donation drive during the year 2024-25 to support victims of a flood in Uttarakhand. The NGO received substantial donations from individuals, corporates, and international donors. These funds were then sent to different NGOs operating in Uttarakhand, who were actively involved in flood relief work.

ABC Foundation has appointed you to audit its accounts for the year in which it collected and remitted donations for flood victims. Draft the audit programme for audit of receipts of donations and remittance of the collected amount to different NGOs. Mention three points each, peculiar to the situation, which you would like to incorporate in your audit programme for audit of said receipts and remittances of donations.

(5 marks)

- (b) Rise of digital platforms has created new opportunities for financial institutions to innovate and create new products and services, such as mobile banking and online investment platforms. Internal auditors need to be able to identify and evaluate these opportunities and ensure that they are pursued in a way that is consistent with the organization's strategy and objectives. Further, use of latest technologies in systems in organizations is an emerging issue in internal audit as it presents new risks and challenges that internal audit must address.

In this context, what are the areas internal audit should focus on, when auditing the use of such technologies ?

(5 marks)

- (c) ABC Ltd., engaged in the manufacturing of various products in its factory, is concerned with shortage in production and there arose suspicion of inventory fraud.

You are appointed by ABC Ltd. to evaluate the options for verifying the process to reveal fraud and the corrective action to be taken. As an investigating accountant what will be your areas of verification and the procedure to be followed for verification of defalcation of inventory ?

(5 marks)

Answer 4(a)

In the given situation, the audit programme should include the following specific points for audit of receipts and remittances of donation.

Receipt of Donations:

- Internal Control System: particularly w.r.t. division of responsibilities in respect of authorized collection of donations, custody of receipt books, and safe custody of money.
- Custody of Receipt Books: Existence of system regarding issue of receipt books, whether unused receipt books are returned and the same are verified physically including checking of number of receipt books and sequence of numbering therein.
- Receipt of Cheques: Receipt Book should have carbon copy for duplicate receipt and signed by a responsible official. All details relating to date of cheque, bank's name, date, amount, etc. should be clearly stated. The cheque should be drawn in the name of NGO only.
- Bank Reconciliation: Reconciliation of bank statements w.r.t. all cash deposits not only w.r.t. date and amount, but also w.r.t. receipt book.
- Cash Receipts: Register of cash donations to be vouched more extensively. If addresses are available of donors who had given cash, the same may be cross-checked by asking entity to post thank you letters mentioning amount, date and receipt number.
- Foreign contributions, if any, to receive special attention to compliance with applicable laws and regulations.

Remittance of Donations to Different NGOs:

- Mode of spending Remittance: All remittances are through account payee cheques. Remittances through Demand Draft would also need to be scrutinized thoroughly w.r.t. recipient.
- Confirming Receipt of Remittance: All remittances are supported by receipts and acknowledgements.
- Identity: Recipient NGO is a genuine entity. Verify address, 12A & 80G Registration Number etc.
- Direct Confirmation Procedure: Send confirmation letters to entities to whom donations have been paid.
- Donation Utilisation: for providing relief to flood victims and not for any other purpose.
- System of selecting NGOs to whom donations have been sent.
- Statutory compliances for donation made

Answer 4(b)

Use of latest technologies

Following are some areas that internal audit should focus on when auditing the use of latest technologies in systems:

(i) Security and Privacy

With the use of latest technologies, there is an increased risk of cyber threats and data breaches. Internal audit should ensure that the systems are secure and that appropriate measures are in place to protect sensitive data. This includes an assessment of the security protocols, encryption, access controls, and other security measures.

(ii) Governance and Management

Internal audit should review the governance structure in place to ensure that there are adequate controls and oversight of the technology initiatives. This should include an assessment of the roles and responsibilities of key stakeholders, including the board, senior management, and the IT team. Additionally, internal audit should review the policies and procedures in place to ensure that they are adequate and up to date.

(iii) System Development Life Cycle

Internal audit should ensure that appropriate controls are in place throughout the system development life cycle, from design to implementation the maintenance. This includes an assessment of the testing and validation procedures, as well as the change management process.

(iv) Business Continuity and Disaster Recovery

Internal audit should ensure that appropriate measures are in place to ensure business continuity in the event of a system outage or disaster. This includes an assessment of the backup and recovery procedures, as well as the disaster recovery plan.

(v) Compliance

Internal audit should ensure that the use of latest technologies is compliant with applicable laws and regulations. This includes an assessment of the data protection laws, industry specific regulations, and other compliance requirements.

Answer 4(c)

Verification Procedure for Defalcation of Inventory – It may be of trading stock, raw materials, manufacturing stores, tools or of other similar items (readily) capable of conversion into cash. The loss may be the result of a theft by an employee once or repeatedly over a long period, when the same have not been detected. Such thefts usually are possible through collusion among a number of persons. Therefore, for their detection, the entire system of receipts, storage and dispatch of all goods, etc. should be reviewed to localize the weakness in the system.

The determination of factors which have been responsible for the theft and the establishment of guilt would be difficult in the absence of:

- (a) a system of inventory control, and existence of detailed record of the movement of inventory,
or
- (b) availability of sufficient data from which such a record can be constructed.

The first step in such an investigation is to establish the different items of inventory defalcated and their quantities by checking physically the quantities in inventory held and those shown by the

Inventory Book. Investigating accountant should ascertain the exact duties of persons handling the stocks received in and issued from store for production/ sale or any other purpose. Identify the excessive control in the hands of a single person, without any supervision as it will widen the scope of investigation.

Afterwards, all the receipts and issues of inventory recorded in the Inventory Book should be verified by reference to entries in the Goods Inward and Outward Registers and the documentary evidence as regards purchases and sales. This would reveal the particulars of inventory not received but paid for as well as that issued but not charged to customers. Further, entries in respect of returns, both in inward and outward, recorded in the financial books should be checked with corresponding entries in the Inventory Book. Also, the totals of the Inventory Book should be checked. Finally, the shortages observed on physical verification of inventory should be reconciled with the discrepancies observed on checking the books in the manner mentioned above. In the case of an industrial concern, issue of raw materials, stores and tools to the factory and receipts of manufactured goods in the godown also should be verified with relative source documents.

Defalcations of inventory, sometimes, also are committed by the management, by diverting a part of production and the consequent shortages in production being adjusted by inflating the wastage in production; similar defalcations of inventories and stores are covered up by inflating quantities issued for production. For detecting such shortages, the investigating accountant should take assistance of an engineer. For that he will be more conversant with factors which are responsible for shortage in production; thus, will be able to correctly determine the extent to which the shortage in production has been inflated. In this regard, guidance can also be taken from past records showing the extent of wastage in production in the past. Similarly, he would be able to judge better whether the material issued for production was excessive and, if so to what extent. The per hour capacity of the machine and the time that it took to complete one cycle of production also would show whether the issues have been larger than those required.

OR (Alternate to Q. No. 4)

Question 4A

- (a) XYZ Ltd. has appointed PK, to conduct their internal audit for the new financial year. The Audit committee requested PK, to present a detailed report on their findings and areas where immediate action is needed to mitigate critical risks.

What should be the content of the internal audit report to address this requirement of the Audit Committee ? Answer with reference to the Standard on Internal Audit (SIA) 370.

(5 marks)

- (b) Rupee Bank Ltd. is suffering from huge number of NPAs. During the month of April 2025, the management of the bank decided to sell some of its NPAs. Bank is doing this exercise for the first time. The management has selected following NPA accounts for sale :

Name	NPA since F.Y.	Amount (Rs. in Lakhs)
ABC Ltd.	2020-21	28.34
AEF Pvt. Ltd.	2019-20	56.65
VXY Fabric Corporation	2022-23	38.60
KOT Iron Works	2023-24	41.70
JKL & Associates	2021-22	60

Being internal auditor of the bank, you are required to scrutinize the proposal made by the bank and help them by providing specific points to be considered.

(5 marks)

- (c) Modern business operations are becoming increasingly complex, particularly in large and diversified organizations, which may make it difficult for internal auditors to understand the entire process and to identify potential risks. It arises due to the multitude of processes, systems and business units within an organization, making it difficult to understand how they all fit together and how they impact the organization's objectives. In this context, to overcome this challenge in internal audits, what are the steps organizations should take ?

(5 marks)

Answer 4A(a)

As per Standard on Internal Audit (SIA) 370 Reporting Results, reporting of internal audit results is generally undertaken in two stages:

- At the end of a particular audit assignment, an "Internal Audit Report" covering a specific area, function or part of the entity is prepared by the Internal Auditor highlighting key observations arising from those assignments. This report is generally issued with details of the manner in which the assignment was conducted and the key findings from the audit procedures undertaken. This report is issued to the auditee, with copies shared with local and executive management, as agreed during the planning phase.
- On a periodic basis, at the close of a plan period, a comprehensive report of all the internal audit activities covering the entity and the plan period is prepared by the Chief Internal Auditor (or the Engagement Partner, in case of external service provider). Such reporting is normally done on a quarterly basis and submitted to the highest governing authority responsible for internal audits, generally the Audit Committee. Some part of the aforementioned Internal Audit Reports may form part of the periodic (e.g. Quarterly) report shared with the Audit Committee.

Accordingly, a typical internal audit report should include the following:

- Audit scope and limitation (if any);
- Audit period Covered;
- Executive Summary;
- Summary of the critical findings;
- Detailed audit findings with elaboration on business impact and root cause of such issues;
- Rating of the highlighted issues (E.g. High / Medium / Low) in accordance with the rating criteria approved by Audit Committee;
- Audit recommendation to improve control environment and address the highlighted finding;
- Response received from the responsible functional authority containing action plan and target timelines for action.
- A summary of the corrective actions required (or agreed by management) for each observation
- The fact that an internal audit has been conducted in accordance the Standards of Internal Audit.
- Nature of assurance, if any, which can be derived from the observations

Answer 4A(b)

In case of Sale of Non-Performing Assets (NPA) by Bank, the internal auditor should examine that:

- (i) The policy laid down by the Board of Directors in this regard relating to procedures, valuation and delegation of powers including non-performing financial assets that may be sold, norms of such sale, valuation procedure and accounting policy.
- (ii) The transferor can transfer loans only after a minimum holding period (MHP), as prescribed below, which is counted from the date of registration of the underlying security interest with Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI):
 - a) Three months in case of loans with tenor of up to 2 years;
 - b) Six months in case of loans with tenor of more than 2 years.

Provided that in case of loans where security does not exist or security cannot be registered with CERSAI, the MHP shall be calculated from the date of first repayment of the loan.

- (iii) the assets have been sold “without recourse” only i.e., the entire credit risk associated with the non-performing asset should be transferred to the purchasing bank.
- (iv) subsequent to the sale of the NPA, the bank does not assume any legal, operational or any other type of risk relating to the sold NPAs.
- (v) the NPA has been sold at cash basis only. Under no circumstances, NPA can be sold to another bank at a contingent price. The entire sale consideration has to be received on upfront basis.
- (vi) the bank has not purchased an NPA which it had originally sold.
- (vii) on the sale of the NPA, the same has been removed from the books of the account of selling bank on transfer;
- (viii) If the sale is at a price below the net book value (NBV) (i.e., book value less provisions held), the shortfall should be debited to the profit and loss account of that year.
- (ix) If the sale is for a value higher than the NBV, the excess provision shall not be reversed but will be utilised to meet the shortfall or loss on account of sale of other non-performing financial assets.

In the given situation, management of Rupee Bank Ltd. is considering to sell following NPAs, during the month of April, 2025:

Name	NPA since F.Y.	Amount (Rs. In Lakh)
ABC Ltd.	2020-21	28.34
AEF Pvt. Ltd.	2019-20	56.65
VXY Fabric Corporation	2022-23	38.60
KOT Iron Works	2023-24	41.70
JKL & Associates	2021-22	60

In view of above-mentioned conditions, if the criteria of minimum holding period has been satisfied, management of Rupee Bank Ltd. can sell the NPAs.

Answer 4A(c)

To overcome the challenges with respect to modern business operation impacting the organizations in internal audits, organisations can take the following steps:

- (i) Conduct a process mapping exercise: Organisations should conduct a process mapping exercise to identify all processes within the organisation and understand how they fit together. This can help to identify redundancies and inefficiencies and streamline processes to improve the effectiveness and efficiency of the organisation.
- (ii) Develop a risk assessment plan: Organisations should develop a risk assessment plan that identifies potential risks associated with each process, system, and business unit. This can help prioritise the areas requiring the most attention and resources during the internal audit process.
- (iii) Establish clear objectives and criteria: Organisations should establish clear objectives and criteria for the internal audit process. This can help to ensure that the audit team focuses on the areas that are most critical to the organisation's success and measures the effectiveness of the processes against the established criteria.
- (iv) Use data analytics and automation: Data analytics and automation tools can help to streamline the internal audit process, reducing the time and effort required to analyze complex data sets. These tools can also provide real-time insights into the organisation's operations, enabling the audit team to identify patterns and trends quickly.
- (v) Involve relevant stakeholders: Organisations should involve relevant stakeholders, such as process owners, system administrators, and business unit leaders, in the internal audit process. This can help to ensure that the audit team has access to the necessary information and can obtain an exhaustive understanding of the organisation's operations.

Develop a comprehensive report: Organisations should develop a comprehensive report summarizing the findings and recommendations of the internal audit. The report should be clear and concise, highlighting areas of concern and providing actionable recommendations to address them.

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

ABC Pharmaceuticals Ltd., a listed company, is under forensic investigation following the resignation of its statutory auditors. The auditors cited concerns over financial irregularities. An internal audit revealed the following :

- Multiple vendor payments just under the Rs. 10 lakh approval threshold.
- Repetitive vendor invoice amounts ending in specific digits.
- Round-number expense reimbursements from a group of employees.
- Suspicious fund transfers through group companies to offshore accounts and back to related parties (possible layering).
- Email evidence of backdated invoices and manipulated purchase orders.

As a forensic auditor, answer the following questions :

- (a) How would Benford's Law be applied to detect irregularities in vendor and reimbursement transactions ? What anomalies would be considered as red flags ?

- (b) Explain the concept of layering in forensic audit. How would you trace and establish a layering mechanism in the fund transfers ?
- (c) What data analytics techniques can be used to detect anomalies or collusion in Employee Reimbursements ?
- (d) How would you preserve and analyze email evidence ? What role does email data play in proving manipulation ?
- (e) Suggest internal audit measures and controls that could have helped in identifying these red flags earlier.

(4+4+4+4+4=20 marks)

Answer 5(a)

Case Study

Benford's Law – Application & Red Flags

Benford's law provides that the distribution of the digit in multi-digit natural number is not random but it follows a pattern which can be predicted. The goal of a Benford's law is to identify fictitious numbers when creating false documentation or transactions to cover the tracks by fraudsters.

Benford's Law is a statistical tool used to detect potential fraud in financial statements or other numerical datasets. The law states that in many naturally occurring datasets, the leading digit is more likely to be a small number (e.g., 1, 2, or 3) than a large number (e.g., 8 or 9).

One application of Benford's Law is in detecting fraudulent journal entries or fraudulent financial transactions in the books of account.

Benford's Law predicts the frequency of digits in naturally occurring datasets. According to it, the number 1 appears as the leading digit about 30% of the time, while higher digits appear less frequently.

Application:

- Apply Benford's Law to the leading digits of vendor payment amounts and employee reimbursements.
- Use audit software (like ACL, IDEA, or Excel plugins etc.) to compare actual frequency vs. expected frequency.

Red flags are nothing but symptoms or indicator of situation of fraud. A red flag is a set of circumstances that are unusual in nature or vary from the normal activity. It is a signal that something is out of the ordinary and may need to be investigated further.

Red Flags:

- Unusual frequency of invoices starting with digits like 9 or 8 (e.g., ₹9, 99,999) is suspicious.
- Consistent patterns of rounding or digit repetition (e.g., ₹2, 99, 997) may indicate manual fabrication or split payments.
- Low variation in reimbursements also signals possible collusion.

Answer 5(b)

Layering in Forensic Audit & Detection

Definition:

- Layering is a money laundering stage where illicit funds are separated from their source through complex layers of transactions, making tracing difficult.

Detection Approach.

- Trace fund flow through bank statements and ledger entries.
- Use tools like bank transaction mapping, flowcharts, and forensic software to reconstruct fund movement.
- Identify shell companies, offshore accounts, and related parties.
- Cross-reference company ownership, directorships, and IP address locations of fund transfers.

Objective: Show circular transactions or multiple layers that disguise the origin of funds, possibly indicating fraud or siphoning.

Answer 5(c)

Data Analytics Techniques to detect anomalies or collusion in employee Reimbursement

- Trend Analysis: Identify spikes or unusual reimbursement patterns over time.
- Benford's Law: Analyze leading digits of expense claims.
- Cluster Analysis: Group employees by similar claim behaviors or vendors.
- Duplicate Testing: Flag multiple identical claims (e.g., same amount, date, or expense type).
- Outlier Detection: Flag the reimbursements which are significantly higher than average.
- Goal: Identify anomalies, repetitive claims, or collusion between employees and vendors.

Answer 5(d)

Email Forensics & Metadata Use

Steps to Preserve & Analyze Emails:

- Use write-blockers and forensic tools (like EnCase or FTK) to extract emails without altering data.
- Maintain chain of custody records.
- Search for keywords like "backdate," "approve," "urgent," "PO," "invoice."

Role of Metadata:

- Timestamps: Actual time of creation, editing, sending.
- Sender/Receiver Info: IP addresses, CCs, BCCs.
- Message ID: Helps track message threads and authenticity.
- Detect if documents were backdated or tampered with post-creation.

Answer 5(e)

Internal Audit Measures & Controls

Preventive Controls:

- Set up threshold alerts for payments near approval limits (e.g. ₹10 lakh).
- Implement mandatory second-level approvals for related parties and repetitive transactions.
- Use AI-based anomaly detection in financial systems.

Detective Controls:

- Monthly reconciliation and review of vendor and reimbursement data.
- Perform trend and ratio analysis of expenses and payments.
- Conduct surprise audits and rotation of audit staff.

Governance Controls:

- Strengthen whistleblower mechanisms.
- Mandate employee declarations of conflict of interest.
- Periodic email and communication audits for key departments.

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

Question 6

- (a) Red flags are systems or indications of situations of Fraud. A red flag is a signal and a set of circumstances that are something unusual in nature.

During the statutory audit of a branch of public sector bank, auditors have following, amongst others, observations :

- Branch Manager and joint-custodians (JCs) of cash hardly had any leave during the year.
- Branch Manager and JCs arrives always early and goes late and works till late evening.
- No cash shortages have been shown on any day, while excess cash has been shown on few days.
- They are in practice of submitting the TA Bills, after several months and making out of pocket expenses.
- They have been reluctant to provide the required information to the auditors and have been never cooperative to produce the required records timely.
- They have been disputing on audit issues.
- Non-compliance of regulatory inspection reports persisting since long and had no respect to regulations and bank's policies/ procedures.

You are required to identify Red Flags and Green Flags, if any upon the above facts.

(5 marks)

- (b) What do you understand by digital Incident Response (IR) ? Describe in brief the key steps of the process.

(5 marks)

- (c) Data Mining Techniques have become increasingly important in fraud detection due to the sheer volume of data that needs to be processed and analyzed in order to identify potentially fraudulent behaviors.

Explain in brief which data mining technique would be most appropriate in the following circumstances :

- (i) To identify abnormal pattern of logging the systems out of office hours.
- (ii) To identify potentially fraudulent behaviour based upon series of criteria.

- (iii) To identify complex pattern of fraudulent behaviour that may not be immediately apparent.
- (iv) To identify suspicious language/emotional tone in emails used in frauds.

(2+1+1+1=5 marks)

(d) You are required to identify the types of cybercrimes from the given situations :

- (i) An email that appears to originate from one source but actually has been sent from another source.
- (ii) Making the websites/services unavailable.
- (iii) Writing readymade computer programs to attack the computer and get enjoyment out of destruction.
- (iv) Changing the data either before or during entry into the computer systems.
- (v) Pretending to be someone he is actually not by creating fake email.

(5 marks)

Answer 6(a)

Red Flags and Green Flags:

Red flags are symptoms or indicators of fraud, white collar crime or something detrimental to the interest of the organization. A red flag is a set of circumstances that are unusual in nature or vary from the normal activity. It is a signal that something is out of the ordinary and may need to be investigated further.

To the contrary there are other signals which could also imply the existence of fraud but do not activate alarm bells. Rather they may even lead to a greater sense of assurance and comfort in a scenario which may be potentially infused with fraud. These signals are referred as 'green flags'.

The instance of Green Flags could be helpful in identifying are unusual signs or inconsistencies, but apparently harmless or perhaps even helpful.

In all the following cases, flags indicated are:

- Branch Manager and joint-custodians (JCs) of cash hardly had any leave during the year - Red Flag
- Branch Manager and JCs arrives always early and goes late and works till late evening. - Green Flag
- No cash shortages have been shown on any day, while excess cash has been shown on few days. - Green Flag
- They are in practice of submitting the TA Bills, after several months and making out of pocket expenses. - Green Flag
- They have been reluctant to provide the required information to the auditors and have been never cooperative to produce the required records timely. - Red Flag
- They have been disputing on audit issues. - Red Flag
- Non-compliance of regulatory inspection reports persisting since long and had no respect to regulations and bank's policies/ procedures. - Red Flag

Answer 6(b)

Digital Incident Response (IR) is the process of identifying, investigating, and responding to security incidents in computer networks and systems. The goal of digital incident response is to minimize the

damage caused by an incident, contain the incident, and prevent future incidents from occurring. Due to frequent cyberattacks which compromise privacy of business data as well as personal privacy especially post pandemic incident response has become necessary. There have been many real incidents involving installation of malware and asking the victims to pay in cryptocurrency.

Digital Incident Response Process

This process typically involves the following steps:

Preparation: This involves creating a plan for incident response, including identifying key personnel, establishing communication protocols, and developing a list of resources that can be used during an incident.

Identification: This involves detecting an incident by monitoring network activity and analyzing logs for signs of suspicious behavior. Incidents can also be identified through reports from users or other sources.

Containment: This involves isolating the affected systems and limiting the damage caused by the incident. This may involve shutting down systems, disconnecting them from the network, or blocking access to certain resources.

Analysis: This involves investigating the incident to determine the cause, scope, and impact of the incident. This may involve forensic analysis of systems and data to identify the source of the incident and gather evidence.

Remediation: This involves taking steps to address the vulnerabilities or weaknesses that allowed the incident to occur. This may involve patching systems, updating software, or implementing new security controls.

Recovery: This involves restoring systems and data to their normal state and verifying that the incident has been fully resolved.

Lessons learned: This involves reviewing the incident response process and identifying areas for improvement. This may involve updating incident response plans, improving monitoring and detection capabilities, or providing additional training to staff. Digital incident response is a critical component of modern cybersecurity, as it allows organizations to quickly and effectively respond to security incidents and minimize the impact of a security breach.

Answer 6(c)

Data Mining Technique would be most appropriate in following circumstances:

- i. To identify abnormal pattern of logging the systems out of office hours. - Anomaly Detection
- ii. To identify potentially fraudulent behavior based upon series of criteria: - Decision Trees
- iii. To identify complex patterns of fraudulent behavior that may not be immediately apparent:
- Neural Networks
- iv. To identify suspicious language /emotional tone in emails in frauds: - Text Mining

Answer 6(d)

Types of cybercrimes in following cases:

- (i) An email is one that appears to originate from one source but actually has been sent from another source: E-mail spoofing / phishing
- (ii) Making the websites/services unavailable: Denial of Service (DOS)/Distributed Denial of Service

- (iii) Writing ready-made computer programs to attack the target computer and get enjoyment out of destruction: Hacking
- (iv) Changing of data either before or during entry into the computer system: Data Diddling
- (v) Pretending to be someone he is actually not by creating fake email: Masquerading

OR (Alternate to Q. No. 6)

Question 6A

- (a) PQR Ltd. is a listed company having turnover of Rs. 100 crore & plans expansion by installation of new machines at new building having total additional project cost of Rs. 40 crore.

Purpose	₹ (Crores)
For Building	20
For Machinery	17
For Working Capital	3
Total	40

Project gets implemented in 2024-25 and one of the accountants reports to the Managing Director that some suspicious transactions are noticed in the purchase of building material. But the Management is confused as to whether they should get an Audit or Forensic Audit done for the same.

Advise Management about the difference in Forensic Audit and Audit.

(5 marks)

- (b) Tarun is performing a forensic accounting engagement involving gathering of evidence in relation to suspected fraud of substantial amount in a company. He has been appointed under the terms of a contractual agreement with the company.

The company operates in an electronic environment. While performing engagement, his team has gathered evidence from electronic records in Enterprise Resource Planning system (ERP), messages in company's e-mail system and also from system logs and audit trails generated by company's computer systems. However, while doing so, the team has failed to take care of aspects such as keeping records of each person in team gathering relevant evidence, date and time of collection and storage of such evidence. What implications would it have on forensic accounting engagement ?

(5 marks)

- (c) ABC Limited engaged in manufacturing of floor coverings has taken a Product Liability Insurance policy (PLI). Such a policy covers risk of liabilities for damages for bodily injury resulting from sale and distribution of floor coverings by vendors of ABC Limited's products. The policy is also subject to "claim series" clause. A Claims Series event is a series of two or more claims arising from one specific common cause which are attributable to the same fault in design or manufacture of products or supply of the same products showing the same defect. A claim series event is deemed to be one claim under the terms and conditions of PLI policy.

The company has been asked to shell out damages of ₹ 3 crores due to supply of faulty

products to one of its vendors. The vendor had sold floor coverings to a 5-star hotel which has alleged that harmful chemicals used in dyeing of floor coverings have resulted in skin ailments to some of its guests.

Being in capacity of Forensic Professional appointed by insurance company, what special issues would you keep in mind while dealing with claims involving PLI policy covering such matters ?

(5 marks)

(d) HIJ Industries is a leading textile manufacturing listed company. In the course of evidence collection and analysis, it was observed that the company is involved in siphoning of funds through payments to shell companies. Hence, SEBI appointed K & Associates, as forensic auditors, to identify the alleged fraud in the company. Explain in brief the steps to be taken by K & Associates in the process of forensic audit.

(5 marks)

Answer 6A(a)

A Forensic Professional will often look for indications of fraud that are not subject to the scope of a financial statement audit. Forensic Accounting has “Investigative mentality” however auditing is done with “professional skepticism”. A Forensic Professional will often require more extensive corroboration. A Forensic Professional may focus more on seemingly immaterial transactions.

<i>Particulars</i>	<i>Other Audits</i>	<i>Forensic Audit</i>
Objectives	Express an opinion as to 'True & Fair' presentation	Whether fraud has actually taken place in books
Techniques	Substantive & Compliance. Sample based	Investigative, substantive or in-depth checking
Period	Normally for a particular accounting period	No such limitations
Verification of stock, Estimation realisable value of assets, provisions, liability etc.	Relies on the management certificate / Management Representation	Independent/verification of suspected/selected items where misappropriation is suspected
Off balance sheet items (like contracts etc.)	Used to vouch the arithmetic accuracy & compliance with procedures	Regulatory & propriety of those transactions/contracts are examined
Adverse findings, if any	Negative opinion or qualified opinion expressed with/without quantification	Legal determination of fraud impact and identification of perpetrators depending on scope

Answer 6A(b)

In a forensic accounting engagement, professional undertakes a scrutiny and detailed examination of all transactions and balances relevant to the mandate so that evidence gathered is suitable in a Court of Law i.e. in compliance with legal requirements where it can be challenged through cross-examination by the defending party.

It is important that team is skilled in collecting evidence that can be used in a court case keeping a clear chain of custody till evidence is presented in court. If there are gaps in chain of custody, then the evidence may be challenged in court or even become inadmissible.

Chain of custody means the chronological documentation, trail that indicates the seizure, custody of digital evidence, control, transfer, analysis and disposition of evidence, physical or electronic. Digital evidence by its very nature is invisible to the human eyes and hence evidence must be developed using sophisticated tools. The chain of custody requires that from the moment the evidence is collected, every transfer of evidence between persons should be documented to prove that nobody else could have accessed to that evidence. If the chain of custody is broken, the defendant can ask the court to declare the evidence as inadmissible.

In the given case, team has failed to keep record of matters such as persons gathering relevant evidence, date and time of collection and storage of evidence. Therefore, team has failed to maintain the chain of custody. It can, therefore, defeat the objective of forensic accounting engagement as evidence may be challenged in Court of law by defending parties and may become inadmissible.

Answer 6A(c)

Special issues which the forensic professional should keep in mind while dealing with claims involving Product Linked insurance policy which cover losses arising from personal injury or property damage to a third party caused by a product the company designed, sold or supplied.:

- (i) In claims involving product liability insurance policies, many documents are required from third parties. The third party may be unwilling to provide relevant documents to Forensic Professional concerning the very organization responsible for causing damages.
- (ii) Independence of Forensic Professional becomes paramount in such types of assignments because it involves engagement with parties who are not directly claiming from insurance company. Forensic Professional needs to resist any pressure or interference in establishing the scope of the assignments or the manner in which the work is conducted and reported.
- (iii) The company might be willing to negotiate it to salvage its reputation. It can lead to additional complexities.
- (iv) Quantification of legal liability under the policy can prove to be a challenging task and it has to be determined in accordance with policy terms & conditions.
- (v) Careful analysis of date of loss when first claim occurred in accordance with "claim series" clause and whether the same falls under the policy.
- (vi) Investigating the Claim's Validity: The primary role is to determine if the claim is legitimate, exaggerated, or fraudulent. This involves a thorough review of all circumstances surrounding the claim.
- (vii) Quantifying Economic Damages: The auditor calculates the actual financial loss suffered by the claimant due to the defective product. This often involves reviewing invoices, purchase orders, inventory records, and sales data to assess lost profits, repair costs, and other additional expenses.
- (viii) Gathering Evidence: They collect and analyze documentary and physical evidence in a manner that maintains a clear chain of custody, ensuring the evidence is admissible in court.
- (ix) Conducting Interviews: The auditor interviews the claimant, witnesses, employees, and other relevant parties to corroborate facts and identify inconsistencies in their statements.
- (x) Analyzing Financial Records: They scrutinize financial statements, general ledgers, bank

records, and tax returns for anomalies or patterns indicative of fraud or misstatement.

- (xi) Identifying Fraud Red Flags: The auditor is trained to spot signs of potential fraud, such as:
 - Inconsistencies between reported damages and physical evidence.
 - Claims filed shortly after increasing policy limits.
 - Lack of supporting documentation (e.g., blank receipts or no store logos).
 - The insured business or individual experiencing financial difficulties before the incident.
- (xii) Providing Litigation Support: If the case goes to court, the forensic auditor prepares detailed reports of their findings and can serve as an expert witness to explain complex financial matters to a judge and jury.
- (xiii) Advising on Risk Mitigation: Based on their investigation, they may recommend improvements to internal controls and processes to prevent similar fraudulent activities or incidents from occurring in the future.
- (xiv) Determining Subrogation Opportunities: In some cases, the auditor may identify opportunities for the insurer to recover losses from a third party (e.g., the original supplier of a faulty component).

Answer 6A(d)

Each Forensic accounting assignment is unique. Accordingly, the actual approach adopted and the procedures performed will be specific to it.

Steps to be taken by K & Associates, as Forensic auditors of the company are:

Step 1- Accepting the investigation

A forensic audit is always assigned to an independent firm/group of investigators in order to conduct an unbiased and truthful audit and investigation. Thus, when such a firm receives an invitation to conduct an audit, their first step is to determine whether or not they have the necessary tools, skills and expertise to go forward with such an investigation. They need to do an assessment of their own training and knowledge of fraud detection and legal framework. Only when they are satisfied with such considerations, can they go ahead and accept the investigation.

Step 2- Develop Plan

Planning the investigation is the key step in a forensic audit. The auditor(s) must carefully ascertain the goal of the audit so being conducted, and to carefully determine the procedure to achieve it, through the use of effective tools and techniques. Before planning the investigation, they should be clear on the final categories of the report, which are as follows, Identifying the type of fraud that has been operating, how long it has been operating for, and how the fraud has been concealed. Identifying the fraudster(s) involved. Quantifying the financial loss suffered by the client. Gathering evidence to be used in court proceedings. Providing advice to prevent the recurrence of the fraud.

Step 3- Obtain Relevant Evidence

In forensic auditing specific procedures are carried out in order to produce evidence. Audit techniques and procedures are used to identify and to gather evidence to prove, for example, how long have fraudulent activities existed and carried out in the organization, and how it was conducted and concealed by the perpetrators. In order to continue, it is pertinent that the planning stage has been thoroughly understood by the investigating team, who are skilled in collecting the necessary evidence.

The investigators can use the following techniques to gather evidence,

- Testing controls to gather evidence which identifies the weaknesses, which allowed the fraud to be perpetrated
- Using analytical procedures to compare trends over time or to provide comparatives between different segments of the business
- Applying computer-assisted audit techniques, for example, to identify the timing and location of relevant details being altered in the computer system
- Discussions and interviews with employees.
- Substantive techniques such as reconciliations, cash counts and reviews of documentation.

Step 4- Perform the Data analysis

The process by which evidence is gathered, summarized and compared with existing different sets of data. The aim here is to detect any anomalies in the data and identify the pattern of such anomalies to indicate fraudulent activity.

Such an analysis requires three kinds of expertise:

- i) Data analyst to perform the technical steps and write the queries
- ii) Team member with extensive experience of the processes and internal controls in the relevant area of the investigated company
- iii) A forensic scientist who is familiar with patterns of fraudulent behavior.

Step 5- Reporting

The reporting stage is the most obvious element in a forensic audit. After investigating and gathering evidence, the investigating team is expected to give a report of the findings of the investigation, and also the summary of the evidence and conclusion about the loss suffered due to the fraud. It should also include the plan of the fraud itself, and how it unfolded, basically the whole trail of events, and suggestions to prevent such fraud in the future

Step 6- Court Proceedings

The last stage expands over those audits that lead to legal proceedings. Here the auditors will give litigation support as mentioned above. The auditors are called to Court, and also included in the advocacy process. The understanding here is that they are called in because of their skill and expertise in commercial issues and their legal process. It is important that they lay down the facts and findings in an understandable and objective manner for everyone to comprehend so that the desired action can be taken up. They need to simplify the complex accounting processes and issues for others to understand the evidence and its implications.

INTELLECTUAL PROPERTY RIGHTS – LAWS AND PRACTICE

GROUP 1 ELECTIVE PAPER 4.3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

Comviva Technologies Limited, a company engaged in the field of mobile and digital solutions, filed Indian Patent Application on 4 January 2016, seeking protection for an invention titled

“Methods and Devices for Authentication of an Electronic Payment Card using Electronic Token.” The invention related to a secure method of authenticating electronic payment cards through the use of electronic tokens, proximity-based data transfer, and multi-step verification mechanisms, intended to improve the safety and reliability of contactless payment transactions. The application underwent examination by the Patent Office, and on 17 June 2020, the Examiner issued the First Examination Report raising several objections, alleging lack of inventive step and more significantly contending that the claimed subject matter fell within the statutory exclusion from patentability as it was, in the Examiner’s view, a mere business method and a computer program per se. Comviva responded to the First Examination Report on 14 June 2021 with detailed submissions and claim amendments to demonstrate the technical nature and inventive step of the invention.

Despite the submissions, the Patent Office issued a hearing notice dated 5 April, 2022, granting the applicant an opportunity to address the pending objections. Comviva attended the hearing and filed further written submissions on 20 May, 2022, reiterating that the invention did not automate a mere commercial or financial process, but rather addressed a specific technical problem in the field of transaction authentication. It was argued that the solution relied on secure token generation and validation protocols, data transfer via near-field communication, and additional verification layers that enhanced the security of contactless payments features that could not be dismissed as mere business logic or abstract computer code. Nevertheless, on 25 August, 2022, the Assistant Controller of Patents refused the application, maintaining that the claims were primarily directed towards commercial transaction automation, thus constituting a business method and that they essentially comprised a computer program per se without a demonstrable technical contribution. The refusal order did not accept Comviva’s contention that the claimed system operated at a technical level beyond mere software implementation, and the application was rejected in its entirety.

Aggrieved by the decision, Comviva Technologies Limited filed an appeal before the Delhi High Court, challenging the refusal on the ground that the Controller had erred in arriving at a decision by equating any invention involving financial transactions with a business method, irrespective of the underlying technical architecture. The appellant emphasized that the claimed invention was not a generic financial solution but a specific technical mechanism for secure electronic payment card authentication, which fell within the category of patentable subject matter when assessed as a whole. The High Court examined the invention in light of the statutory provisions and the 2017 Computer Related Inventions Guidelines, which require consideration of the technical effect or contribution rather than focusing solely on the nature of the transaction. The High Court set aside the Controller’s decision and directed that the application proceed towards grant, subject to compliance with other patentability requirements.

Answer the following :

(a) "While assessing the patentability of computer software per se, the Controller has to see whether the invention results in a technical effect or a technical advancement". Explain with the help of the decided cases.

(5 marks)

(b) "Adoption of similar trademark and trade name by the defendants is not only a violation of the plaintiff's rights, but may also deceive the general unwary consumers and appears dishonest". Examine the observations of the Court based on a decided case law.

(c) What are the features and uses of "ESPACENET" ?

(5 marks)

(d) Explain how the Bolar Provision under Section 107A of the Patents Act, 1970 promotes research and generic competition, while parallel safeguards consumer access to affordable patented products.

(5 marks)

(e) Define prior public use in the context of patent law and also discuss exceptions to prior public use under Patents Act, 1970.

(5 marks)

Answer 1(a)

Under the Patents Act, 1970, computer software per se is excluded from patentability under Section 3(k), which bars "a mathematical or business method or a computer programme per se or algorithms." However, this exclusion is not absolute.

While assessing the patentability of a computer-related invention, the Controller of Patents must examine whether the invention results in a "technical effect" or "technical advancement." The examination is based on the substance of the invention and not merely the form of the claims.

This position has been clearly affirmed by the Hon'ble Delhi High Court in *Ferid Allani v. Union of India* (2019), wherein the Court held that if a computer-related invention demonstrates a technical contribution, it should not be rejected solely on the ground that it involves a computer program. The Court emphasized that technological developments cannot be ignored and inventions showing technical effect or technical advancement are patentable even if they are implemented through software.

The TRIPS Agreement does not expressly provide the exclusion of computer programs in general or business methods in general from patentability. On the other hand, neither the term "invention" nor the term "technology" is defined under the TRIPS Agreement.

In effect, in certain countries, patents have been granted to inventions concerning financial services, electronic sales and advertising methods and business methods, including business methods performed on the Internet.

In the United States of America, a business method for managing an investment portfolio was found patentable subject matter in *State Street Bank & Trust v. Signature Financial Group* 149 F. 3d 1368 (Fed. Cir. 1998).

Further, patents are also granted to the inventions such as a system called "virtual sales personnel" and a method of gripping a golf putter. In Europe, in the SOHEI case T769/92, OJ 1995, 525, the Boards of Appeal of the European Patent Office (EPO) decided that a computer system involving a

number of independent management tasks, including financial and inventory management and a system operation method, was patentable subject matter.

In those countries where a patentable invention should have a technical character, since those inventions are often executed by a computer system, drawing a line between inventions that belong to a field of technology and non-inventions is not an easy task. In some countries, claims defining a computer program itself or a computer program embodied on a machine-readable medium (such as diskettes and CD-ROMs) are accepted. This is due to the fact that software products are often marketed in the form of computer readable media or directly over the Internet, separately from the computer hardware.

Further, the Computer Related Inventions (CRI) Guidelines issued by the Indian Patent Office provide illustrative examples of technical effect or technical advancement, such as:

- Improved speed and efficiency
- Reduced memory usage
- Enhanced security
- Improved hardware performance
- Better resource management

Thus, during examination, the Controller is required to determine whether the claimed invention goes beyond a computer programme per se and makes a technical contribution to the art. If such technical effect or advancement is established, the invention may be considered patentable notwithstanding Section 3(k) of the Patents Act, 1970.

Therefore, while assessing the patentability of computer software per se, the Controller must evaluate whether the invention results in a technical effect or technical advancement, in light of Section 3(k), CRI Guidelines, and judicial precedents such as *Ferid Allani v. Union of India*.

Answer 1(b)

The adoption of an identical or deceptively similar trade mark and trade name by the defendant constitutes a violation of the proprietary rights of the plaintiff and also gives rise to a likelihood of confusion and deception among the general unwary consumers. Such conduct is actionable under the law of trade mark infringement and passing off, and prima facie reflects dishonest adoption.

Under the Trade Marks Act, 1999, infringement occurs when a mark identical or deceptively similar to a registered trade mark is used in relation to similar goods or services, resulting in a likelihood of confusion in the minds of the public. In cases of passing off, the plaintiff is required to establish goodwill, misrepresentation, and damage.

Section 29 of the Trade Marks Act, 1999 dealing with infringement of trademarks explicitly enumerates the grounds which constitute infringement of a registered trade mark. This section lays down that when a registered trade mark is used by a person who is not entitled to use such a trade mark under the law, it constitutes infringement. This section clearly states that a registered trade mark is infringed, if the mark is identical and is used in respect of similar goods or services; or the mark is deceptively similar to the registered trade mark and there is an identity or similarity of the goods or services covered by the trade mark; or the trade mark is identical and is used in relation to identical goods or services; and that such use is likely to cause confusion on the part of the public or is likely to be taken to have an association with the registered trade mark.

Section 29 (4) of the Act states that a person shall be deemed to have infringed a registered trade mark, if he uses a mark which is identical with or similar to the trade mark, and is used in relation to goods or services which are not similar to those for which trade mark is registered; and the

registered trade mark has a reputation in India and the use of the mark without due cause would take unfair advantage of or is detrimental to the distinctive character or repute of the registered trade mark.

Section 29 (5) of the Act prohibits a person from using someone else's trade mark, as his trade name or name of his business concern or part of the name of his business concern dealing with goods or services in respect of which trade mark is registered.

An infringement action is available to the registered proprietor or registered user to enforce his exclusive right over the trade mark in relation to the goods in respect of which it is registered. If at the time of registration of trade mark, certain limitations or conditions have been imposed, then, the exclusive right has to be evaluated within the terms of such registration. If an offending use of the mark fulfils the conditions laid down in Section 29(1) discussed above, it squarely constitutes infringement.

In *M/s J K Oil Mills v. M/s Adani Wilmar Ltd.*, 2010, the Delhi High Court held that in order to constitute infringement under the provisions of Section 29 of the Trade Marks Act, it would be necessary to show that impugned trade mark (label) is identical or deceptively similar to the registered trade mark. And once the plaintiff is able to establish that the impugned trade mark (label) is identical or deceptively similar to the registered trade mark (label) then, it matters little whether the defendant is using the impugned mark/label in respect of the goods and services which are not similar to those in respect of which the trade mark is registered.

The Hon'ble Supreme Court in *Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd.* (2001) held that, while determining deceptive similarity, courts must consider the perspective of ordinary purchasers with imperfect recollection, particularly in a country like India where consumers may be illiterate or semi-literate. The Court emphasized that the likelihood of confusion and deception is sufficient to grant relief, even without proof of actual damage.

Therefore, the adoption of an identical or deceptively similar trade mark or trade name by the defendant not only infringes the statutory and common law rights of the plaintiff, but is also likely to deceive unwary consumers and cause confusion. Such conduct indicates lack of bona fides and dishonest intention, warranting injunctive relief under the principles of infringement and passing off.

Answer 1(c)

ESPACENET is a free online patent search database developed by the European Patent Office (EPO), providing access to patent information from across the world. ESPACENET offers free access to more than 130 million patent documents worldwide, containing information about inventions and technical developments from 1782 to today. It has a user-friendly interface available in almost all European languages. It enables users with little or no experience in patent searching to obtain an overview of the state of the art, to follow new developments or to find out who invented what. Espacenet is a free patent search tool accessible to beginners and experts. Supporting information can help you understand whether a patent has been granted and if it is still in force.

Uses of Espacenet

It can be used to:

- search and find patent publications
- machine-translate patent documents
- track the progress of emerging technologies
- find solutions to technical problems
- see what competitors are developing

Features of Espacenet

- Extensive coverage by the tool in various forms
- Inexpensive, since it is a free tool launched by European Patent Office (EPO)
- Multilingual advanced search in languages English, French and German
- Option to choose office/language for the Espacenet interface – with access to 38 offices, multiple languages and countries
- It provides for Machine translation:
- Espacenet will translate from English, French and German into 28 other EU languages (and vice versa).
- Espacenet will also translate Chinese, Russian, Japanese and Korean into English, and vice versa
- Database of Patent families and cited patents.
- It provides a Claims tree, which is the visualisation of the hierarchy of a patent's claims.

Answer 1(d)

Section 107A of Patents Act, 1970 in the act incorporates Bolar provision and provision for parallel imports. Section 107A(a) states that “For the purposes of this Act, — any act of making, constructing, using, selling or importing a patented invention solely for uses reasonably related to the development and submission of information required under any law for the time being in force, in India, or in a country other than India, that regulates the manufacture, construction, use, sale or import of any product; shall not be considered as an infringement of patent rights.”

Bolar provision allows manufacturers to begin the research and development process in time to ensure that affordable equivalent generic medicines can be brought to market immediately upon the expiry of the product patent. For private, non-commercial use, or to support research or experimentation, the Bolar provision, or more precisely the Bolar exemption, may be viewed as a particular kind of experimental use exception. The Bolar Provision is a legal strategy for preventing patent infringement. An innovation is either used or sold by a third party for specific reasons, for further study and development after it is created. Due to the implementation of the Bolar rule, generic drug manufacturers who want to grow their business in the market soon after the expiration of the innovator company's patents have the time and opportunity to perform research on the product while the patent is still in effect. In India, the Bolar provision is comparatively broader than its US equivalent. While the US provision restricts the safe harbour available to generic manufacturers to making, using, offering for sale or selling the patented invention solely for uses that are reasonably related to the development and submission of information under US federal law in the United States only, its Indian counterpart does not specify such territorial limits. Thus, a sale, even if outside India, will fall within the sweep of Section 107A if it is reasonably related to the development and submission of information required for regulatory approval under the law of the country in which the sale takes place.

Parallel import provisions are provided in section 107 A (b) of the Patents Act, which says that importation of patented products by any person authorized by the Patentee will not be considered as an Infringement. Therefore, it is possible to import the patented products from the licensee of the patentee in any country without the permission of the Patentee. The purpose of Parallel import is to check the abuse of patent rights and meant to control the price of patented product. Unauthorized purchases of non-falsified goods from another nation made by the owner of intellectual property are known as parallel imports. Parallel goods, sometimes known as “grey goods,” are involved in

international trade and intellectual property issues. The premise behind parallel imports is that all available intellectual property rights have been used. The depletion of intellectual property rights is one of the rights' limitations. The resale, renting, loan, and other contractual uses of IP-protected products on the domestic and international markets shall be governed by the owner when a commodity has been distributed with the consent of the IP owner. Parallel imports take place when real goods are produced illegally, without the consent of the seller who owns the trademark, patent, or other intellectual property rights over such goods, with the intention of competing with the manufacturer's products which he initially sold internationally at a lower price. Parallel import is the practice of bringing legal goods produced with permission from the owner of the rights into another nation by an unlicensed manufacturer. The lawfulness of parallel imports in the country is decided by the exhaustion regimes adopted by the importing country. It relies greatly on the Doctrine of Exhaustion, which varies from country to country.

Bolar Provision Promotes Research and Generic Competition in the following ways :

- Encourages Early Research and Development

Generic manufacturers can conduct experiments and generate regulatory data before the expiry of the patent, thereby avoiding delay in market entry.

- Facilitates Timely Market Entry of Generics

By permitting pre-expiry testing and regulatory filings, generic products can be launched immediately after patent expiration, enhancing competition.

- Reduces "Patent Monopoly Extension"

Without the Bolar exception, patentees would enjoy a de facto extension of monopoly due to regulatory delays. Section 107A prevents such indirect extensions.

- Promotes Technological and Scientific Advancement

The provision encourages innovation and research by allowing use of patented inventions for non-commercial experimental purposes related to regulatory compliance.

Answer 1(e)

Prior public use in patent law refers to the use of an invention by the public in India before the priority date or filing date of a patent application, in such a manner that the invention becomes accessible to the public. If an invention has been publicly used prior to the filing of a patent application, it lacks novelty and is therefore not patentable.

Under the Patents Act, 1970, prior public use is a ground for opposition and revocation, as provided under Sections 25 and 64.

Public use does not necessarily require commercial exploitation; any non-secret use that makes the invention available to the public amounts to prior public use.

However, there is an exception to this general rule. The Act provides that if an invention has been publicly worked in India within one year before the priority date by the patentee or applicant for the patent or by any third person from whom he derives the title or by the person who has obtained a consent to work the invention and such working of invention was only for the purpose of reasonable trial and it was necessary to effect such trial or working in public in view of the nature of the invention then such working of invention does not anticipate the invention (Section 32).

In case of a prior disclosure by the inventor, the Patents Act provides a one-year grace period for filing a patent application if the invention has been described in front of a learned society or published during the transactions of such learned society. The grace period is also available for

conducting reasonable trials such as data generation for regulatory approval; it is not available where an invention is being sold or commercially worked in India. However, any use or publication of an invention after filing a provisional patent application in India will not be considered anticipation.

Similarly, the grounds relating to public display [Sections 31(a), 31(b) and 31(c)], public working (Section 32) and traditional knowledge [Section 3(p)] are major considerations when determining novelty. An invention can also be anticipated by knowledge, either oral or in any other form existing in a local or indigenous community in India or elsewhere. The general factors considered for anticipation assessment may be relevant in selection invention cases. In selection inventions, the selection of specific dimensions, ranges of values or parameters within (prior) larger areas based on new characteristics and unknown properties is considered to be an invention. While the Indian Patent Office (IPO) does not expressly state that selection patents are unpatentable in India, a combined reading of Sections 3(d) and 2(1) (ja) appears to have a strict standard regarding patentability of selection inventions.

Exceptions to Prior Public Use under the Patents Act, 1970 are as under:

1. Use for Experiment or Trial

Use of the invention solely for experiment or trial, including to test its utility or improve it, does not constitute prior public use.

2. Use in Government-approved Institutions

Use of the invention at government-controlled or government-approved institutions for research or experimentation is excluded from prior public use.

3. Secret or Confidential Use

Use of the invention in secrecy, such as internal testing or confidential trials, does not amount to public use since the invention is not made available to the public.

4. Use by the True and First Inventor for Reasonable Period

Use by the inventor himself, in good faith and for a reasonable time prior to filing, solely for development or testing, is not considered prior public use.

5. Display at Exhibition

Display of an invention at a notified exhibition or publication of its description therein does not amount to prior public use, provided the patent application is filed within the prescribed time.

Question 2

The business unit named as PRAYATNJALI manufactures Ayurvedic medicines and nutraceutical products at its production facility in Haridwar, Uttarakhand. According to the averments in the petition, the trust and its business establishment were formed to produce indigenous healthcare products. The Uttarakhand Biodiversity Board (UBB) passed an order levying a demand under the category of "Fair and Equitable Benefit Sharing" (FEBS) as per the Biological Diversity Act, 2002.

Aggrieved by the order passed by the UBB, PRAYATNJALI filed a Writ petition. The core contention of the petitioner was that the Uttarakhand Biodiversity Board (UBB) has no authority or jurisdiction to levy a demand under the category of "Fair and Equitable Benefit Sharing" (FEBS). It is argued that the petitioner is not liable to pay any amount or contribute in any form. Since the petitioner does not fall within the categories specified under Section 3(2) of the Biological Diversity Act, the question of seeking prior approval from the National Biodiversity Authority (NBA) does not arise. The petitioner further argued that the State Biodiversity Board (SBB) lacks the power to impose

FEBS obligations on Indian entities as per the Biological Diversity Act, 2002. Even the NBA does not possess the authority to delegate such powers to the SBB, as the NBA itself is not empowered to levy FEBS on Indian entities. According to the petitioner, there is no statutory provision that mandates monetary or non-monetary contributions from Indian entities; FEBS obligations are restricted solely to foreign entities. It was further submitted that the principle of statutory interpretation requires words in a statute to be given their plain meaning, supported by precedent from the Supreme Court.

In response, the respondents argued that “Fair and Equitable Benefit Sharing” (FEBS) is a central objective of the Biological Diversity Act, 2002, and must be understood in the context of international conventions and treaties that informed the legislation, including the Rio de Janeiro Convention, Johannesburg Declaration, and the Nagoya Protocol. Counsel for the State Biodiversity Board (SBB) submitted that there exists no distinction between foreign and Indian entities with respect to FEBS obligations. Creating such a distinction would undermine the purpose of the Act and contradict India's international commitments. It was argued that while foreign entities under Section 3 require prior approval from the NBA, Indian entities under Section 7 are obligated to provide prior intimation to the SBB. Thus, regulatory authority over Indian entities lies with the SBB, and the imposition of FEBS forms part of its statutory regulatory functions.

The petitioner, being an Indian entity without foreign participation in either its shareholding or management, challenged the imposition of FEBS on the ground that such obligations cannot be extended to domestic entities. Therefore, when the SBB, acting as a regulator, demands a fee in the form of FEBS from an entity utilizing biological resources for commercial purposes, such an action cannot be regarded as beyond its powers.

The Court emphasized that FEBS must not be interpreted solely within the narrow confines of the definition clause but rather in the broader context of the Act's objectives and India's international commitments towards biodiversity conservation. It concluded that the SBB is legally authorized to demand FEBS as part of its statutory role, and the NBA is empowered to issue necessary regulations in this regard. Accordingly, the challenge to the validity of the 2014 Regulations on Access to Biological Resources and Associated Knowledge and Benefit Sharing was dismissed.

Answer the following :

- (a) Analyze and evaluate the concept of Fair and Equitable Benefit Sharing (FEBS) under the Biological Diversity Act, 2002 with reference to the above stated facts. (5 marks)
- (b) Define “Homonymous Geographical Indications” and explain how they are treated under Section 10 of the Geographical Indications Act, 1999. (5 marks)
- (c) Explain the importance of technology transfer with reference to society and industry. (5 marks)
- (d) What is meant by “dominant position” in the context of Competition Law ? Explain how an enterprise can abuse its dominant position in the market. (5 marks)
- (e) Analyze the role of National Biodiversity Authority (NBA) and the State Biodiversity Authority in regulating access to biological resources. (5 marks)

Answer 2(a)

“Fair and equitable benefit sharing” defined under Section 2(g) of the Biological Diversity Act, 2002) refers to the sharing of benefits as determined by the National Biodiversity Authority under Section 21. The concept of Fair and Equitable Benefit Sharing (FEBS) is a cornerstone of the Biological Diversity Act, 2002, aimed at ensuring that benefits arising from the commercial utilisation of biological resources and associated traditional knowledge are shared fairly with local communities and the State. FEBS reflects India’s obligations under international instruments such as the Convention on Biological Diversity (CBD) and the Nagoya Protocol. Under the Act, regulatory powers are distributed between the National Biodiversity Authority (NBA) and the State Biodiversity Boards (SBBs). While Section 3 requires foreign entities to obtain prior approval of the NBA, Section 7 mandates Indian entities to give prior intimation to the SBB before accessing biological resources for commercial purposes. The SBB is empowered to regulate such access and impose benefit-sharing obligations.

In the present case, Prayatnjali, an Indian entity, challenged the authority of the Uttarakhand Biodiversity Board (UBB) to levy FEBS, contending that benefit-sharing obligations apply only to foreign entities and that neither the NBA nor the SBB has statutory authority to impose FEBS on Indian companies. The petitioner relied on a literal interpretation of the statute.

In case of *Divya Pharmacy vs. Union of India, Writ Petition (M/S) No. 3437 of 2016*, which had the similar facts as that of the present case, the Court stated that “regulating an activity in form of demand of a fee is an accepted practice recognised in law. Therefore, in case the SBB as a regulator, demands a fee in the form of FEBS from the petitioner when the petitioner is admittedly using the biological resources for commercial purposes, it cannot be said that it has no powers to do so.”

In this case, it was clarified that FEBS is a universal obligation applicable to both Indian and foreign entities, and the State Biodiversity Boards are legally empowered to impose such obligations. The decision reinforces a purposive interpretation of the Biological Diversity Act, balancing commercial utilisation with conservation and community interests. The Court also stated that “What is Fair and Equitable Benefit Sharing cannot be looked through the narrow confines of the definition clause alone. The concept of FEBS has to be appreciated from the broad parameters of the scheme of the Act and the long history of the movement for conservation, together with our international commitments in the form of international treaties to which India is a signatory. Once we do that, we find that Under Section 2(f) and subsection (4) of Section 21, the NBA has got powers to frame regulations in order to give payment of monetary compensation and other nonmonetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit, in form of Regulations and the State Biodiversity Board in turn has powers and duties to collect FEBS under the regulatory power it has under Section 7 read with Section 23 (b) of the Act.

In view of the above, in the present case, UBB has got powers to demand Fair and Equitable Benefit Sharing from the petitioner i.e., Prayatnjali, in view of its statutory function given under Section 7 read with Section 23 of the Act and the NBA has got powers to frame necessary regulations in view of Section 21 of Biological Diversity Act, 2002.

Answer 2(b)

Homonymous geographical indications (GI) are those that are spelled or pronounced alike, but which identify products originating in different places, usually in different countries. In principle, these indications should coexist, but such coexistence may be subject to certain conditions. For example, it may be required that they be used only together with additional information as to the origin of the product in order to prevent consumers from being misled. A GI may be refused protection if, due to the existence of another homonymous indication, its use would be considered potentially misleading to consumers concerning the product’s true origin.

Section 10 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 deals specifically with the registration of homonymous geographical indications.

- **Permissibility of Registration:** Section 10 allows the registration of homonymous GIs, provided that such registration does not mislead or confuse the public as to the true place of origin of the goods.
- **Equitable Treatment of Producers:** The Registrar is required to ensure equitable treatment to the producers concerned, having regard to the need to distinguish between the homonymous GIs.
- **Consumer Protection:** Adequate measures must be taken to ensure that consumers are not misled, including clear differentiation through labelling, packaging, or description.
- **Conditions and Limitations:** The Registrar may impose conditions or limitations on the use of homonymous GIs to clearly distinguish the goods originating from different geographical areas.

Answer 2(c)

Technology transfer refers to the process by which scientific knowledge, innovations, and technical skills developed in research institutions or industries are transferred and applied for commercial and societal use. It plays a vital role in economic development and social progress. It is a collaborative process that allows scientific findings, knowledge and intellectual property to flow from creators, such as universities and research institutions, to public and private users. Its goal is to transform inventions and scientific outcomes into new products and services that benefit society. Technology transfer is closely related to knowledge transfer.

The term “transfer” refers to the use of technology; it does not refer to physical transportation or delivery. Knowledge is best disseminated through its publication and release into the public domain. But in many cases, the most effective way of realizing the social benefits of research-based knowledge is to protect it under IP laws and sell or transfer it to a company capable of transforming inventions into new products. When managed strategically, the transfer of research results can lead to benefits for society at large, as well as the industry sector and the institutions concerned.

Benefits of technology transfer for society:

Transfer of academic research is expected to improve the quality of life generally through new products and services, meeting human needs in healthcare, environmental challenges and other critical areas; and new businesses (start-ups, spin-offs) and jobs. Transfer of technology helps address social challenges such as food security, disease control, environmental protection, and sustainable development. Adoption of new technologies creates employment opportunities and promotes skill enhancement among the workforce. It facilitates dissemination of advanced technologies from developed sectors to underdeveloped regions, promoting inclusive growth.

Benefits of technology transfer for industry:

Collaboration with universities and research institutions can strengthen industry by:

- providing companies with IP that they can invest in to develop early-stage technologies;
- providing technical assistance to local firms;
- allowing companies to work with top university researchers; securing companies' access to more basic (“blue-sky”) research fields;
- enabling them to commercialize new products, generating growth and profit;

- and strengthening the local economy – increasingly, communities around research institutions are becoming high-tech innovation clusters, attracting a highly educated labor force and building a strong innovation sector.

Technology transfer enables industries to convert research outputs into marketable products, accelerating innovation. Access to advanced technologies improves productivity, efficiency, and quality, helping industries compete globally. Industries save time and resources by acquiring proven technologies instead of developing them independently. It promotes collaboration between industry, academia, and research institutions, fostering a robust innovation ecosystem.

Answer 2(d)

Dominant Position

Under Section 4 of the Competition Act, 2002, a dominant position refers to a position of strength enjoyed by an enterprise in the relevant market which enables it to:

- Operate independently of competitive forces prevailing in the market; or
- Affect competitors, consumers, or the relevant market in its favour.

Dominance itself is not prohibited under the Act; it is only the abuse of such dominant position that is restricted.

Abuse of Dominant Position

An enterprise abuses its dominant position when it uses its market power unfairly or exploitatively. Section 4(2) of the Act lists various forms of abuse, including:

1. Imposition of Unfair or Discriminatory Conditions or Prices:

Charging excessive prices, predatory pricing, or imposing unfair contractual terms on consumers or business partners.

2. Limiting or Restricting Production, Supply, or Technical Development:

Restricting output or innovation to maintain market power or eliminate competition.

3. Denial of Market Access:

Preventing competitors from entering or accessing the market through exclusionary practices.

4. Making Contracts Subject to Unrelated Obligations (Tying):

Imposing supplementary obligations that have no connection with the subject matter of the contract.

5. Using Dominance in One Market to Enter or Protect Another Market (Leveraging):
Extending dominance from one relevant market to another to distort competition.

Answer 2(e)

According to Section 18 of the Biological Diversity Act, 2002 (hereinafter "the Act"), The National Biodiversity Authority may-

- advise the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and 1 [fair and equitable] sharing of benefits arising out of the utilisation of biological resources;
- advise the State Governments in the selection of areas of biodiversity importance to be notified under sub-section (1) of section 37 as 2 [biodiversity heritage sites] and measures for the management of such heritage sites;

- advise the State Biodiversity Boards on any matter relating to the implementation of the Act;
- perform such other functions as may be necessary to carry out the provisions of this Act.

The National Biodiversity Authority shall, with the approval of the Central Government, make regulations to provide for access to biological resources and traditional knowledge associated thereto, and for determination of fair and equitable sharing of benefits.

It shall be the duty of the National Biodiversity Authority to regulate any activity referred to in sections 3, 4 and 6 by granting or rejecting approvals.

The National Biodiversity Authority may, on behalf of the Central Government, take any measures necessary to oppose the grant of intellectual property rights in any country outside India on any biological resource which is found in or brought from India, including those deposited in repositories outside India, or traditional knowledge associated thereto accessed.

As per section 19 Biological Diversity Act, 2002 , any person referred to in sub-section (2) of section 3 who intends to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilisation or for bio survey and bio-utilisation or transfer the results of any research relating to biological resources occurring in, or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.

Any person referred to in sub-section (2) of section 3 who intends to apply for a patent or any other form of intellectual property rights, whether in India or outside India, referred to in sub-section (1) of section 6, may make an application to the National Biodiversity Authority in such form, on payment of such fee, and in such manner, as may be prescribed.

Any person referred to in sub-section (1A) of section 6 shall register with the National Biodiversity Authority at the time of making application under sub-section (2), and persons referred to in sub-section (1B) of section 6 shall obtain prior approval from the National Biodiversity Authority at the time of commercialization.

On receipt of an application under sub-section (1) or sub-section (2), the National Biodiversity Authority may, after making such enquiries as it may deem fit and if necessary after consulting an expert committee constituted for this purpose, by order, grant approval subject to any regulations made in this behalf and subject to such terms and conditions as it may deem fit, including the imposition of charges by way of royalty or for reasons to be recorded in writing, reject the application: Provided that no such order for rejection shall be made without giving an opportunity of being heard to the person affected.

The National Biodiversity Authority shall, while granting approval under this section, determine the benefit sharing in such manner as may be specified by regulations made in this behalf:

Provided that if the National Biodiversity Authority is of the opinion that such an activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity or fair and equitable sharing of benefits arising out of such activity, it may, by order, for reasons to be recorded in writing, prohibit or restrict any such activity:

Provided further that no such order for rejection shall be made without giving an opportunity of being heard to the person concerned.

The National Biodiversity Authority shall place in public domain details of every approval granted or rejected under this section.

The functions of the State Biodiversity Board are listed under section 23 of the Act. The Board shall advise the State Government on matters relating to the conservation of biodiversity, sustainable

use of its components and fair and equitable sharing of benefits arising out of the utilisation of biological resources or traditional knowledge associated thereto, in conformity with the regulations or guidelines if any, issued by the Central Government or the National Biodiversity Authority.

The State Board determines the fair and equitable sharing of benefits as provided under the regulations made in this behalf by the National Biodiversity Authority while granting approvals.

The State Board may regulate any activity referred to in section 7 of the Act by granting or rejecting approvals;

Section 24 of the Act provides for the power of State Biodiversity Board to restrict certain activities violating the objectives of conservation, etc.

Further, if any person other than the person referred to in section 3(2), intends to undertake any activity covered under section 7, he shall give prior intimation to the State Biodiversity Board, in such form as may be prescribed by the State Government.

If the State Biodiversity Board is of the opinion that such activity is detrimental or contrary to the objectives of conservation and sustainable use of biodiversity of fair and equitable sharing of benefits arising out of such activity, it may by order, restrict or reject such activity.

Question 3

A dispute arose involving the design of a seemingly simple but widely used everyday product : the toothbrush. What appeared to be a small matter of shape and style soon evolved into a significant case that tested the very principles of novelty, originality, and the protection of industrial designs under Indian law. The plaintiffs named as XYZ was a large multinational healthcare corporation, originally incorporated in Europe, which had undergone several name changes and mergers over the years. Their business extended across continents, and among the many products they manufactured and marketed, toothbrushes formed an important segment. The company XYZ gets registered a design for toothbrush under Indian law as Design No. 170554 with specific features of S-shaped" zigzag neck and a curved handle. One day plaintiff discovered that a domestic manufacturer in India had introduced a toothbrush under its own brand name which, in their view, closely resembled their registered design. The plaintiff filed a suit of infringement alleging that the similarities were not coincidental but amounted to a fraudulent imitation. They argued that such unauthorized copying would mislead consumers and allow the defendant to unfairly benefit from the reputation and market goodwill built around their product. To protect their interests, the plaintiffs approached the court seeking an interim injunction to prevent the defendant from manufacturing, distributing, or selling the allegedly infringing toothbrush. They also sought an account of profits earned by the defendant through such sales. An ex parte ad-interim injunction was initially issued by the court, restraining the defendant from further selling the contested toothbrush.

In response, the defendant argued that the design claimed by the plaintiffs was neither new nor original. According to them, toothbrushes with the same essential shape and configuration, particularly those with an "S-shaped" zigzag neck and a curved handle, had already been manufactured and marketed for years in India and abroad. These features, they argued, were well known in the industry and formed part of the public domain. In fact, similar designs had been sold by multiple companies, which meant that the plaintiffs' registration could not legitimately claim exclusivity. As per the defendant the plaintiffs themselves had conceded that their designs had been previously published and, therefore, lacked novelty. It was further argued by the defendant that the zigzag bend was not a matter of aesthetic innovation but rather a functional feature meant to improve flexibility in brushing. This admission, according to the defendant, disqualified the plaintiffs from later attempting to re-register the same or substantially similar designs and monopolize them through another round of litigation.

The court undertook a careful examination of the toothbrush designs. A comparison was drawn between the plaintiffs' previously registered toothbrushes and the one protected under Design No. 170554. The judges noted that while the plaintiffs tried to emphasize three minor changes as evidence of novelty, these differences were superficial and merely amounted to trade variations. The court emphasized that, although even a small change can result in a new design, the key test is whether the design appears distinct and original at first sight to the average consumer.

The court observed that the plaintiffs had failed to disclose material facts, including the existence of earlier litigations where they had admitted that similar designs were already in the public domain. This non-disclosure was seen as an attempt to mislead the court and obtain an interim order unfairly. Ultimately, the court held that the plaintiffs registered design lacked novelty and dismissed the suit.

Answer the following :

- (a) What do you mean by Trade Variation ? Discuss the Court's reasoning for holding that the plaintiffs' alleged novelty in design was merely a trade variation and not a truly novel design. (5 marks)
- (b) What are the exclusive rights of a performer under the Copyright Act, 1999. (5 marks)
- (c) What are the essential prerequisites for a design to qualify for protection under the Designs Act, 2000 ? (5 marks)
- (d) What is Design Piracy ? How does Section 19 of the Designs Act provide a ground of defense in proceedings relating to piracy of a design ? (5 marks)
- (e) What do you mean by integrated circuit layout, and what is the need for enacting the Semiconductor Integrated Circuits Layout-Design Act, 2000, in India ? (5 marks)

Answer 3(a)

Under the design law, the term "trade variation" denotes a slight, routine, or superficial alteration made to an already existing design, which lacks the element of true originality or inventive character. Such modifications are typically ornamental or cosmetic, without imparting any distinctiveness, and are often resorted to only for the purpose of prolonging control over a previous design rather than creating something substantially new. For a design to qualify as novel, it must be readily distinguishable to an ordinary observer at first glance and should not be the outcome of insignificant. Where the alleged novelty merely reflects conventional or commonly used trade practices, it is treated as a trade variation and not as a genuinely new design.

In essence, a trade variation amounts to a minor or obvious modification in an existing design, devoid of authentic innovation, and hence does not merit protection under the Designs Act.

It is true that in certain cases even a small novelty may introduce a new design but the bottom line is that a really new design should come into existence which is not a copy or trade variation of the earlier design introduced mala fide to continue to have a hold on the old design. Novelty should be capable of making a design different and distinctive at first sight of the consumer, should be new and should not require lot of effort to find out the novelty. If this yardstick is not applied then by introducing minor and insignificant changes here and there, one may try to monopolise an old and already known design which cannot be protected even by Designs Act.

After comparing the plaintiffs' earlier registered brushes with the brush registered under No. 170554, the Court held that the three changes relied on by the plaintiffs "do not constitute a new design and are merely trade variations which are neither inventive nor innovative." A valid novelty must make the design different and distinctive at first sight, not depend on minor and insignificant changes. Similar brushes with the zig-zag "S" bend and curved handle had been in the market for years, and the plaintiffs had themselves conceded prior publication in other litigations. The registration appeared fraudulently obtained by not disclosing earlier designs/litigations. Moreover, the zig-zag S-bend, rubber cushions, and the handle were found utilitarian/functional, not protectable design features;"

Thus, a design identical with or even materially similar to the relevant design should not be published or registered previously. A slight trivial or infinitesimal variation from the pre-existing design shall disqualify the relevant design for registration. The change introduced should be substantial. A balance has to be struck so that novelty and originality may receive the statutory recognition and interest of trade and right of those engaged therein to share common knowledge is also protected. Mere trade variants of what is already in existence or what is common to the trade is not capable of being registered.

Applying the above test to the facts of the present case, it prima facie appears that the design of the plaintiff is merely a trade variant of an already-existing registered design(s) cited by the defendant. Hence, the plaintiffs lacked a prima facie case of design infringement.

Answer 3(b)

Performer's Right: Section 38 of the Copyright Act, 1957 provides that where any performer appears or engages in any performance, he shall have a special right to be known as the "performer's right" in relation to such performance. The performers right subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made.

Section 2(a) of the Copyright Act, 1957: "performance", in relation to performer's right, means any visual or acoustic presentation made live by one or more performers,

Section 2(aa) of the Copyright Act, 1957: "performer" includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance;

Exclusive Right of Performer: Section 38A of The Copyright Act, 1957 deals with the exclusive rights of the performers.

Section 38A (1): Without prejudice to the rights conferred on authors, the performer's right which is an exclusive right subject to the provisions of this Act to do or authorise for doing any of the following acts in respect of the performance or any substantial part thereof, namely: —

- (a) to make a sound recording or a visual recording of the performance, including—
 - i. reproduction of it in any material form including the storing of it in any medium by electronic or any other means;
 - ii. issuance of copies of it in any material form including the storing of it in any medium by electronic or any other means;
 - iii. communication of it to the public;
 - iv. selling or giving it on commercial rental or offer for sale or for commercial rental any copy or the recording;
- (b) to broadcast or communicate the performance to the public except where the performance is already broadcast.

Section 38A (2): Once a performer has, by written agreement, consented to the incorporation of his performance in a cinematograph film he shall not, in the absence of any contract to the contrary, object to the enjoyment by the producer of the film of the performer's right in the same film:

Provided that, notwithstanding anything contained in this sub-section, the performer shall be entitled for royalties in case of making of the performances for commercial use.

Answer 3(c)

Design as per Section 2(d) of the Designs Act, 2000 means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or anything which is in substance a mere mechanical device, and does not include any trade mark, as define in clause (v) of sub-section of Section 2 of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957.

As stated in the definition of the design above, design does not include:

- (i) any trademark, as defined in Section 2(zb) of the Trademarks Act, 1999, or
- (ii) any property mark, as defined in Section 479 of the Indian Penal Code, 1860, or
- (iii) any artistic work, as defined in Section 2(c) of the Copyright Act, 1957.

Section 4 of the Designs Act, 2000 provides the prohibition of registration of certain designs.

This section states that a design which—

- (a) is not new or original; or
- (b) has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
- (c) is not significantly distinguishable from known designs or combination of known designs; or
- (d) comprises or contains scandalous or obscene matter,

shall not be registered."

Thus, the pre-requisites for a design to qualify for protection are as follows:

- It should be novel and original.
- It should be applicable to a functional article.
- It should be visible on a finished article. It should be non-obvious.
- There should be no prior publication or disclosure of the design.

A design is capable of being registered only if it is new or original.

- Novelty: A design shall be considered to be new when it has not been disclosed to the public, anywhere in India or in any other Country, by publication or by use or in any other way, before the filing date or priority date.

A design shall be considered new if it is significantly distinguishable from known designs or a combination of known designs. [Section 4]

- Originality: Original in relation to a design means originating from the author of the design, and includes the cases, which, though old in themselves, are new in their application. [Section 2(g)]

For instance, the figure of the Taj Mahal is centuries old. But if a person conceives for the first time, the idea of making a flower vase or an ashtray in the form of a figure of the Taj Mahal, that may be an original design and shall be registrable.

Answer 3(d)

Piracy of a design means the application of a design or its imitation to any article belonging to the class of articles in which the design has been registered for sale or importation of such articles without the written consent of the registered proprietor. Publishing such articles or exposing them for sale with knowledge of the unauthorized application of the design to them also involves piracy of the Design. Design piracy, particularly in the context of registered designs, poses significant challenges in today's industrial landscape. A "design" encompasses the aesthetic aspects of any shapes, patterns, ornamentations, or compositions that can be applied to any two-dimensional or third-dimensional articles through industrial processes or techniques. The proprietor of the design gets the exclusive right to apply the design to the article in a class in which the design is registered. During the existence of copyright over any design, other persons are prohibited from using the design except or with the permission of the proprietor, his licensee, or assignee.

Section 22(1) of the Design Act of 2000 addresses the issue of pirated designs and specifies the circumstances that would constitute such piracy.

1. Registered designs are used for fraudulent or obvious imitation of the design. In this context, the term 'imitation' does not refer to an exact duplication of designs. Rather, it pertains to determining if the infringing copy includes the key elements of the registered designs, which are the basis for claiming novelty.
2. Registered designs are imported for sale without the consent of the proprietor.
3. A registered design has been published or exposed for sale with prior knowledge that it has obvious or fraudulent imitations

It is submitted that as per Section 19 of the Designs Act, 2000, at any time during the subsistence of the Design registration, any person can seek cancellation of design registration by filing a Petition before the Controller, on the following grounds: that the design has been previously registered in India; or that it has been published in India or in any other country before the date of registration; or that the design is not new or original; or that the design is not registrable under this Act; or that it is not a design as defined under clause (d) of section 2.

Answer 3(e)

The Semiconductor Integrated Circuits Layout Design Act, 2000, protects semiconductor IC layout designs. Semiconductor Integrated circuits are fabricated from a complex series of layers of semiconductors, metals, dielectrics (insulators), and other materials on a substrate. The Act and Rules refer to the three-dimensional configuration of these layers as an integrated circuit layout.

Under Section 6 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Treaty of the World Trade Organization (WTO), the Member Countries have agreed to protect IC layout designs, i.e., topographies of integrated circuits, to cater to the legal framework of creation/protection/trading aspects of intellectual property rights of products and services by member nations. India is a signatory to the TRIPs Agreement. The Semiconductor Integrated Circuits Layout-Design Act empowers the registered proprietor of the layout design an inherent right to use the layout design, commercially exploit it, and obtain relief in respect of any infringement.

Need of enacting the Semiconductor Integrated Circuits Layout Design Act, 2000 in India

Product life cycles are getting shorter across many industries. The time and money needed to acquire intellectual property rights, particularly patents, might be excessive compared to the lifespan of the resulting product. Since products have short life cycles and incorporate numerous technologies covered by various patents, especially when these products are miniaturized, requirements such as the necessity to designate products with “patent pending” also become impractical.

Integrated circuits are made up of many individual building blocks, each of which is patentable. A claim to an integrated circuit would need to cover hundreds or thousands of individual components because an integrated circuit has hundreds or thousands of semiconductor devices. As a result, an attempt to explain an entire integrated circuit in a patent claim could take hundreds of pages for each of the building blocks. It is not only time-consuming and cumbersome process but also very expensive. Such a limited claim would offer very little defence. Getting an integrated circuit patent from the majority of patent offices around the world may take several years. Given that an integrated circuit’s practical commercial life may be less than a year, this is unacceptable. Patent law is frequently an inadequate form of protection for integrated circuits due to the difficult, time-consuming process of filing and the incredibly limited protection. The existing intellectual property laws do not include integrated circuit design in any way. Design patents only cover the decorative features of a manufactured good as depicted in the drawings, not its functioning components. Since integrated circuit layout is primarily utilitarian rather than decorative, integrated circuits are typically exempt from design patent protection. Most integrated circuits cannot be protected by trade secret law because an integrated circuit layout can be reverse-engineered.

A unique protection for semiconductor integrated circuit layout design has become important for the semiconductor industry because patent, copyright, and trade secret laws cannot sufficiently protect integrated circuit design. And, the fact that protection could not be granted under either patent, due to a high threshold of ‘novelty’ requirements, nor in copyright, which is too general to accommodate such kinds of scientific creations. Due to this reason, an altogether new law called ‘Semiconductor Integrated Circuits Layout Designs Act, 2000’ was enacted by the Indian Government.

Question 4

AB Ltd., the plaintiff, filed a suit seeking a perpetual injunction to prevent the defendants from using the trademark “Sun Plus” in connection with soaps or detergents. The plaintiff also seeks to restrain the defendants from using the word “Sun” in any form, whether as a prefix, suffix, as well as from employing any labels incorporating the term “Sun Plus” or any other similar variations. The plaintiff contends that such usage infringes upon its registered trademarks and is likely to mislead consumers into believing that the defendants’ goods originate from or are associated with the plaintiff. The plaintiff alleged that such use amounted to infringement of its well-established and registered trademark, as it sought to unfairly capitalize on its longstanding reputation and brand value.

The plaintiff is the registered owner of the word marks “Sun,” “Sunlight,” and “Sunsilk” under Class 3 of the trademark registry. The marks “Sunlight” and “Sunsilk” are closely associated with “Sun,” reinforcing its brand identity. Additionally, the plaintiff holds registered label marks prominently featuring the word “Sunlight.” However, it is undisputed that the plaintiff has never used the standalone mark “Sun” in India, although its other registered trademarks incorporate the word.

On the other hand, the defendant, AC Ltd., has been using the mark “Sun Plus” since 1997 and has independently built a reputation for its products in the State of Kerala. There is no concrete evidence to indicate that the mark “Sunlight” has acquired such a level of distinctiveness in Kerala that the plaintiff would automatically benefit from consumer recognition merely by virtue of its

existing trademarks. Moreover, the plaintiff's mark "Sun" has remained unused in India for over six decades, raising questions about its enforceability in the present case.

Answer the following :

- (a) Discuss the "Doctrine of Likelihood of Confusion" in trademark law. What are the factors considered by courts while determining the likelihood of confusion between two trademarks ?
- (b) What is honest concurrent use, and how does it serve as an exception to relative grounds for refusal of registration" under Section 11 of the Trade Marks Act, 1999 ?
- (c) Explain the main principle of the Utilitarian Theory of Intellectual Property and what danger does this theory highlights regarding creator's ability to recoup their costs of expression.
- (d) What are the key focus areas and goals outlined under the National IPR Policy, 2016 ?
- (e) How is essentially derived variety defined under Protection of Plant Varieties and Farmers Rights Act, 2001 ? Enumerate the procedure for registration of essentially derived variety.

(5 marks each)

Answer 4(a)

The Doctrine of Likelihood of Confusion under India's Trade Marks Act, 1999, is a core principle in trademark law, primarily addressed in Section 11(1) (refusal of registration) and Section 29 (infringement). It prevents registration or finds infringement if an unauthorized mark is so similar (visually, phonetically, or conceptually) to an existing registered mark, for similar goods/services, that the public is likely to be deceived or confused into believing there's a connection with the original brand. Courts assess factors like mark similarity, goods/services relatedness, and the unwary consumer's perspective, with concepts like "initial interest confusion" also gaining traction, especially online.

Section 11 provides for the relative grounds for refusal of registration. —

11(1) states that :

Save as provided in section 12, a trade mark shall not be registered if, because of—

- (a) its identity with an earlier trade mark and similarity of goods or services covered by the trade mark; or
- (b) its similarity to an earlier trade mark and the identity or similarity of the goods or services covered by the trade mark,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.

The concept of likelihood of confusion is also addressed in Article 16 of the TRIPS Agreement. Article 16 says that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services. And such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available based on use.

In the case of *Starbucks Corporation vs. Sardarbuksh Coffee & Co. & Ors.*, CS (COMM) 1007/2018 . In this case the plaintiff Starbucks, in India, registered their trademark with a word-mark pronounced as STARBUCKS along with a logo visualising "crowned maiden with long hair". Whereas, the defendant, being a local vendor, initiated his business in 2015, with a name called "Sardarbuksh Coffee & Co". Both were dealing with the same product. The court observed that the name used

by the defendant was, likely to cause confusion in the minds of the customers. As a consequence, the court ordered the defendant to change the name of its outlet to "Sardarji-Bakhsh Coffee and Co." from "Sardarbuksh Coffee & Co".

Factors Considered for Determining Likelihood of Confusion Between Two Trademarks

While determining whether the use of one trademark is likely to cause confusion or deception, courts consider the issue from the perspective of an average consumer with imperfect recollection, and not by a side-by-side comparison. The following factors are generally taken into account:

1. Similarity of the Marks

The degree of similarity between the competing marks in appearance, sound, structure, and idea. Overall similarity is more important than minute differences.

2. Nature of the Goods or Services

Whether the goods or services covered by the marks are identical, similar, or allied and cognate in nature.

3. Class of Purchasers

The nature of consumers, their education, intelligence, and level of care while purchasing the goods.

4. Mode of Purchase and Surrounding Circumstances

Whether the goods are purchased over the counter, online, or on prescription, and whether purchases are made casually or after careful consideration.

5. Nature and Strength of the Plaintiff's Mark

Whether the mark is distinctive, invented, or has acquired reputation and goodwill in the market.

6. Likelihood of Association

Whether the use of the impugned mark is likely to create an impression that the defendant's goods are associated with or originate from the plaintiff.

7. Honesty of Adoption

Whether the defendant adopted the mark bona fide or with dishonest intention to ride on the goodwill of the plaintiff.

8. Evidence of Actual Confusion (if any)

Though not mandatory, evidence showing actual confusion strengthens the claim.

Answer 4(b)

Honest concurrent use refers to a situation where two or more traders independently and bona fide use identical or deceptively similar trademarks in relation to the same or similar goods or services for a substantial period of time, without any intention to deceive or derive unfair advantage from the reputation of the other.

The doctrine recognises the commercial reality that similar marks may come to be used honestly and simultaneously by different proprietors.

Honest Concurrent Use as an Exception to section 11 of the Trade Marks Act, 1999

To all the relative grounds of refusal mentioned under Section 11 of the Trade Marks Act, 1999 allows one exception in Section 12. As per Section 12 in the case of honest concurrent use, or of other special circumstances which make it proper so to do, the Registrar may permit the registration of trade marks which are identical or similar in respect of the same or similar goods or services,

irrespective of the fact that any such trade mark is already registered or not. This is done so if in the opinion of the Registrar it is proper so to do in favour of more than one proprietor of trade mark. In such an event the Registrar is empowered to impose such conditions and limitations, as he deems fit. The provisions establish the superiority of trade mark rights acquired by use.

Such registration may be allowed subject to conditions or limitations, such as:

- Territorial restrictions
- Manner of use
- Disclaimer or differentiation

Factors Considered for Honest Concurrent Use

Courts and the Registrar generally consider:

1. Honesty of adoption of the mark
2. Duration and extent of use
3. Degree of confusion likely to arise
4. Nature of the goods or services
5. Relative inconvenience to parties and public interest

Honest concurrent use acts as an equitable exception to the relative grounds for refusal under Section 11. By allowing registration under Section 12, the Trade Marks Act balances the rights of prior proprietors with commercial fairness and prevents hardship to traders who have honestly built goodwill under similar marks.

Answer 4(c)

Utilitarian Theory has been advocated by economists such as Bentham and Mill and its primary focus is upon the attainment of the greatest good for the greatest number. The main principle of this theory is that any policy made and implemented by any authority should have the power to ensure the greatest good for the greatest number. Greatest good here refers to the utmost welfare and greatest number refers to the masses.

Lawmakers' beacon when shaping property rights should be the "maximization of net social welfare". This is essentially the utilitarian thought.

In respect of the subject of intellectual property, the school of thought requires that the lawmakers must strike an optimal balance between the power of exclusive rights to stimulate the creation of inventions and works of art on the one hand, and, the partially offsetting tendency of such rights to curtail widespread public enjoyment of those creations, on the other.

The danger expressed in respect of this theory is that the creators of such products will be unable to recoup their "costs of expression" i.e. the time and effort devoted by them to writing or composing and the costs of negotiating with publishers or record companies, since copyists are likely to undercut them and persons bear a very low cost of production and thus they can offer identical products to the consumers at a very low price resulting in a loss to the creators of the products.

If this happens, it will disincentivise the creators from making any socially valuable intellectual product. This can, however be avoided by allocating to the creators (for limited times) the exclusive right to make copies of their creations. The creators of works that are valuable to consumers will be empowered to charge prices (for allowing anyone to access their works), which shall be substantially greater than they could in a competitive market. This rationale, put forward by the utilitarian thinkers, has been used to shape specific doctrines within the field.

Answer 4(d)

On May 12th, 2016, the Union Cabinet approved the Policy. It acknowledges India's well-established, TRIPS-compliant legal structure to protect IPRs and strives to balance its development objectives by making use of the flexibilities offered by the global regime. The Policy places a special emphasis on spreading knowledge about IPRs and emphasising their value as a marketable financial asset and a tool for the economy. IPR Policy focuses on: Improving access to healthcare, food security, and environmental protection, among other areas of critical social, economic, and technological importance fostering creativity and innovation and thereby promoting entrepreneurship and enhancing socio-economic and cultural development. The Policy outlines seven goals that are further defined with actions that must be taken by the designated nodal Ministry or Department.

The goals are briefly discussed below:

i. IPR Awareness: Outreach and Promotion:

To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society. A nation-wide program of promotion was launched with an aim to improve the awareness about the benefits of IPRs and their value to the rights holders and the public. It will build an atmosphere where creativity and innovation are encouraged in public and private sectors, R&D centers, industry and academia, leading to the generation of protectable IP that can be commercialized. It is also necessary to reach out to the less-visible IP generators and holders, especially in rural and remote areas. The clarion call of the program would be the holistic slogan "Creative India; Innovative India".

ii. Generation of IPRs:

To stimulate the generation of IPRs. India has a large talent pool of scientific and technological talent spread over R&D institutions, enterprises, universities and technical institutes. There is a need to tap this fertile knowledge resource and stimulate the creation of IP assets. A comprehensive baseline survey or IP audit across sectors will enable assessment and evaluation of the potential in specific sectors, and thus formulate and implement targeted programs. Its main focus is on facilitating researchers and innovators in areas of national priority. The corporate sector also needs to be encouraged to generate and utilize IPRs. Steps also need to be taken to devise mechanisms so that the benefits of the IPR regime reach all inventors, especially MSMEs, start-ups, and grassroots innovators.

iii. Legal and Legislative Framework:

To have strong and effective IPR laws, which balance the interests of rights owners with the larger public interest. The existing IP laws in India were either enacted or revised after the TRIPS Agreement and are fully compliant with it. These laws, along with various judicial decisions, provide a stable and effective legal framework for the protection and promotion of IPRs. India shall remain committed to the Doha Declaration on the TRIPS Agreement and Public Health. At the same time, India is rich in traditional medicinal knowledge, which exists in diverse forms in our country, and it is important to protect it from misappropriation.

iv. To modernize and strengthen service-oriented IPR administration. The Offices that administer the different Intellectual Property Rights (IPOs) are the cornerstone of an efficient and balanced IPR system.

Answer 4 (e)

"Essentially derived variety", in respect of a variety (the initial variety), shall be said to be essentially derived from such initial variety when it-

- (i) is predominantly derived from such initial variety, or from a variety that itself is predominantly

derived from such initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety;

- (ii) is clearly distinguishable from such initial variety; and
- (iii) conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotype of such initial variety. [Section 2(i)]

Registration of essentially derived variety

Section 23 of the Protection of Plant Varieties and Farmers Rights Act, 2001 provides for the registration of essentially derived variety. It provides that:

1. An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to in section 14 and in the manner specified in section 18 as if for the word "variety", the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fees as may be prescribed.
2. When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant documents to the Authority.
3. On receipt of an application, the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.
4. When the Authority is satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.
5. Where the Authority is not satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety it shall refuse the application.
6. The rights of the breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety:

Provided that the authorisation by the breeder of the initial variety to the breeder of essentially derived variety under sub-section (2) of section 28 may be subject to such terms and conditions as both the parties may mutually agree upon.
7. An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 15 as if for the word "variety", the words "essentially derived variety" have been substituted therein.
8. When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority, the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy thereof to the Authority and to such other authority, as may be prescribed, for information.

ARTIFICIAL INTELLIGENCE, DATA ANALYTICS AND CYBER SECURITY – LAWS & PRACTICE

GROUP 1 ELECTIVE PAPER 4.4

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

TechSecure Innovations Pvt. Ltd., headquartered in Bangalore, is a fast-growing IT and cybersecurity solutions provider specializing in AI-driven security systems, digital compliance, and OTT platform support services. Its client base spans across banks, healthcare providers, e-commerce platform, and digital streaming services, making the company an integral part of India's ongoing digital transformation journey. However, the company operates in an environment where new cybersecurity challenges, evolving digital laws, and stricter regulatory frameworks are forcing it to rethink strategies and realign operations. TechSecure now faces multiple situations that test its technical capacity, legal awareness, and strategic decision-making.

TechSecure recently launched an AI-based Intrusion Detection System (IDS) that processes and analyzes millions of data points every second to detect anomalies and potential threats. The positive impact is that the system has drastically reduced the number of cyberattacks targeting client networks but challenge is that it sometimes produces false positives, creating unnecessary panic and diverting resources. Some clients also fear that over-reliance on AI could compromise decision-making if human oversight is minimized and this raises the issue of how TechSecure can strike a balance between automation and human expertise in cybersecurity.

India's National Cybersecurity Policy 2013 emphasizes the promotion of indigeneous research and development in cybersecurity. Currently, TechSecure imports several tools from foreign vendors. The CEO is considering investing in an in-house R&D lab in Bangalore to build homegrown AI-based security products, but this requires substantial resources and skilled manpower. The decision could either make TechSecure a leader in indigenous innovation or become a financial burden if not executed well.

Recently, a ransomware attack bypassed TechSecure's automated defenses and was detected only through manual log analysis after damage had been done. This exposed the need for a proactive threat hunting team that can identify suspicious activity before it escalates. Management is debating whether to train its current workforce in advanced threat hunting techniques or hire specialized cybersecurity hunters to proactively seek anomalies and neutralize threats before they escalate. The decision will affect both the cost structure and the effectiveness of future cybersecurity strategies.

One of TechSecure's OTT clients faced regulatory warnings from the Ministry of Information & Broadcasting (MIB) under the Digital Media Ethics Code 2021 for hosting "sensitive content." The OTT platform asked TechSecure to build an AI-driven compliance monitoring system. This raises a dilemma : should TechSecure stick to being a technology enabler or also act as a compliance partner by advising clients on ethical content management. This situation raises concerns about role boundaries, business diversification, and ethical responsibilities in the digital ecosystem.

The Digital India Act 2023, which seeks to replace the outdated IT Act 2000, will impose new rules and obligations on digital companies. This act is expected to bring stricter cybersecurity accountability,

AI governance rules, and higher penalties for data misuse. TechSecure anticipates increased compliance costs, legal liabilities, and operational challenges in adapting existing frameworks to align with new legal requirements. TechSecure must now prepare for a future where compliance is not optional but a core business strategy.

In the above case scenario, answer the following questions :

- (a) TechSecure operating online, adopted AI tools for cybersecurity, customer experience, and compliance. Being technical head in TechSecure, experience with AI-based intrusion detection system analysis, how would you justify the usefulness of AI for their online operations ?

(5 marks)

- (b) The aim of National Cyber Security Policy-2013 is to create a Cybersecurity framework by collaboration of government and non-government entities that strengthen India's position as a global cybersecurity hub. According to you what strategies, of TechSecure in promotion of research and development in cybersecurity, contribute to building long- term national resilience against evolving digital threats ?

(5 marks)

- (c) TechSecure faced concerns about role boundaries, business diversification, and ethical responsibilities in the digital ecosystem. In this context, what guidelines should TechSecure follow relating to social media administered by the Ministry of Electronics and IT of the Intermediary Guidelines and Digital Media Ethics Code, for regulating social media platforms.

(5 marks)

- (d) Considering TechSecure's role in AI-driven cybersecurity and OTT compliance, what way forward strategies should the company adopt to successfully adapt to the provisions of the Digital India Act ?

(5 marks)

- (e) In the context of TechSecure's ransomware incident, how could a structured threat hunting investigation have helped detect the attack earlier and reduce its impact ?

(5 marks)

Answer 1(a)

Organizations operating online can benefit from AI in the following ways:

- *Detection of Threats:* In order to find abnormalities and possible risks, AI can scan huge amounts of data, including network activity, records, and system events. AI-powered platforms are very good at spotting and stopping assaults because they can continually adapt to new risks and learn from prior ones.
- *Automation in Cybersecurity:* Several cybersecurity jobs, including incident management, threat hunting and security screening, may be automated by AI. Businesses may use this automation to speed up reaction times, increase precision, and remove unnecessary security staff to focus on more difficult duties.
- *Statistical Analysis:* To identify possible cyber dangers, AI may evaluate data from a variety of domains, particularly social networking sites and use for predictive insights, enabling preemptive defenses via User and Entity Behavior Analytics. This makes it possible for companies to take preventive steps to stop assaults before they happen.

- *Detecting fraud:* By examining huge databases to find abnormal behaviour patterns and abnormalities, AI may assist businesses in identifying and preventing fraud.
- *Usefulness of AI in the Current Digital World:* It is impossible to exaggerate the importance of AI in the digital world. AI-powered technologies are becoming into crucial tools for businesses to secure their online resources as the quantity and complexity of cyber threats rise.
- *Predictive Threat Intelligence:* AI systems analyse historical and real-time data to predict potential cyber threats and vulnerabilities, enabling organisations to take preventive measures before an attack occurs.

Answer 1(b)

The Strategies, of TechSecure in Promotion of Research & Development in cybersecurity, contribute to building long-term national resilience against evolving digital threats are as follow:

- To undertake Research & Development programs for addressing all aspects of development aimed at short term, medium term and long-term goals. The Research & Development programs shall address all aspects including development of trustworthy systems, their testing, deployment and maintenance throughout the life cycle and include R&D on cutting edge security technologies.
- To encourage Research & Development to produce cost-effective, tailor-made indigenous security solutions meeting a wider range of cybersecurity challenges and target for export markets.
- To facilitate transition, diffusion, and commercialization of the outputs of Research & Development into commercial products and services for use in public and private sectors.
- To build resilient national cyberspace through scalable AI defenses, enhancing collective resilience against evolving attacks like in ransomware incident."
- To collaborate in joint Research & Development projects with industry and academia in frontline technologies and solution-oriented research.

Answer 1(c)

Social media is administered by the Ministry of Electronics and IT through Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The important aspects of these guidelines are discussed below:

- **Due Diligence to be Followed by Intermediaries:** Information Technology Act & Rules made thereunder prescribe due diligence that must be followed by intermediaries, including social media intermediaries. In case, due diligence is not followed by the intermediary, safe harbour provisions will not apply to them.
- **Grievance Redressal Mechanism:** The Rules seek to empower the users by mandating the intermediaries, including social media intermediaries, to establish a grievance redressal mechanism for receiving resolving complaints from the users or victims. Intermediaries shall appoint a Grievance Officer to deal with such complaints and share the name and contact details of such officer. Grievance Officer shall acknowledge the complaint within twenty-four hours and resolve it within fifteen days from its receipt.
- **Ensuring Online Safety and Dignity of Users, especially women users:** Intermediaries shall remove or disable access within 24 hours of receipt of complaints of contents that exposes the private areas of individuals, show such individuals in full or partial nudity or in sexual act or is in the nature of impersonation including morphed images etc. Such a complaint can be filed either by the individual or by any other person on his/her behalf.

- Two Categories of Social Media Intermediaries: To encourage innovations and enable growth of new social media intermediaries without subjecting smaller platforms to significant compliance requirement, the Rules make a distinction between social media intermediaries and significant social media intermediaries. This distinction is based on the number of users on the social media platform. Government is empowered to notify the threshold of user base that will distinguish between social media intermediaries and significant social media intermediaries. The Rules require the significant social media intermediaries to follow certain additional due diligence.

Answer 1(d)

The Digital India Act, 2023 is a future ready legislation that aims to replace the existing Information Technology Act, 2000 & provide a strong legal framework to support India's Techade goals. It constitutes a significant part of the Global Standard Cyber laws. The company should adapt itself in advance from the following aspects:

1. Ensure Internet is Open, Safe & Trusted and Accountable
2. Accelerate the growth of innovation and technology ecosystem
3. Manage the complexities of internet
4. Create a framework for accelerating digitalization
5. Protect citizens' rights
6. Address emerging technologies and risks
7. Being Future-proof and Future-ready
8. Adoption of Fair trade practices
9. Make strategies for Safeguarding innovation

Answer 1(e)

Structured Threat Hunting investigations can help detect the attack earlier and reduce its impacts *inter alia* in the following manner:

- Hypothesis Driven Investigations: When significant information of a new, imminent threat vector is discovered, cyber threat hunting will delve deeper into network or system logs in search of hidden anomalies or trends that could signal the new threat.
- Analytics Driven Investigation: Searches based on information gathered from Machine Learning (ML) and Artificial Intelligence (AI) tools. ML/AI tools (SIEM+UEBA) may be leveraged for pattern detection. For example, AI scanning endpoint logs for behavioral deviations (e.g., abnormal file encryption), flagging ransomware pre-execution unlike reactive IDS.
- Tactics, Techniques, and Procedures (TTP) Investigation: Hunting for attack mannerisms typically uses the same operational techniques. This is helpful to source or attribute the threat and to leverage existing remediation methods that worked with these behaviors. Tactics, Techniques, and Procedures (TTP) investigation is an organised method of evaluating and comprehending the techniques and procedures employed by attackers or adversaries in executing cyber-attacks or harmful actions. It entails examining their approaches (overall strategy or plan), techniques (particular methods or instruments employed), and procedures (step-by-step processes or activities conducted) in order to acquire knowledge about their motivations, abilities, and potential effect.

Question 2

TechNova Digital Solutions Pvt. Ltd. is a globally recognized leader in the Information Technology industry, renowned for its cutting-edge innovations and extensive digital ecosystem. The company operates a diverse range of online services, including an Online Content Platform that hosts a wide array of digital content such as news, current affairs, blogs, and audio-visual materials, and attracts millions of daily active users from various regions worldwide. Its social media platform VibeNest enables users to connect, share posts, exchange multimedia content, and participate in live discussions. It also offers secure and user-friendly email services to individuals and organizations that support integration with third-party applications and cloud storage for seamless communication. Headquartered in India, with operational offices in Europe, North America, and Southeast Asia, and serves a global user base exceeding 10 million registered accounts across all its platforms. Known for its technological advancements, but recently under scrutiny for challenges in data privacy, misinformation control, and timely grievance redressal. TechNova manages an Aadhaar-based identity authentication service integrated with its digital content platform but concerns arose regarding the collection, storage, and use of biometric and demographic data without explicit consent safeguards.

TechNova's online content platform is facing increasing criticism for being a hub of fake news, hate speech, and illegal content. During the recent state elections, several unverified posts spread rapidly across the platform, shaping voter perceptions and sparking public unrest. In another instance, a false rumor about a health emergency went viral, leading to panic buying and street-level protests. These incidents exposed serious vulnerabilities in TechNova's content moderation processes, fact-checking mechanisms, and overall responsiveness to user grievances.

TechNova's popular social media platform, "VibeNest" faced an incident where a flaw in its popular media platform integration feature "View As" was exploited, allowing hackers unauthorized access to the million-user accounts, including third-party apps linked through social login. This led to the theft of access tokens for thousands of accounts, exposure of personal information as name, email/phone numbers of 20 thousand users, and additional sensitive details like gender, religion, and location leaked for 30 thousand accounts. The company taken technological safeguards and patch and upgrade the "View As" feature with multi-layer authentication and role-based access control and implement end-to-end encryption for access tokens and sensitive data.

TechNova suffered a sophisticated cyberattack on its centralized database that managed client credentials, financial transactions, and personal information. Hackers exploited a vulnerability in the company's web application to gain unauthorized access to its servers. They tampered with computer source code, altering transaction logs and misdirecting payments. Attackers used advanced techniques to erase traces of their intrusion, making it difficult for the incident response team to trace their activities.

This breach compromised over 500,000 user accounts. To strengthen the Company's defensive perimeter, the configuration and performance of the firewalls across all data centres were evaluated. They saw them not as passive barriers but as active components of threat management. The latest generation of firewalls in use had intrusion prevention systems capable of identifying malicious patterns in network traffic and blocking them before damage occurred. However, they found that the firewall policies in some regional facilities were overly permissive, allowing unnecessary inbound connections. This was promptly rectified, with tighter rules and regular review schedules introduced to ensure that only essential traffic passed through.

A legal challenge emerged when certain politically sensitive posts were taken down without court orders, leading to accusations of violating citizens' free speech rights online on social media platforms. It would be very difficult for intermediaries like Google, Facebook etc. to act when

millions of requests are made and the intermediary is then to judge as to which of such requests are legitimate and which are not.

TechNova faced major challenges in data privacy, cybersecurity, and content moderation, including unauthorized access, misuse of Aadhaar data, and fake news proliferation. These incidents exposed gaps in grievance redressal, consent management, and compliance with IT regulations. While corrective measures were adopted, a proactive privacy-by-design approach and stronger adherence to IT Rules 2021 are essential to restore user trust and regulatory compliance.

In the above case scenario, answer the following questions :

(a) TechNova's Aadhaar-based identity authentication raised concerns over collecting and using biometric and demographic data without proper consent safeguards.

- What is the Supreme Court's stance in the 2018's Aadhaar judgement concerning the Right to Privacy ?
- How does the case illustrate the balance between technological innovation (AI-driven biometric systems) and individual privacy rights in India ?

(5 marks)

(b) A viral rumor threatens to spoil TechNova's fame in the digital media world.

- How the Information Technology rules apply to TechNova in this scenario ?
- What key monthly compliance requirements must TechNova fulfill as a large digital platform ?
- How do these rules aim to enhance accountability, grievance redressal, and proactive content regulations ?

(5 marks)

(c) TechNova Digital Solutions Pvt. Ltd. has recently faced multiple cybersecurity breaches, including unauthorized access to Aadhaar-based identity data, fake news propagation during elections, and exploitation of its social media platform 'VibeNest'. Such vulnerabilities in major IT platforms can be leveraged for cyber terrorism activities in India.

In support of your answer, analyze the real-life cases of cyber terrorism attacks reported in the country over the past decade.

(5 marks)

(d) You have been asked for consultation in TechNova Digital Solutions Pvt. Ltd to suggest a device that exclude unwanted and undesirable network traffic from entering the organization's system.

Critically evaluate the role of the suggested device, including next-generation capabilities, in an organisation's network defence strategy.

(5 marks)

(e) "It would be very difficult for intermediaries like Google, Facebook, etc. to act when millions of requests are made and the intermediary is then to judge as to which of such requests are legitimate and which are not". In light of the above statement, how can a legal framework be established for accusations of violating citizens free speech rights in judicial proceedings?

(5 marks)

Answer 2(a)

In the case of Justice *K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court of India recognised the Right to Privacy as a Fundamental Right under Article 21 of the Constitution. Subsequently, in *K.S. Puttaswamy v. Union of India (Aadhaar) (2018)*, the Court examined the constitutional validity of the Aadhaar scheme, particularly in the context of collection, storage, and use of biometric and demographic data.

While Aadhaar is not an artificial intelligence system per se, it is a technology-driven identity architecture that raised significant concerns regarding data protection, informational privacy, surveillance, and proportionality. The Court upheld the Aadhaar Act with limitations, applying the tests of legality, necessity, and proportionality, and struck down provisions enabling private entities to mandatorily use Aadhaar authentication.

The judgment highlights the importance of data minimisation, purpose limitation, and security safeguards in technology-enabled governance systems. It serves as a guiding precedent for organisations deploying advanced technologies, including AI-based systems, to ensure that privacy, transparency, and accountability remain central to system design and implementation.

Answer 2(b)

The Intermediary Guidelines Rules, 2011 were replaced by Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which were formulated by the Union Government in accordance with the IT Act, 2000. As per the said rules, large digital platforms with such user threshold as may be notified by the Central Government (presently 50 lakh users for significant social media intermediaries) would be required to publish periodic compliance reports each month. The Rules prescribe a framework for the regulation of online content in terms of current affairs, news, and audio-visual content. In India, all intermediaries, including OTT platforms and digital portals, must offer a grievance redressal process to address user complaints. These rules aim to empower netizens for the timely resolution of their grievances with a mechanism for redressal and assistance of a Grievance Redressal Officer (GRO) residing in India.

The Rules also impose additional due diligence obligations on Significant Social Media Intermediaries, including appointment of a Chief Compliance Officer, Nodal Contact Person, and Resident Grievance Officer.

The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, Rules mandate that social media outlets post monthly compliance reports that include the following information:

- Information about complaints filed and measures undertaken in response, and
- The number of particular communication links or informational components that the social media platform has blocked or erased as part of proactive monitoring.

Since the above said Rules are applicable to TechNova, they are requested to make necessary compliances of these rules. The compliances mentioned above are also required by TechNova as a large digital platform. Further, from the discussion above it is clear that these rules aim to enhance accountability, grievance redressal, and proactive content regulations.

Answer 2(c)

Cyber terrorism covers acts intended to threaten the unity, integrity, security or sovereignty of India by unauthorised access to computer resources, disruption of essential services, or unauthorised access to sensitive information.

Over the past few years, India has witnessed a growing number of cyber terrorist attacks, with government departments, particularly defence establishments, coming under attack. There are the following cases of cyber terrorism in India.

- In 2012 Hackers from Algeria carried out an attack on websites run by the DRDO, the Prime Minister's Office and various other government departments.
- Hackers from Pakistan and terrorist organizations are increasing their attacks on Indian Websites to provide a new dimension to the ongoing conflict over Jammu and Kashmir. 'GForce' a group of anonymous hackers whose members write slogans critical of India and its claim over Kashmir, have owned up to several instances of hacking of Indian sites run by the Indian government like breaking into the high security computer network of Bhabha Atomic Research Center.
- Indian Parliament attack is one of the deadliest attacks on Indian Democracy. It is a case of cyber terrorism where accused committed cyber forgery and made passes, downloaded official logo and layout map of the parliament has been downloaded through the Pakistan service provider. They controlled the e-mail and identity system of the Indian Army.

These incidents demonstrate how cyber space can be misused to further terrorist objectives, thereby justifying stringent legal provisions and enhanced cyber security preparedness

Answer 2(d)

A Firewall is a network security device that monitors and filters incoming and outgoing network traffic based on an organization's previously established security policies. Appositely, it is a barrier that stands between a private internal network and the open Internet at its most basic level. Firewalls exclude unwanted and undesirable network traffic from entering the organization's systems. Depending on the organization's firewall policy, the firewall may completely disallow some traffic or all traffic, or it may perform a verification on some or all of the traffic.

Primarily, it is an essential component of any security design since it gives your network security device control over host level defences, eliminating the need for guesswork. With the help of an integrated intrusion prevention system (IPS), firewalls, and especially Next Generation Firewalls, concentrate on thwarting malware and application-layer attacks. These Next Generation Firewalls can react swiftly and seamlessly to detect and respond to external attacks across the entire network. They can implement policies to better protect your network and do speedy analyses to find intrusive or dubious activities, like malware, and stop it.

Firewalls can carry out fast assessments to detect intrusive or suspect behaviour, such as malware, and can be configured to act on previously specified policies to further safeguard a network. Network can be configured with precise policies to allow or prohibit incoming and outgoing traffic by using a firewall as security infrastructure

Answer 2(e)

In 2015, in the landmark Shreya Singhal judgement, the Supreme Court for the first time recognized the Indian citizen's free speech rights over the Internet by striking down and declaring unconstitutional the draconian Section 66A of the IT Act, which provided for punishment for sending offensive messages through communication services. Further, regarding intermediary liability, the Court held that "Section 79 is valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relating to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material.

Similarly, the Information Technology Intermediary Guidelines Rules, 2011 are valid subject to Rule 3 sub-rule (4) being read down in the same manner as indicated in the judgment." The Court also observed that "it would be very difficult for intermediaries like Google, Facebook etc. to act when millions of requests are made and the intermediary is then to judge as to which of such requests are

legitimate and which are not." Subsequently, in the case of Kamlesh Vaswani v Union of India (Writ Petition (Civil) No. 177 of 2013), the Supreme Court issued directions to intermediaries to disable specific content where a website operating child abusing contents were sought to be restricted.

Question 3

Arun is the CEO of SecureNext E-Commerce Pvt. Ltd., one of India's fastest-growing online platforms. The company specializes in providing engineering equipment, industrial solutions, and services to industries across the country. Its rapid expansion has made it a crucial player in India's industrial supply chain, handling thousands to customer transactions everyday.

The transactions involve sensitive payment information, vendor agreements, employee data, and proprietary product designs. This combination of intellectual property, financial records, and personal data makes SecureNext an attractive target for cybercriminals. As the business grows, the volume of data and the complexity of its IT infrastructure have also expanded, creating new cybersecurity challenges.

Recently, SecureNext has been facing serious software security issues in its internal network. Unauthorized logins, SQL injection attempts, and ransomware alerts have created concern for both Arun and regulators. These events have alarmed not only Arun and his leadership team but also regulators and stakeholders. The Board of Directors has formally directed Arun to strengthen cybersecurity compliance and align reporting mechanisms with statutory requirements under the Information Technology Act, 2000, Digital Personal Data Protection (DPDP) Act, 2023, Sectoral advisories from CERT-In and the Reserve Bank of India (RBI), particularly for handling financial transactions.

The first major crisis struck when SecureNext's application servers were targeted by a ransomware attempt. Investigations revealed the root causes are weak access controls, unpatched open-source libraries, and a lack of multi-factor authentication. The RBI and CERT-In advisories mandate regular patch management, encryption of sensitive data, and multifactor authentication for payment systems. To meet these requirements, Arun must institutionalize secure coding practices, roll out access control policies, and ensure detailed logging of user activity, while also filing timely compliance reports to regulators.

To overcome scalability and resilience challenges, the company's member of advisory board, Mr. Deepak suggested adopting a cloud computing model where a provider delivers on-demand computing resources like servers, storage, and networking over the internet for flexibility and scalability, and offers benefits such as cost efficiency and disaster recovery, shared responsibility matrices, and provider responsibilities with hardware security, hypervisor patching and Customer responsibilities in application security, data protection, identity management. Before migration, SecureNext must prepare a compliance roadmap, demonstrating how security responsibilities will be divided between the cloud provider and the company. Arun realizes this decision requires deep knowledge of cloud architecture, statutory obligations, and forensic readiness.

A troubling insider attack revealed further gaps in SecureNext's security posture. During forensic investigations, it was discovered that the incident response team had failed to capture volatile evidence (RAM data such as session keys, temporary files, and unsaved logs) before the compromised system was rebooted. Since volatile evidence disappears once a system is powered down, this failure raised serious concerns. To fix this, Arun must ensure that forensic policies mandate the order of the volatility principle and use tools like FTK Imager and registry viewer, and establish standard operating procedures (SOPs) for handling live evidence during incident response.

During the festival season, SecureNext faced a DDoS attack that temporarily crippled its main database, but operations were restored using remote recovery. As part of its cloud strategy, the

company is conducting Disaster Recovery (DR) testing with geo-redundant backups and high-availability architecture. Meanwhile, an employee accused of data theft formatted his workstation to erase evidence. Forensic investigators recovered deleted files from unallocated disk space, but during legal proceedings, the defense challenged the evidence due to improper chain of custody, missing hash verification logs, and incomplete documentation. CEO Arun must now ensure robust cybersecurity measures, proper forensic protocols, and compliance with Indian regulations to strengthen resilience and maintain the admissibility of digital evidence in future incidents.

From the above scenario, answer the following questions :

- (a) SecureNext's servers were compromised due to weak access controls and unpatched software libraries. Software security is a continuous process that starts at design and development and continues through the lifecycle with regular updates and patches to address vulnerabilities. In this context, what best practices would you suggest, being a consultant, be adopted to strengthen software security and prevent such attacks ?

(5 marks)

- (b) Mr. Deepak recommended migrating to a cloud service platform, where computing, networking, and storage resources are made available to users on demand over the internet on a pay on use basis. Which cloud service model will meet SecureNext's requirements, and what advantages can the company gain from utilizing this service ?

(5 marks)

- (c) SecureNext found a suspect's unauthorized data transfer from one of its servers. As a forensic investigator, you perform Live Forensics to capture volatile data.

- Analyze, why Live Forensics is the preferred method in this situation ?
- Describe the order of volatility you would follow during evidence collection, and
- Evaluate the potential risks if the live data is not collected immediately.

(5 marks)

- (d) During the festival season, SecureNext successfully utilized remote recovery capabilities to restore operations after a Distributed Denial-of-Service (DDoS) attack. Analyze the importance of implementing remote recovery as part of the company's cloud disaster recovery strategy.

(5 marks)

- (e) During a data theft investigation at SecureNext, forensic analysts retrieved deleted files from unallocated disk space using specialized tools.

- What are the capabilities of digital investigation software that it maintains the admissibility of such evidence in court ?
- How do tools like Forensic Toolkit and EnCase ensure data integrity during this process?

(5 marks)

Answer 3(a)

Best practices to be adopted to strengthen Software Security and prevention of cyber attacks:

1. Verification of Software: Software Verification is the process of verifying whether a code corresponds to particular specifications. The security limitations are encoded and given as configuration to the verification process. The process of verification ensures that a particular software conforms to the specifications, which in turn guarantees that security violations will

not take place. For example, Comp-Cert is a formally verified compiler which ensures that conversions are always correct and no bug is introduced during compilation.

2. **Language Based Security:** A new area of research has emerged in the form of language-based security where security properties are implemented in the programming language. This practice encourages development of programming languages in security specific manner and prevents the programmers from making mistakes.
3. **Software Testing:** It is the practice of finding flaws or possible vulnerabilities in software while executing a program. However, it is important to note that security requirements cannot be tested easily as software testing only reveals and detects if the program is infused with bugs, but it cannot confirm absence of bugs.
4. **Training:** All users, be it employees, students, businessmen, should be trained to use the software in a proper manner and must be cautioned and informed about security risks and how to identify, avoid and prevent them. Users must also be trained about remedial measures that must be taken as soon as a breach is detected.
5. **Data Encryption:** Data encryption converts data into an unreadable format which can only be deciphered with the help of a security key. It is a proven security technique which is widely used to protect against data breach.
6. **Patching Software:** It is always recommended to resolve and fix system vulnerabilities as and when they are detected. This is known as 'patching the software'.
7. **Use of Firewall:** Firewall act as a protective layer and barrier between the internal computer network and the internet. It allows or prohibits traffic from the internet as per the pre-established security rules and policies. Use of firewalls is thus recommended as a good security practice.
8. **Two factor authentication:** It is a security practice which allows access to a software or program only on providing credentials like login ID and password. Only a user who knows the login ID and password would be able to access the account.
9. **Penetration Testing:** This security practice involves hiring a testing team which attempts to penetrate into the system by using the same tools and in the same manner that a hacker would do, to identify and flag security issues in the software. It is recommended that penetration testing should be done periodically. Benefit of this practice is that existing issues or vulnerabilities in the software are quickly identified and resolved before they are discovered by hackers.
10. **Remain agile and proactive:** It is recommended that one must always be aware of current and emerging security trends and new security issues and constantly evolve and adapt to new, updated and emerging security practices, only after checking its viability.

Answer 3(b)

Infrastructure-as-a-Service, abbreviated as "IaaS," is a type of cloud computing where basic computing, networking, and storage resources are made available to users on demand through the internet and on a pay-as-you-go basis.

Several factors, when considered collectively, make cloud infrastructure seem like a good fit:

- **Pay-as-you-Go:** Unlike traditional IT, IaaS does not require any upfront, capital expenditures, and end users are only billed for what they use.
- **Speed:** With IaaS, users can provision small or vast amounts of resources in a matter of minutes, testing new ideas quickly or scaling proven ones even quicker.

- Availability: Through things like multizone regions, the availability and resiliency of cloud applications can exceed traditional approaches.
- Scale: With seemingly limitless capacity and the ability to scale resources either automatically or with some supervision, it's simple to go from one instance of an application or workload to many.
- Latency and performance: Given the broad geographic footprint of most IaaS providers, it's easy to put apps and services closer to your users, reducing latency and improving performance.

Answer 3(c)

The field of computer Forensics Analysis involves identifying, extracting, documenting, and preserving information that is stored or transmitted in an electronic or magnetic form (that is, digital evidence). The volatile data that is held in temporary storage in the system's memory (including random access memory, cache memory, and the onboard memory of system peripherals such as the video card or NIC) is called volatile data because the memory is dependent on electric power to hold its contents. Volatile data is the data that is usually stored in cache memory or RAM. This volatile data is not permanent this is temporary and this data can be lost if the power is lost i.e., when computer loses its connection. During any cybercrime attack, investigation process is held in this process data collection plays an important role but if the data is volatile then such type of data should be collected immediately. Volatile information can be collected remotely or onsite. If there are many numbers of systems to be collected then remotely is preferred rather than onsite. It is very important for the forensic investigation that immediate state of the computer is recorded so that the data does not lose as the volatile data will be lost quickly. If the volatile data is lost on the suspects computer if the power is shut down, Volatile information is not crucial but it leads to the investigation for the future purpose. To avoid this problem of storing volatile data on a computer we need to charge continuously so that the data isn't lost. So that computer doesn't lose data and forensic expert can check this data sometimes cache contains Web mail. This volatile data may contain crucial information. So, this data is to be collected as soon as possible. This process is known "Live Forensics".

The final step in evidence assessment specifically deals with the evidence itself. You should identify the stability of the evidence, and collect the most volatile evidence first before moving to nonvolatile evidence. In doing so, you should prioritize the collection and acquisition of evidence so that the evidence that is most likely to contain what you're searching for is examined first. There are different examples of an order of volatility, like Registers and cache, Routing tables, Arp cache, Process table, Kernel statistics and modules, Main memory, Temporary file systems, Secondary memory, Router configuration, & Network topology

Answer 3(d)

The major requirement of remote service is that the hardware must be working for lost data to be recovered. In these cases, where there is physical damage, the hard drive needs to go into a recovery lab so engineers can use special tools to get the drive running again for long enough to copy the data.

There are other hurdles with remote service for customers already shaken by their data-loss experience. Remote service requires some assistance from the customer so the engineer can connect with the system and produce a file listing. This process might be too intimidating for the less technically inclined user, as many people are afraid to even touch their computers after a data-loss situation out of fear that they might cause more damage.

Another requirement is the need for available staff to work with the remote-recovery engineers. If

the circumstances surrounding the data loss are too hectic, sending the drive into a reliable data recovery lab might be a better option.

Remote service requires a stable connection, which can be a challenge in a high-security environment. Many organizations have strict proxy server or firewall policies and may not be able to connect with outside systems. Working with large amounts of data can also be a problem. Although remote recovery is capable of recovering huge volumes of data, sometimes the customer doesn't have the space available for the copied data. For example, working with some Unix or Macintosh systems requires special copy-out destinations to maintain data integrity.

Finally, the unique nature of the service can be a roadblock to using remote data recovery. Since it's a fairly new technology, many users feel that remote recovery is too good to be true and don't believe that it can deliver on the promises it makes. Remote data recovery is an option that every data-loss sufferer should always consider.

Answer 3(e)

Forensic Toolkit (FTK) is computer forensics software, created by AccessData. It is a court-accepted, digital investigations software that includes many features and capabilities such as full-disk forensic images, decrypting files and cracking passwords, parsing registry files, collecting, process and analyzing datasets, and advanced volatile memory analysis. FTK is recognized as the standard toolkit for cyber defense forensic analysts, incident responders, and other professionals working or collecting forensic evidence. This path will cover the basic tools within the FTK suite - FTK Imager, Registry Viewer, and Password Recovery Toolkit (PRTK.) Then dive into use cases and analysis with FTK Suite.

OpenText™ EnCase™ Forensic is recognized globally as the standard for digital forensics and is a court-proven solution built for deep-level digital forensic investigation, powerful processing, and integrated investigation workflows with flexible reporting options. It is built with a deep understanding of the digital investigation lifecycle and the importance of maintaining evidence integrity. EnCase Forensic empowers any examiner to seamlessly complete any investigation, including investigations of mobile devices. For digital investigations, examiners need to be able to prioritize, collect, and decrypt evidence from a wide variety of devices while maintaining its integrity. The process needs to be quick, efficient, repeatable, and defensible, with the ability to create intuitive reports. With EnCase Forensic, examiners can be confident the integrity of the evidence will not be compromised. All evidence captured with EnCase Forensic is stored in the court-accepted EnCase evidence file formats.

Question 4

In the first quarter of 2025, Pragati Bank Ltd., a mid-sized private sector bank in India, began to feel the pressure of rising competition from nimble fintech players. These new-age companies were offering real-time payments, decentralized investment products and seamless user experiences that traditional banks struggled to match. Pragati Bank, with its legacy systems and centralized databases, often found itself dealing with reconciliation delays, operational bottlenecks, and increasing customer complaints about transparency. It was against this backdrop that the Board of Directors initiated a discussion on adopting blockchain technology as part of the bank's long-term digital transformation agenda.

The bank's management recognized that blockchain, though popularly associated with cryptocurrencies, offered much broader applications. The directors were also keen on the promise of reducing dependence on third-party auditors and intermediaries, which not only raised costs but also left scope for human errors. To justify the investment, the Board asked the executive team to present a clear business case. The team highlighted three areas of concern.

First, the time and effort spent reconciling inter-branch and inter-bank transactions consumed enormous resources and affected service delivery.

Second, customers were increasingly demanding quicker settlements and transparent systems where they could track their transactions instantly.

Third, the bank was facing heightened risks from cyber threats, making it necessary to adopt a system that ensured confidentiality, integrity and availability of data. Blockchain, they argued, could provide a framework that addressed all these concerns, provided it was implemented correctly.

The bank did not want to adopt the technology blindly. The technology committee studied global practices and found that leading banks in Europe and Singapore had already begun using blockchain for trade finance and settlements. Some institutions had also experimented with decentralized finance applications that enabled peer-to-peer lending without involving traditional intermediaries. Non-fungible tokens, although popularly known in the art world, were also being used to certify ownership of digital contracts and documents, a use case highly relevant to loan agreements and property papers. Encouraged by these developments, Pragati Bank began exploring potential vendors who could deliver blockchain solutions adapted to its needs. Three vendors were shortlisted and invited to present their products through a structured request for proposal process.

There was also the larger issue of aligning the bank's management information system, which handled everything from customer databases to HR processes, with the distributed design of blockchain. Pragati Bank's prime service that is offered in the banking industry is to solve the financial problems that the customers of the bank are facing. The MIS in a bank must be designed in such a manner that it is able to provide differentiated services to the varied service requests of the customers. The key factors which Pragati Bank Ltd should consider while designing a Banking Information System may be Customer Database; Service to the Account Holders; Service for Business Promotions; Index Monitoring System; Human Resource Upgrade.

The Company Secretary reminded the Board that under the Companies Act, the responsibility of maintaining statutory books of accounts remained unchanged, regardless of the medium or technology used. Blockchain, therefore, could complement but not replace legal and regulatory obligations.

Despite these concerns, the bank approved a pilot project with one of the vendors. Blockchain was introduced in trade finance, where letters of credit and cross-border remittances were recorded on the distributed ledger, and in payroll management, where salary payments and vendor bills were validated through smart contracts. The early results were encouraging, transaction times reduced significantly, reconciliation errors dropped, and customers appreciated the enhanced transparency. However, new risks soon surfaced. A coding flaw in one smart contract led to an overpayment to a supplier, and because blockchain entries were irreversible, the error could not be corrected. Regulators also expressed apprehensions that peer-to-peer lending platforms modelled on decentralized finance could undermine established safeguards designed to protect depositors.

The Chief Information Security Officer emphasized that any system must guarantee secure and reliable information access, while the Committee stressed the need for staff training in blockchain, smart contracts, and cryptographic protocols. The Company Secretary proposed a phased approach. Instead of rolling out blockchain across all functions, the bank should first consolidate its success in internal operations such as vendor management and cross-border payments, while keeping experimental projects like decentralized lending within a controlled sandbox environment. He recommended drawing up a comprehensive compliance framework mapping blockchain transactions to statutory obligations, negotiating robust vendor contracts with clear liability clauses,

and conducting independent audits of smart contracts. The Board accepted this advice and also resolved to publish an annual Blockchain Governance Report to communicate its approach transparently to shareholders, regulators and customers.

While immutability, decentralization, and efficiency offered by the technology were compelling, the risks of coding errors, legal uncertainties, and regulatory pushback could not be ignored. The case highlighted the fact that blockchain was not merely a technological shift but a transformation with deep legal, ethical, and governance implications. For traditional banks, the challenge lies not in jumping on the blockchain bandwagon but in carefully aligning innovation with fiduciary duties, compliance requirements, and the trust that underpinned their relationship with customers.

Based on the facts, answer the following questions :

(a) Pragati Bank, with its legacy systems and centralized databases, often found itself dealing with reconciliation delays, operational bottlenecks, and increasing customer complaints about transparency. Why do you think Board of Directors initiated a discussion on adopting blockchain technology as part of the bank's long-term digital transformation agenda ?

(5 marks)

(b) What governance safeguards and legal reviews should Pragati Bank Ltd. undertake before finalizing a blockchain vendor contract to ensure value and minimize risks ?

(5 marks)

(c) The prime service that is offered in the banking industry is to solve the financial problems that the customers of the bank are facing. The MIS in a bank must be designed in such a manner that it is able to provide differentiated services to the varied service requests of the customers. Outline the key factors which Pragati Bank Ltd should consider while designing a Banking Information System.

(5 marks)

(d) "There was also the larger issue of aligning the bank's management information system, which handled everything from customer databases to HR processes, with the distributed design of blockchain." Elucidate the essential elements required for the effective implementation of a complete information system in an organisation.

(5 marks)

(e) Technology is a huge part of business, so managing corporate and customer data is top priority for companies. As this intervention of technology in banking becomes most essential to keep data secured and make policies related to data security, what are the factors chief information security officer should adhere in safeguarding information security in banks ?

(5 marks)

Answer 4(a)

Blockchain is a distributed database or ledger shared amongst a computer network's nodes. They are best known for their crucial role in cryptocurrency systems for maintaining a secure and decentralized record of transactions, but they are not limited to cryptocurrency uses. Blockchains can be used to make data in any industry immutable, the term used to describe the inability to be altered.

Because there is no way to change a block, the only trust needed is at the point where a user or program enters data. This aspect reduces the need for trusted third parties, which are usually auditors or other humans that add costs and make mistakes.

Since Bitcoin's introduction in 2009, blockchain uses have exploded via the creation of various cryptocurrencies, Decentralized Finance (DeFi) applications, Non-Fungible Tokens (NFTs), and smart contracts.

Non-Fungible Token (NFT) is a unique digital identifier that is recorded on a blockchain, and is used to certify ownership and authenticity. It cannot be copied, substituted, or subdivided.

Decentralized Finance (DeFi) is an umbrella term for a variety of financial applications in cryptocurrency or blockchain geared toward disrupting financial intermediaries.

- Blockchain is a type of shared database that differs from a typical database in the way it stores information; blockchains store data in blocks linked together via cryptography. Cryptographic linking prevents smart contract coding flaws.
- Different types of information can be stored on a blockchain, but the most common use for transactions has been as a ledger.
- In Bitcoin's case, blockchain is decentralized so that no single person or group has control—instead, all users collectively retain control.
- Decentralized blockchains are immutable, which means that the data entered is irreversible. For Bitcoin, transactions are permanently recorded and viewable to anyone.

Due to the advantages mentioned above, the Board of Directors might have initiated the discussion on adopting Block-Chain Technology.

Answer 4(b)

To minimize risks and ensure value, Pragati Bank Ltd. should undertake the following governance safeguards and legal reviews before finalizing a blockchain vendor contract:

- Define business case/need and spell-out required values. Be specific. Ensure the business sponsor is willing to push through business case for change.
- Look round the market for what product is available. Identify vendors that operate and their general approaches to technologies. Discuss with others in the same industry as you are etc.
- Clarify your requirements and be sure of whether what you are looking for is in line with your business case. Refine requirements if possible and be specific too.
- Find out what product is looking promising in line with the business need and from which vendor.
- Identify which vendor and their products suits the requirements and invite interesting ones for demo etc. Request for proposal (RFP).
- Invite each shortlisted vendor over for a chat and find out more about the product. List out expectations based heavily on business requirements.
- At this point evaluate the following approach. Can you afford to change your current process? Can you afford the change the new product will bring?
- Initiate Negotiation for the selected product with the selected vendor. Agree on who does what, when are they to be done. Negotiate deliverables, timelines, cost & payments schedules and terms, support inclusive.
- Review all legal terms, finalise the contract and select product for onward implementation.
- Alignment of business requirement to what the software/hardware can provide. This is the core of the whole exercise else stop the evaluation.

- Evaluate the product capabilities in line with the business requirement. Evaluate the impact of the product on the business requirement.

Answer 4(c)

Banks are organisations that provide various types of financial services such as savings, cheque clearance, and providing loans to the account holders. The function of the bank in today's world has increased as they are offering financial assistance to the customers by offering various policies. The bank also has to meet various socio-economic obligations. The banks handle many transactions which are different from each other in terms of complexity and length. Like the customer of any other service, the customer of the bank also expects to get the end results as fast as possible.

The prime service that is offered in the banking industry is to solve the financial problems that the customers of the bank are facing. The time elapsed for executing a transaction is the most widely used measurement for performing a service. The MIS in a bank must be designed in such a manner that it is able to provide differentiated services to the varied service requests of the customers.

Factors and Requirements Affecting Bank Information System Design:

- Customer Database;
- Service to the Account Holders;
- Service for Business Promotions;
- Index Monitoring System;
- Human Resource Upgrade.

These factors can be considered by Pragati Bank Ltd while designing a Bank Information System.

Answer 4(d)

The essential elements required for the effective implementation of a complete information system in an organization are as follow:

- Development of computer applications for business transactions, such as production, marketing, selling, etc.
- Development of management information systems for effective business control.
- Planned introduction and use of computers and telecommunications.
- Creation of an overall systems and standards architecture for technology, applications and data.
- Development of information systems for business planning.
- Improved productivity in information systems and computing.
- Development of appropriate staff resources.
- Development of internal support systems (payroll, personnel, pensions, etc.).

Answer 4(e)

The Following factors Chief Information Security Officer should adhere in safeguarding information security in Banks:

- (a) Confidentiality: When protecting information, we want to be able to restrict access to those who are allowed to see it; everyone else should be disallowed from learning anything about its contents. This is the essence of confidentiality. Confidentiality is the ability not to disclose

information to unauthorized persons, programs, or processes. It relates to information security because it requires control over access to protected information. Confidentiality requires measures to ensure that only authorized persons have access to information, and while unauthorized persons are denied access to them. Simply put, confidentiality means that something is secret and should not be passed on to unintentional persons or organizations.

If confidentiality is compromised, this can lead to loss of privacy and disclosure of confidential information to the public or other persons. There is a wide range of information that could be considered confidential, such as financial information, medical information, and other sensitive information. Some information is more sensitive than others and requires a higher level of confidentiality and RBAC + encryption protects transaction data (no third-party auditor leaks).

- (b) Integrity: Integrity means that protection against improper modification and destruction of information, ensuring that information cannot be changed undetected, and ensuring the integrity of the information. This means that a cyber threat or vulnerability to cyber-attack can be measured by compromising one or more of its principles. Integrity is based on encryption and hashing to ensure the best possible protection against cyber-attacks and cyber threats such as cyber espionage and SHA-256 hashing + immutability prevents smart contract overpayment errors.
- (c) Availability: Availability ensures that information is available to those in need that includes timely and reliable access, regardless of the time of day, place of residence, location, or other factors. The accuracy and completeness of the information are crucial to the functioning of an organization. Focus on integrity to ensure that data is considered authentic and reliable and cannot be manipulated. It should be noted that integrity is important in order to protect data in its use, not only in the management of the organization but also in its use by other organizations and individuals and multi-zone nodes ensure 99.99% uptime for trade finance settlements.

ADVANCED DIRECT TAX LAWS & PRACTICE

GROUP 1 ELECTIVE PAPER 4.5

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

All the references of the Question Paper relate to the Income tax Act, 1961 and the relevant Assessment Year 2025-26 unless stated otherwise.

PART-I

Question 1

Frenzy and Falak Tyres Limited, an Indian Company engaged in the manufacture of Tyres in Gujrat, has adopted Ind AS from 1-4-2020. The following particulars are provided for the year ended 31-3-2025 :

Net profit as per statement of profit and loss is ₹ 18 crores after considering the following items :

Items Debited :

- (i) Depreciation ₹ 15 crores. Included in depreciation is ₹ 2 crores, being amount provided on revalued assets.
- (ii) Provision for the loss of subsidiary company ₹ 5.4 crores.
- (iii) Provision for gratuity based on actuarial valuation ₹ 30 lakhs.
- (iv) Provision for income-tax ₹ 72 lakhs. It includes ₹ 3 lakhs of interest payable on income-tax.
- (v) Interest charged for delay in remittance of tax deducted at source ₹ 20 lakhs.
- (vi) Amount debited to the Statement of Profit and Loss towards interest to a public financial institution is ₹ 7 lakhs. Out of this, ₹ 3 lakhs were paid on 12-11-2025.

Items Credited :

- (i) Share of income from Association of Persons in which the company is a member ₹ 62 lakhs. (The AOP is charged to tax at Maximum Marginal Rate)
- (ii) Profit from unit established in Special Economic Zone ₹ 12.5 lakhs.
- (iii) Amount of ₹ 4 crores withdrawn from revaluation reserves on account of revaluation of assets.
- (iv) Dividend from Indian companies (listed) ₹ 1.6 crores.
- (v) Short term capital gains on Sale of Listed Equity Share ₹ 1.3 crores.

Other Information :

- (1) The application of a financial creditor for corporate insolvency resolution process has been admitted by the Hyderabad Bench of the National Company Law Tribunal under section 7 of the Insolvency and Bankruptcy Code, 2016
- (2) Brought forward business loss and unabsorbed depreciation of Company :

Assessment Year	Business Loss	Depreciation
2021-22	₹ 2 crores	₹ 3 crores
2022-23	₹ 5 crores	₹ 2 crores

- (3) Items credited to other comprehensive income which will not be reclassified to profit or loss :
- Re-measurement of defined employee retirement benefits plan ₹ 30 lakhs.
 - Revaluation surplus of property, plant and equipment ₹ 1 crore.
- (4) The transition amount as on convergence date 1-4-2020 stood at ₹ 5 crores including capital reserve of ₹ 50 lakhs (credit balance).
- (5) Tax payable under the regular provisions of the Income Tax Act, 1961 is ₹ 1.75 crores.

Based on the information provided :

- (a) Compute the Book Profit u/s 115JB of the Income Tax Act, 1961 for the company for the Assessment Year 2025-26.

(15 marks)

- (b) Compute the Minimum Alternate Tax (MAT) payable by the company for the Assessment Year 2025-26.

(5 marks)

- (c) Compute the amount of eligible MAT Credit u/s 115JAA of the Income Tax Act, 1961 to be carried forward by the company. Also explain the time limit for carry forward of such MAT Credit.

(5 marks)

Answer 1(a):

Computation of Book Profit of Frenzy and Falak Tyres Ltd. u/s 115JB for A.Y. 2025-2026

Particulars	Amount (₹)	Amount (₹)
Net profit as per statement of Profit and loss		18,00,00,000
Add: Net profit to be increased by the following amounts as per explanation 1 to section 115JB(2):		
- Depreciation	15,00,00,000	
- Provision for the loss of subsidiary company	5,40,00,000	
- Provision for gratuity based on actuarial valuation [Provision for gratuity based on actuarial valuation is an ascertained liability. Hence, the same should not be added back to compute book profit.]	Nil	
- Provision for Income Tax [As per Explanation 2 to section 115JB, income-tax shall include, inter alia, any interest charged under the Act, therefore, whole of the amount of provision for income-tax including ₹ 3 lakh towards interest payable has to be added]	72,00,000	
- Interest charged for delay in remittance of TDS [As per Explanation 2 to section 115JB, income- tax shall include, inter alia, any interest charged under the Act. Therefore, interest on delay in remittance of TDS has to be added back]	20,00,000	

Particulars	Amount (₹)	Amount (₹)
- Interest to a Public Financial Institution [It is only the specific items mentioned under Explanation 1 to section 115JB, which can be adjusted from the net profit as per the Statement of Profit and Loss prepared as per the Companies Act for computing book profit for levy of MAT. Since the following items are not specified thereunder, the same cannot be adjusted for computing book profit.]	Nil	
Total		21,32,00,000
		39,32,00,000
Less: Net profit to be decreased by the following amounts as per Explanation 1 to section 115JB(2):		
- Depreciation other than depreciation on revaluation of assets [₹ 15 crore – ₹ 2 crore]	13,00,00,000	
- Share income from Association of Persons [Share income of company in AOP has to be reduced while computing the book profit, since no income-tax is payable by the company on share income in AOP, as the AOP is chargeable to tax at Maximum Marginal Rate]	62,00,000	
- Profit from unit established in special economic zone [As per proviso to section 115JB(6), the profits from unit established in special economic zone cannot be excluded while computing the book profit, and hence, such income would be liable for MAT]	Nil	
- Amount withdrawn from revaluation reserve [To the extent it does not exceed depreciation on revaluation of assets Rs. 4 crore – Rs. 2 crore]	2,00,00,000	
- Dividend from Indian companies [Amount not deducted for calculating MAT Profit]	Nil	
- Short term capital gains on Sale of Listed Equity Share [Amount not deducted for calculating MAT Profit]	Nil	
- Brought forward business loss of ₹ 7 crore [₹ 2 crore + ₹ 5 crore] and unabsorbed depreciation of ₹ 5 crore [₹ 3 crore + ₹ 2 crore] [Since Frenzy and Falak Tyres Limited is a company against which an application for corporate insolvency resolution process has been admitted by NCLT under section 7 of the Insolvency and Bankruptcy Code, 2016, the amount of total	12,00,00,000	

Particulars	Amount (₹)	Amount (₹)
loss brought forward (including unabsorbed depreciation) is allowed to be reduced from the book profit for the purposes of levy of MAT under section 115JB]		
Total		(27,62,00,000)
Book profit computed in accordance with Explanation 1 to section 115JB(2)		11,70,00,000
Add: Items credited to OCI that will not be reclassified to profit or loss:		
- Re-measurement of defined employee benefit plan	30,00,000	
- Revaluation surplus of property, plant and equipment ₹ 1 crore [Book profit not to be increased by revaluation surplus for assets]	Nil	
Total		30,00,000
		12,00,00,000
Add: One-fifth of Transition amount [Credit Balance] Transition amount	5,00,00,000	
Less: Amounts to be excluded from transition amount Capital Reserve	(50,00,000)	
	4,50,00,000	
One-fifth of ₹4,50,00,000		90,00,000
Book Profit for levy of MAT		12,90,00,000

Answer 1(b):**Computation of MAT payable by the Frenzy and Falak Tyres Limited for A.Y. 2025-26**

Particulars	Amount (₹)
MAT on book profit under section 115JB = 15% of ₹12,90,00,000	1,93,50,000
Add: Surcharge @ 12% (since book profit exceeds ₹10 crore)	23,22,000
	2,16,72,000
Add: Health and education cess @ 4%	8,66,880
MAT liability for A.Y.2025-26	2,25,38,880

Answer 1(c):**Computation of MAT Credit to be carry Forward**

Particulars	Amount (₹)
MAT liability for A.Y. 2025-26 (rounded off)	2,25,38,880
Less: Income-tax computed as per the normal provisions of the Act for A.Y. 2025-26	(1,75,00,000)
Since the income-tax liability computed as per the regular provisions of the Income-tax Act, 1961 is less than the MAT payable, the book profit of ₹12,90,00,000 would be deemed to be the total income and tax is leviable @ 15%: The total tax liability (rounded off) is ₹ 2,25,38,880.	
Carry forward of MAT Credit	50,38,880
This MAT Credit is allowed to be carry forward for 15 Assessment years succeeding the assessment year in which credit became allowable.	

Question 2

Mr. Balwant, a resident individual, engaged in retail trade, reports a turnover of ₹ 2,97,50,000 for financial year 2024-25. The amount received in cash during the PY 2024-25 is ₹ 13,50,000 and balance through prescribed electronic modes on or before 31st October 2025.

His income from the said business as per books of account is ₹ 16,00,000 computed as per the provisions of chapter IV-D "Profits and Gains from Business or Profession" of the Income Tax Act, 1961. Retail trade is the only source of income for Mr. Balwant. Assessment year 2024-25 was the first year for which he declared his business income in accordance with the provisions of presumptive taxation u/s 44AD.

In this background, you are requested to answer the following :

- (i) Is Mr. Balwant eligible to opt for presumptive taxation for A.Y. 2025-26 ? For whom the presumptive taxation scheme of section 44AD is designed ?
- (ii) Are there any businesses which are not covered under the presumptive taxation scheme of section 44AD ?
- (iii) Is presumptive income computed as per the prescribed rate is the final income ? Any further expenses will be allowed or not ?
- (iv) Determine the income of Balwant from retail trade as per the applicable presumptive provisions.
- (v) What are the consequences if Balwant opts out from the presumptive taxation scheme of section 44AD ?

(3 marks each)

Answer 2(i)

Yes, Mr. Balwant is eligible to opt for presumptive taxation scheme u/s 44AD in respect of his retail trade business since his cash receipt during FY 2024-25 does not exceed 5% of the total turnover, and his total turnover is below ₹ 3 crore.

The presumptive taxation u/s 44AD is provided to give relief to small taxpayers engaged in any business (except the business of plying, hiring or leasing of goods carriages referred to in section 44AE) whose total turnover or gross receipts in the previous year does not exceed an amount of Rs. 2 crore. However, where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed five per cent of the total turnover or gross receipts of such previous year, this sub-clause shall have effect as if for the words "two crore rupees", the words "three crore rupees" had been substituted.

The presumptive taxation scheme of section 44AD can be adopted by following persons:

- 1) Resident Individual
- 2) Resident Hindu Undivided Family
- 3) Resident Partnership Firm (not Limited Liability Partnership Firm)

In other words, the scheme cannot be adopted by a non-resident and by any person other than an individual, a HUF or a partnership firm (not Limited Liability Partnership Firm) who has not claimed deduction under any of the sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C. Deductions in respect of certain incomes" in the relevant assessment year.

Answer 2(ii)

The Presumptive taxation scheme of section 44AD is designed to give relief to small taxpayers engaged in any business, except the following businesses:

1. Business of plying, hiring or leasing of goods carriages referred to in section 44AE.
2. A person who is carrying on any agency business (Example-Insurance Agent)
3. A person who is earning income in the nature of commission or brokerage.
4. A person who is engaged in any profession as prescribed under section 44AA(1) cannot adopt the presumptive taxation scheme of section 44AD.
5. Any business whose total turnover or gross receipts in the previous year exceed an amount of two crore rupees provided that where the amount or aggregate of the amounts received during the previous year, in cash, does not exceed five per cent of the total turnover or gross receipts of such previous year, this sub-clause shall have effect as if for the words "two crore rupees", the words "three crore rupees" had been substituted.

Answer 2(iii)

Under the normal provisions of the Income-tax Act, taxable business income will be computed after allowing deduction in respect of expenses which are deductible as per the Income-tax Act and after disallowing expenses which are not deductible as per the Income-tax Act.

In case of a person who is opting for the presumptive taxation scheme of section 44AD, the provisions of allowance/disallowances as provided for under the Income-tax Act will not apply and income computed at the presumptive rate of 6% or 8% (as the case may be) will be the taxable income of the business covered under the presumptive taxation scheme.

Any deduction allowable under the provisions of sections 30 to 38 shall, for the purposes of section, be deemed to have been already given full effect to and no further deduction under those sections shall be allowed.

While computing income as per the provisions of section 44AD, separate deduction on account of depreciation is not available. However, the written down value of any asset used in such business shall be calculated as if depreciation as per section 32 is claimed and has been actually allowed.

Answer 2(iv)

In case of a person opting the provisions of section 44AD, income is computed on presumptive basis at the rate of 8% of the turnover or gross receipts of the eligible business for the year.

Further, in order to promote digital transactions and to encourage small unorganized business to accept digital payments, income shall be computed at the rate of 6% instead of 8% of the turnover/gross receipt which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed during the previous year or before the due date of filing of return under section 139(1).

Income of Balwant is as under:

Nature of Receipt	Amount (₹)	Rate	Presumptive Income (₹)
1. Cash Receipts	₹ 13,50,000	8%	1,08,000
2. Electronic mode Receipts	₹2,84,00,000	6%	17,04,000
Total Income as per 44AD			18,12,000

Note: Actually, the due date of filing of Income Tax Return for Mr. Balwant when he is paying tax as per section 44AD shall be 31st July, 2025 for the PY 2024-25 as he is not required to maintain books of accounts and no need of audit under section 44AB of the Income Tax Act. Therefore, receipts in prescribed electronic modes should be considered only till 31st July, 2025. It is assumed that the all receipt through prescribed mode is received latest by 31st July, 2025.

Alternative Answer 2(iv)

In case of a person opting the provisions of section 44AD, income is computed on presumptive basis at the rate of 8% of the turnover or gross receipts of the eligible business for the year.

Further, in order to promote digital transactions and to encourage small unorganized business to accept digital payments, income shall be computed at the rate of 6% instead of 8% of the turnover/gross receipt which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed during the previous year or before the due date of filing of return under section 139(1).

Income of Balwant is as under:

Nature of Receipt	Amount (₹)	Rate	Presumptive Income (₹)
1. Cash Receipts	₹ 13,50,000	8%	1,08,000

Nature of Receipt	Amount (₹)	Rate	Presumptive Income (₹)
2. Electronic mode Receipts	₹2,84,00,000	8%	22,72,000
(Since, not received within due date of filing of return of income i.e. 31 st July, 2025]			
Total Income as per 44AD			23,80,000

Note: Actually, the due date of filing of Income Tax Return for Mr. Balwant when he is paying tax as per section 44AD shall be 31st July, 2025 for the PY 2024-25 as he is not required to maintain books of accounts and no need of audit under section 44AB of the Income Tax Act. Therefore, receipts in prescribed electronic modes should be considered only till 31st July, 2025. It is mentioned that the balance receipt is received through electronic prescribed mode by 31st Oct, 2025 and therefore rate will be applied @8% instead of 6%.

Answer 2(v)

Where an eligible assessee declares profit for any previous year in accordance with the provisions of section 44AD and he declares profit for any of the five assessment years relevant to the previous year succeeding such previous year not in accordance with the provisions of sub-section (1) of section 44AD, he shall not be eligible to claim the benefit of the provisions of section 44AD for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1) of section 44AD.

If Balwant opts for presumptive taxation scheme then he is also required to follow the presumptive taxation scheme for next 5 years. If Balwant failed to do so, then presumptive taxation scheme will not be available for him for next 5 years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of sub-section (1) of section 44AD.

Here, Balwant claims to be taxed on presumptive tax basis under Section 44AD for AY 2024-25. However, for AY 2025-26, if he did not opt for presumptive taxation Scheme. In this case, he will not be eligible to claim benefit of presumptive taxation scheme for next five AYs, i.e., from AY 2026-27 to 2030-31.

As his total income as per books of accounts is ₹ 16 lakh which is less than ₹ 18.12 lakh (presumptive basis), he is required to keep and maintain books of accounts u/s 44AA and also liable for tax audit as per section 44AB and furnishing the said report within the prescribed timelines.

Question 3

- (a) Shanti (P) Ltd. is in the business of manufacturing electronic goods. For the assessment year 2025-26, it paid tax @15% on its book profit computed under section 115JB (MAT Provisions). The Assessing Officer though satisfied that it is liable to pay book profit tax under section 115JB.

Shanti (P) Ltd. has not paid any installment of advance tax during the previous year 2024-25 and therefore, assessing officer wants to charge interest under sections 234B and 234C. The company seeks your opinion on the proposed levy of interest.

(5 marks)

- (b) Ajay a resident individual aged 32 years, sold a plot of land on 17th March 2025. LTCG on

such sale amounted to 5,00,000. Since he had no other income during PY 2024-25, he did not pay any advance tax instalment.

You are required to calculate the amount of advance tax payable by Ajay, if any assuming that he has followed old tax regime (OTR). Base your answer on the relevant provisions relating to the payment of advance tax on income from capital gain and advise Ajay suitably so that the liability on late payment does not arise.

(5 marks)

- (c) Varsha (P) Ltd., Bhopal has 2 centres viz. Unit A at Jabalpur and Unit B at Indore. Unit A is eligible for deduction under section 80-IB of the Income-tax Act. During the financial year 2023-24, the company earned a net profit of ₹ 83,00,000 from Unit A and suffered a loss of ₹ 31,00,000 from Unit B. The assessee claimed 100% of the profits from Unit A (amounting to ₹ 83,00,000) as a deduction under section 80-IB. However, the Assessing Officer applied section 80AB and allowed deduction only to the extent of income under the head 'Profits and gains of business and profession'. i.e., ₹ 52 lakhs.

Explain whether the action of the Assessing Officer is tenable in law.

(5 marks)

Answer 3(a)

The issue under consideration is whether interest under sections 234B and 234C can be levied where a company is assessed on the basis of its book profit under section 115JB.

The Supreme Court, in *Joint CIT v. Rolta India Ltd.* (2011) 330 ITR 470, observed that there is a specific provision in section 115JB (5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section. Section 115JB is a self-contained code pertaining to MAT, and by virtue of sub-section (5) thereof, the liability for payment of advance tax would be attracted.

According to section 207, tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year.

Under section 115JB(1), where the tax payable on total income is less than 15% of "book profit" of a company, the "book profit" would be deemed to be the total income and tax would be payable at the rate of 15%.

Since in such cases, the book profit is deemed to be the total income, therefore, as per the provisions of section 207, tax shall be payable in advance in respect of such book profit (which is deemed to be the total income) also.

Therefore, if a company defaults in payment of advance tax in respect of tax payable under section 115JB, it would be liable to pay interest under sections 234B and 234C. Therefore, even though Shanti (P) Ltd. is assessed on the basis of its book profit under section 115JB for A.Y.2025-26, it is liable to pay advance tax.

Since, Shanti (P) Ltd. has not paid any advance tax during the financial year 2024-25, the levy of interest under section 234B and 234C by the assessing officer is valid.

Answer 3(b)

As per the provisions of advance tax, an assessee requires to estimate his income in advance and discharge his advance tax liability in specified instalments. However, it is not possible to estimate

the amount of capital gains. Therefore, no advance tax is payable on estimated basis and is to be paid on actual basis in respect of capital gains.

Computation of Advance tax payable by Mr. Ajay:

The total income of ₹ 5 lakhs comprises only of LTCG on sale of plot on 20th March 2025. Therefore, while calculating the tax liability of Mr. Ajay, he would be entitled to the benefit of deficiency in normal income as well as rebate u/s 87A.

Particulars	(₹)
Tax @ 12.5% on LTCG of ₹ 2,50,000 (₹ 5 lakh-₹ 2.5 lakh)	31,250
Less: Rebate	(12,500)
Tax after Rebate	18,750
Add: HEC @ 4%	7,50
Total	19,500

Since, Mr. Ajay has sold the plot of land on 17th March 2025, LTCG on transfer of such land arises only after the due date of fourth instalment (i.e., 15th March 2025).

It is stated in the proviso to section 234C that if the capital gains arise after due dates of payment of all instalments of advance tax, then the advance tax on such income shall be paid on or before 31st March of the Previous Year.

Further, in order to avoid interest liability u/s 234B, it is advisable that Mr. Ajay pays the tax of ₹ 19,500 on such LTCG on or before 31st March 2025.

Answer 3(c)

Quantum of deduction u/s 80-IB for an industrial undertaking

As per section 80AB, where the GTI includes any income of nature specified under the heading C, like section 80-IB, then, notwithstanding anything contained in that section, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of the Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income. Section 80A(2) provides that the aggregate amount of the deduction under Chapter VI-A, shall not exceed the "gross total income" of the assessee.

The section 80-IB of the Income Tax Act states that the "total income" of an assessee is computed by taking into account the allowable deduction in respect of the profits and gains derived from the "eligible business" as the "only source of income".

For the purpose of calculating profit-linked deduction under any section of Chapter VI-A, loss sustained in other division or units cannot be taken into account, as only profits from the eligible business have to be taken into account.

The deduction u/s 80-IB is undertaking-specific and is granted with reference to the impugned undertaking only. It cannot be reduced by loss, if any, from any other undertaking.

Conclusion

The deduction u/s 80-IB for the Jabalpur unit has to be allowed with regard to its income (₹ 83 lakh) only, and not with reference to the overall business income. Thus, the action of the Assessing Officer is not tenable in law.

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

(a) M/s Joshi Ranga & Sons, a partnership firm consisting of two partners, reports a net profit of ₹ 12,25,000 for the financial year 2024-25, before deduction of the following items :

- Salary of ₹ 32,000 each per month payable to two working partners of the firm (as authorized by the deed of partnership)
- Depreciation on plant and machinery under section 32 is ₹ 1,75,000
- Interest on capital @ 15% per annum (as per the deed of partnership). The amount of capital eligible for interest is ₹ 6,00,000 each for both partners.
- Carry forward of business loss of P.Y. 2023-24 – ₹ 85,000.

In this background, you are requested to answer the following :

- (i) Compute the Book-profit of the firm under section 40(b) of the Income Tax Act, 1961 for Assessment Year 2025-26.
- (ii) Compute the amount of allowed salary that can be paid to working partners as per section 40(b) of the Income Tax Act, 1961.

(5 marks)

(b) Ankita Arora aged 63 years and a resident in India, has a total income of ₹ 1,20,00,000 comprising :

- Income from trading in crypto currency ₹ 22,00,000 on 1st January, 2025 taxable under section 115BBH.
- Short-term capital gain on sale of listed equity shares on 15th December, 2024 taxable under section 111A of ₹ 35,00,000 and
- Business income during the financial year 2024-25 was ₹ 63,00,000.

Compute her tax liability for A.Y. 2025-26. Assume that she has opted for the default provisions of new tax regime under section 115BAC.

(5 marks)

(c) Renoll Food and Disposal Ltd. wants to sell one of its Food units (unit first) out of two units on 30th March, 2025, which was set up in June, 2017. Total consideration for sale of Food unit as a going concern by way of Slump Sale is ₹ 47,80,000. The summarized financial position of Food unit as on 30th March, 2025 is as under :

Capital and Liabilities	Amount (₹)	Assets	Amount (₹)
Paid up capital	18,00,000	Fixed assets	19,00,000
General Reserve	12,20,000	Debtors	15,00,000
Revaluation Reserve	10,50,000	Inventories	13,00,000
Current liabilities	6,30,000		
	47,00,000		47,00,000

Following additional informations are provided by company as under :

- (1) Fixed assets include Land purchased at ₹ 12,50,000 in October, 2020 revalued at ₹ 15,00,000.

- (2) For the remaining fixed assets, their written down value as per the Income- tax Act, 1961 is ₹ 3,50,000.
- (3) Cost index number for F.Y. 2024-25 is 363; F.Y. 2016-17 is 264; F.Y. 2017-18 is 272; and F.Y. 2020-21 is 301.

Compute the Capital Gain arising on sale of Food unit of Renoll Food and Disposal Ltd. for the assessment year 2025-26.

(5 marks)

Answer 4(a)

(i) Computation of Book Profit of the Firm under section 40(b) for Assessment Year 2025-26

Particulars	Amount (₹)
Net Profit (before deduction of depreciation, salary and interest)	12,25,000
Less: Depreciation under section 32	(1,75,000)
Less: Allowed interest on partner capital @ 12% (being maximum allowed as per section 40(b). (₹ 6,00,000 x 2 x 12%)	(1,44,000)
Book Profit	9,06,000

Working Note

“Book profit” means the net profit as per the profit and loss account for the relevant previous year computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to the partners of the firm if the same has been already deducted while computing the net profit.

Hence, brought forward loss of ₹ 85,000 of P.Y.2023-24 is not allowed to be set off for computation of “book profit”.

(ii) Computation of Allowed Remuneration to partner for A.Y. 2025-26

Particulars	Amount (₹)	Amount (₹)
A. Actual Remuneration Given to Partners (32,000 x 2 x 12)		7,68,000
B. Maximum permissible under section 40(b)(v) :		
Book Profit upto first 6,00,000 @ 90% (6,00,000 x 90%)	5,40,000	
Remaining Book Profit @ 60% {(9,06,000 - 6,00,000) x 60%}	1,83,600	
Maximum permissible remuneration [B]	7,23,600	
Allowed remuneration u/s 40(b)(v) is lower of A or B		7,23,600

Answer 4(b)**Computation of Tax Liability of Ankita Arora for A.Y. 2025-26**

S. No.	Particular	Amount (₹)	Amount (₹)
	Tax on Total Income of ₹ 1,20,00,000:		
(i)	Tax on Income from crypto currency u/s 115BBH @ 30% (₹ 22,00,000 x 30%)		6,60,000
(ii)	Tax on STCG u/s 111A @ 20% (w.e.f. 23 July, 2024 taxable @ 20%) (₹ 35,00,000 x 20%)		7,00,000
(iii)	Tax on other income ₹ 63,00,000 (as per new tax regime u/s 115BAC)		
	Up to ₹ 3,00,000	Nil	
	₹ 3,00,001 – ₹ 7,00,000 @ 5% of ₹ 4,00,000	20,000	
	₹ 7,00,001 – ₹ 10,00,000 @ 10% of ₹ 3,00,000	30,000	
	₹ 10,00,001 – ₹ 12,00,000 @ 15% of ₹ 2,00,000	30,000	
	₹ 12,00,001 – ₹ 15,00,000 @ 20% of ₹ 3,00,000	60,000	
	₹ 15,00,001 – ₹ 63,00,000 @ 30% of ₹ 48,00,000	14,40,000	15,80,000
			29,40,000
	Less: Rebate u/s 87A (Since total income exceeds ₹ 7,00,000, no rebate allowed.)		Nil
			29,40,000
	Add: Surcharge @ 15% of Tax (since Income exceeds ₹ 1 crore) (₹ 29,40,000 x 15%)		4,41,000
			33,81,000
	Add: Health and Education Cess @ 4% of ₹ 33,81,000		1,35,240
	Total of Tax, Surcharge and Cess		35,16,240

Answer 4(c):**Computation of Net worth of the Food Unit**

Particulars	Amount (₹)
Fixed assets (other than Land) at W.D.V.	3,50,000
Land at cost price (Revaluation Reserve is not to be considered)	12,50,000
Debtors (at Book value)	15,00,000

Particulars	Amount (₹)
Inventories (at Book value)	13,00,000
	44,00,000
Less Current liabilities	(6,30,000)
Net worth of the Food Unit	37,70,000

Computation of Long-Term Capital Gain on Slump Sale of Renoll Food and Disposal Ltd. for A.Y. 2025-26

Full Value of Consideration (FVC)	47,80,000
Less: Expenditure on Transfer	Nil
Therefore, Net Sale Consideration	47,80,000
Less: Cost of Acquisition and Cost of Improvement (Being Net Worth of the Undertaking transferred)	(37,70,000)
Long Term Capital Gains	10,10,000

Note:

- Since the Unit transferred is in existence for more than 36 months, the resultant capital gains is Long Term Capital Gains.
- Benefit of indexation is not available in case of Slump Sale.

OR (Alternate Question to Q. No. 4)

Question 4A

- (i) ABC Ltd., Chennai is a part of a large multi-national group. It is engaged in the manufacturing of kids' high-quality toys. During the financial year 2024-25, it sold goods to its foreign associated enterprise, Micky Inc. of UK as well as to some unrelated parties in India and the U.K.

During the course of the assessment, the Transfer Pricing Officer computed arm's length price and the Assessing Officer (AO) applied it on all the transactions, with associated enterprises as well as with unrelated parties.

ABC Ltd. aggrieved with the adjustment made by AO, seeks your opinion whether the action of the Assessing Officer is valid or not ?

(5 marks)

- (ii) Mohit Ltd. filed its return of income under section 139(I) on 14th September, 2023 for A.Y. 2023-24. The return was found to be defective, and an intimation was issued on 11th May, 2024, directing the assessee to rectify the defects within 15 days. The defects were rectified on 20th May, 2024. The return was processed, and intimation was sent on 16th July, 2024. Subsequently, the Assessing Officer issued a notice under section 143(2) on 23rd June, 2025.

Company Secretary of Mohit Ltd. contended that the notice was barred by limitation since it

was issued beyond the permissible time limit. Examine the validity of the notice issued under section 143(2) by the Assessing Officer.

(5 marks)

- (iii) Greenwood Trust, registered under section 10(23C) (iv) as a charitable educational trust, is undergoing assessment under section 143(3). The Assessing Officer discovers that the trust has diverted a significant portion of its income for purposes other than charitable activities, violating the conditions for exemption under section 10(23C) (iv). Greenwood Trust argues that it has rectified the diversion and should still be eligible for the exemption.

Does the Assessing Officer have the authority to deny the exemption claimed by Greenwood Trust under section 10(23C) (iv) ? Analyse.

(5 marks)

Answer 4A(i)

The issue involved is whether the action of the Assessing Officer is valid in law, in applying the Arm's Length Price (ALP) determined by the Transfer Pricing Officer (TPO) to the transactions with unrelated parties also.

Section 92 of the Income-tax Act, 1961 provides that any income arising from an international transaction or specified domestic transaction shall be computed having regard to the arm's length price.

As per section 92B, international transaction means a transaction, inter alia, between two or more associated enterprises, either or both of whom are non-residents.

Further, section 92BA list out the transaction covered under specified domestic transaction.

The ALP determined by the TPO will be binding on the AO.

The ALP can be determined by the TPO, only in respect of transaction covered under the definition of international transactions and specified domestic transaction.

Reading section 92B / 92BA with section 92, it can be said that, arm's length price needs to be computed for transaction which essentially mean transactions between two or more associated enterprises.

Thus, the ALP, as determined by the TPO, can be applied by the AO, only in respect of transactions with Associated enterprises and not with other unrelated parties. Hence, the action of the Assessing Officer is not tenable in law for applying the ALP in respect of transactions with unrelated parties.

Answer 4A(ii)

Notice of Scrutiny Assessment u/s 143(2)

If an assessee files his return of income u/s 139 or in response to a notice received u/s 142(1), the assessing officer or the prescribed income tax authority, shall serve a notice on the assessee if he considers it necessary to ensure that,

- i. The assessee has not understated the income or
- ii. Has not computed excessive loss or
- iii. Has not short paid the tax

However, no such notice can be issued after the expiry of 3 months from the end of the financial year in which the return is furnished.

The issue under consideration is whether, for the purpose of computing limitation period under section 143(2), the relevant date is the date of filing of the original return of income or the date of removal of defects in response to a notice issued under section 139(9).

The same issue came up before in *DCIT vs Travel Designer India Pvt. Ltd. vs (2025) 482 ITR 283*. In this case, the High Court noted that since the return was defective, the assessee was called upon to remove such defects, which was removed within the time allowed by the Assessing Officer. Therefore, upon such defects being removed, the return would relate back to the date of filing original return. Consequently, the limitation for issuance of notice under section 143(2) would be three months from the end of the financial year in which the original return under section 139(1) was filed.

In the present case, notice under section 143(2) has been issued on 23rd June, 2025, which is much beyond the period of limitation. Therefore, such notice is barred by limitation and cannot be sustained.

Accordingly, the notice issued under section 143(2) is not a valid notice.

Answer 4A(iii)

As per the second proviso to Section 143(3) of the Income Tax Act, if an educational institution is exempt under Section 10(23C) (iv) has committed a "specified violation," the Assessing Officer (AO) must refer the case to the Principal Commissioner or Commissioner for withdrawal of its approval or registration.

One key "specified violation" under Section 10(23C) occurs when the income of the institution is used for purposes other than its stated objectives.

The AO cannot finalize the assessment (i.e., determine the institution's taxable income or loss) without considering the order of the Principal Commissioner or Commissioner regarding the cancellation of approval. If the Principal Commissioner or Commissioner cancels the institution's approval, the AO can assess its income without granting the tax exemption under Section 10(23C).

If the Greenwood Trust, is institution approved under Section 10(23C) (iv) but has been found to misuse its income by diverting a significant portion of its income for purposes other than charitable activities, thereby violating the conditions for exemption u/s 10(23C)(iv). The AO may refer the matter to the Principal Commissioner or Commissioner. If they decide to cancel its approval, the AO can assess its income without allowing the exemption u/s 10 and treat it as a regular taxable entity.

Question 5

Mrs. Radha Chandra, aged 65 years a Resident and ordinary resident in India during the financial year 2024-25. She is Indian classical singer and composer who performs concerts in India and Country P. She visits Country P every year during the music season in December to participate in the Mega music concert held there on the occasion of Christmas. For the rest of the year, she performs concerts in India. She provides the following information relating to financial year 2024-25 :

- (i) Income from concerts held — In India - ₹ 15 lakhs.
- (ii) Income from concerts held — In Country P - GBP 7,000 (Tax deducted in Country P in December, 2024 in respect of income earned by her in that country was 2,000 GBP).
- (iii) She received dividend from an Indian Company – ₹ 45,000 (after deducting the TDS @ 10%).
- (iv) She also earns Agricultural income of JPY 13,09,000 from Country Q on 25th March, 2025. The expenses incurred by Mrs. Radha Chandra relating to such agricultural income is JPY 1,53,000. The rate of Income Tax in Country Q is 18%.

- (v) In India, she has Interest income of ₹ 2 lakhs from IDBI Bank fixed deposits in her name and ₹ 15,000 from IDBI savings bank account.
- (vi) She pays medical insurance premium of ₹ 22,000 to insure her health and ₹ 32,000 to insure the health of her husband, a resident aged 66 years.
- (vii) She deposits ₹ 1.50 lakhs in public provident fund and ₹ 3 lakhs in five-year fixed deposit in SBI Bank on 31-03-2025.

The conversion rates may be taken as follows :

Country	Rate
Country P	1 GBP = ₹ 120
Country Q	1 ₹ = 1.70 JPY

India has no double taxation avoidance agreement with Country P and Country Q. Compute the total income and net tax liability (after taking the relief under section 91) of Mrs. Radha Chandra for A.Y. 2025-26, if she has opted out from the default tax regime u/s 115BAC.

(15 marks)

Answer 5

Computation of Total Income and net tax liability of Mrs. Radha Chandak for the A.Y. 2025-26 paying tax by opting out of section 115BAC of the Income Tax Act

Particulars	Amount (₹)	Amount (₹)
Profits and Gains from Business or Profession:		
Income from concerts held in India	15,00,000	
Income from concerts held in Country P [GBP 7,000 x 120]	8,40,000	
Total Income from Business or Profession		23,40,000
Income from Other Sources		
Dividend Income from Indian Company (Gross up) [45000/90 x 100]	50,000	
Agricultural Income from Country Q (Taxable since Agricultural income received from outside India) [JPY 13,09,000 – 1,53,000 = 11,56,000 x 1/1.70]	6,80,000	
Interest from IDBI bank fixed deposits	2,00,000	
Interest from IDBI savings bank account	15,000	
Total Income from other sources		9,45,000
Gross Total Income		32,85,000
Less: Deduction under section 80C		(1,50,000)
Deposit in PPF	1,50,000	
Five-year fixed deposit (But restricted to ₹ 1,50,000, being the maximum limit)	3,00,000	

Particulars	Amount (₹)	Amount (₹)
Less: Deduction under section 80D		(50,000)
Medical insurance premium to insure of her health	22,000	
Medical insurance premium to insure her of spouse health (But restricted to ₹ 50,000, being the maximum allowable for senior citizens)	32,000	
Less: Deduction under section 80TTB		(50,000)
Interest on Bank FD	2,00,000	
Interest on Saving Bank Account (But restricted to ₹ 50,000, being the maximum limit)	15,000	
Total Income		30,35,000

Computation of Tax Liability for A.Y. 2025-26

Particulars	Amount (₹)	Amount (₹)
Tax on total income as per normal slab		7,20,500
Income-tax upto 3,00,000	Nil	
Next 2,00,000 @ 5%	₹ 10,000	
Next 5,00,000 @ 20%	₹ 1,00,000	
Remaining 20,35,000 @ 30%	₹ 6,10,500	
Add: Health and Education Cess @ 4%		28,820
Tax on Total Income		7,49,320
Average rate of tax in India (i.e., ₹ 7,49,320/ ₹ 30,35,000 × 100)	24.689%	
Double tax Relief u/s 91 pertaining to Country P: Indian Tax Rate @ 24.689% Or Tax rate in country P @ 28.571% (2,000/7,000 x 100) Whichever is lower (Relief u/s 91 = 8,40,000 X 24.689%)		(2,07,388)
Double tax Relief u/s 91 pertaining to Country Q: Indian Tax Rate @ 24.689% Or Tax rate in country Q @ 18% Whichever is lower (Relief u/s 91 = 6,80,000 X 18%)		(1,22,400)

Particulars	Amount (₹)	Amount (₹)
Net Tax Liability after Relief u/s 91 (₹ 7,49,320 – ₹ 2,07,388 – ₹ 1,22,400)		4,19,532
Net tax liability (rounded off)		4,19,530

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

Question 6

- (a) Comment on the following independent situations, whether Jack Ltd. and Jill Inc. constitute associated enterprises under the provisions of Section 92A of the Income Tax Act, 1961 :
- (i) Jill Inc. has advanced a loan of ₹ 30 crores to Jack Ltd. on 12-1-2025. The total book value of assets of Jack Ltd. is ₹ 50 crores. The market value of the assets, however, is ₹ 65 crores. Jack Ltd. repaid 10 crores before 31-3-2025.
 - (ii) Jack Ltd. is engaged in trading of furniture. During the previous year 2024-25 it purchases furniture of ₹ 90 lakhs from Jill Inc. Total purchases of Jack Ltd. during the year 2024-25 is ₹ 95 lakhs.
 - (iii) Jill Inc. has the power to appoint 3 of the directors of Jack Ltd., whose total number of directors in the Board is 6.
 - (iv) Jack Ltd. holds whole of equity share capital of Rita Ltd. Rita Ltd. holds 30% equity shares of Jill Inc. Jack Ltd. also holds 60% of preference share capital of Jill Inc.
 - (v) Jack Ltd. borrowed 50 crores from HSBC Bank for which 100% guarantee was given by Jill Inc. The total borrowings of Jack Ltd. 800 crores.
- (b) On 15th August 2024, Smt. Vandana, maternal aunt of Suresh, transferred ₹ 65 lakhs in his account. In this case, additions were made by the Assessing Officer, under section 68 of Income Tax Act, 1961 on the grounds that assessee had failed to show why, without any occasion, ₹ 65 lakhs had been gifted by the maternal aunt without any consideration. Comment, whether the action of assessing officer for unexplained addition under section 68 is tenable ?
- (c) Discuss the role of technology in enhancing direct tax compliance in India. What are the key benefits of technological Innovations in Tax Compliance ?

(5 marks each)

Answer 6(a)

(i)	<p>As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprise, if at any time during the previous year, the loan advanced by one enterprise to another enterprise constitutes not less than 51% of book value of the total asset of the other enterprise.</p> <p>Jill Inc., a foreign company, has advanced a loan of ₹ 30 crores to Jack Ltd., a domestic company, which amounts to 60% (30 crore x 100/ 50 crore) of the total book value of assets of Jack Ltd. Since the loan advanced by Jill Inc. is not less than 51% of the book value of the total assets of Jack Ltd., Jack Ltd. and Jill Inc. are deemed to be associated enterprises for the purpose of transfer pricing regulations.</p>
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	<p>The deeming provisions would be attracted even if there is a repayment of loan during the same previous year which brings down his percentage below 51%.</p> <p>Therefore, Jack Ltd. and Jill Inc. are Associated Enterprise.</p>
(ii)	<p>As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprises, if at any time during the previous year, 90% or more of the raw material required for the manufacture or processing of goods carried out by one enterprise, 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, Jack Ltd. is not engaged in manufacturing or processing of goods and hence, Jack Ltd. and Jill Inc. do not qualify as Associated Enterprises.</p> <p>Therefore, Jack Ltd. and Jill Inc. are not Associated Enterprise.</p>
(iii)	<p>As per section 92A of the Income-tax Act, 1961, two enterprises would be deemed to be associated enterprises, if at any time during the previous year, more than half of the board of directors of one enterprise are appointed by the other enterprise. In this case, since Jill Inc. has the power to appoint exactly half (and not more than half) of the directors of Jack Ltd., therefore they do not qualify as Associated Enterprises.</p> <p>Therefore, Jack Ltd. and Jill Inc. are not Associated Enterprises.</p>
(iv)	<p>As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprises, if at any time during the previous year, one enterprise holds, directly or indirectly, shares carrying not less than 26% of voting power in other enterprise. In this case, Jack Ltd. indirectly (through Rita Ltd.) holds more than 26% equity shares (i.e. 30%) in Jill Inc. and thus they qualify as associated enterprises.</p> <p>Therefore, Jack Ltd. and Jill Inc. are Associated Enterprises.</p>
(v)	<p>As per section 92A of the Income-tax Act, 1961, two or more enterprises are deemed as associated enterprises, if at any time during the previous year, one enterprise guarantees not less than 10% of the total borrowings of the other enterprise; Since Jill Inc. guarantee for ₹ 50 crores out of the total borrowing of Jack Ltd. ₹ 800 crores, which is only 6.25% of the total borrowing. Hence, Jack Ltd. and Jill Inc. do not qualify as associated enterprises.</p> <p>Therefore, Jack Ltd. and Jill Inc. are not Associated Enterprises.</p>

Answer 6(b)

The similar matter was decided in case of "Pendurthi Chandershekar vs DCIT (2018) (Hyderabad High Court). In this case, additions were made under section 68 on the grounds that assessee had failed to show why, without any occasion, the amount gifted by the maternal aunt without any consideration.

The appellate authorities also upheld the action of Assessing Officer (AO). On further appeal, the High Court held in favour of assessee that an occasion is not necessary to accept a gift from a relative. Section 56 does not envisage any occasion for a relative to give a gift. It was almost impermissible for any authority and even for a court to import the concept and develop a theory based on such concept.

The court further held that when donor had given a confirmation letter that she had transferred the amount to her nephew as a gift out of natural love and affection, the AO should not have further doubted her. The donor in instant case was assessee's own maternal aunt and was covered within the definition of 'relative' defined under explanation to section 56(2)(v).

Therefore, unexplained addition under section 68 with respect to gift of ₹ 65 lakh received by assessee from his maternal aunt is not justified, the action of AO is not tenable in Law.

Answer 6(c)

Role of Technological Enhancing Tax Compliance: The transition to electronic filing (e-filing) and digital services represents a significant leap forward in tax administration. E-filing refers to the submission of tax returns and related documents through online platforms, rather than traditional paper-based methods. This shift has brought about several advantages that enhance the overall tax administration experience.

Benefits of Technological Innovations in Tax Compliance: The adoption of technological innovations in tax compliance has yielded several benefits for both taxpayers and the tax administration in India:

- 1. Increased Efficiency:** Automation and digitization have streamlined tax processes, reducing the time and effort required for compliance.
- 2. Enhanced Transparency:** Technology has improved the transparency of transactions, making it easier to detect and prevent tax evasion.
- 3. Better Compliance:** With simplified processes and user-friendly platforms, taxpayers are more likely to comply with tax regulations.
- 4. Reduced Litigation:** Technology-driven dispute resolution mechanisms (Faceless Assessments) have expedited the settlement of tax disputes.
- 5. Data-Driven Decision Making:** Advanced analytics and AI have enabled data-driven decision-making, improving the effectiveness of tax administration.

OR (Alternate Question to Q. No. 6)

Question 6A

- (i) Explain the cases where provision of GAAR is not applicable under Rule 10U of the Income Tax Rules.
- (ii) CAMBAY LLP has an income of ₹ 90,00,000 under the head profits and gains of business and profession. One of its businesses is eligible for deduction @ 100% of profits under section 80-IB. The profit from such business included in the business income is ₹ 70,00,000.

Compute the tax payable by the CAMBAY LLP for the A.Y. 2025-26, assuming that it has no other income during the previous year 2024-25 and AMT rate is 18.50%.

- (iii) Simi Techno Ltd. (STL) is an Indian company, having its head office in Mumbai. For the P.Y. 2024-25, it furnished the following information of certain entities and the transactions undertaken with these companies :

Johns Inc. is a wholly owned foreign subsidiary in USA of STL. It is currently paying royalty of USD 4 million per annum to STL for supply of know-how. For similar supply of know-how to Byte LLC., a wholly owned Government Company in USA, STL receives annual royalty of USD 5 million. (1 USD = ₹ 83).

STL supplies goods to Perfect Work Ltd. (PWL), in Singapore. The paid-up capital of PWL in foreign currency equivalent is ₹ 108 crores. STL holds shares to the tune of ₹ 26 crores in PWL. The voting power in the company is directly proportional to the number of shares held.

You are required to examine the above-mentioned transactions entered into by STL and determine the applicability of transfer pricing provisions for each transaction.

(5 marks each)

Answer 6A(i)

Rule 10U of Income Tax Rules, 1962 highlights the exclusion from GAAR. The following have been kept outside the purview GAAR:

1. An arrangement where the tax benefit in the relevant assessment year arising, in aggregate, to all the parties to the arrangement does not exceed a sum of ₹ 3 Crore.
2. An assessee, who is Foreign Institutional Investors (FII), who has not taken benefit of an agreement referred to in section 90 or section 90A as the case may be; and who has invested in listed securities, or unlisted securities, with the prior permission of the competent authority.
3. A person, being a non-resident, in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly, in a Foreign Institutional Investor.
4. Any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the 1st day of April, 2017 by such person.
5. The provisions of GAAR shall not apply to any arrangement in respect of the tax benefit obtained from the arrangement on or before the 1st day of April, 2017.

Note: It is to be noted that the threshold of ₹ 3 crore is not taxpayer specific and it has to be determined with regard to all the parties to the arrangement. Further, the Rules also provide that the tax benefit shall be with reference to the amount of tax, and in the case of an increase in loss, it will be with reference to the tax that would have been chargeable had the increase in loss referred to therein been the total income.

Answer 6A(ii)

Computation of tax payable by CAMBAY LLP for A.Y.2025-26	
Particulars	Amount (in ₹)
Total income	90,00,000
Less: Deduction under section 80IB	(70,00,000)
Taxable Income	20,00,000
Tax @ 30%	6,00,000
Add: Health and Education cess @ 4%	24,000
Total Tax	6,24,000
Computation of Alternate Minimum Tax 'AMT'	
Particulars	Amount (in ₹)
Total income	90,00,000
AMT on adjusted total income @ 18.5%	16,65,000

Add: Health and Education cess @4%	66,600
Total Tax	17,31,600

Since the regular income tax payable is less than AMT, the adjusted total income would be deemed to be the income of CAMBAY LLP and it would be liable to pay tax @ 18.5% plus cess i.e., Tax payable will be higher of AMT or normal tax i.e., ₹ 17,31,600.

Further, the LLP would be eligible for tax credit in 15 subsequent years to the extent of difference between the AMT and normal Tax i.e., ₹ 11,07,600 (₹ 1731600 - ₹624000), in the year in which the tax payable under regular provisions exceeds the AMT.

Answer 6A(iii)

Any income arising from an international transaction, between two or more “associated enterprises”, shall be computed having regard to arm's length price as per the provisions of Chapter X of the Income tax Act, 1961. Section 92A defines an “associated enterprise” and sub-section (2) of this section provides the situations when the two enterprises shall be deemed to be associated enterprises.

Transaction with Johns Inc.

Johns Inc. is a wholly owned subsidiary of STL and is a non-resident company. Hence, it is an associated enterprise. Royalty falls within the meaning of international transaction, since it is payment for supply of know-how, being an intangible property. Johns Inc. is currently paying a royalty of USD 4 million per annum to STL for supply of know-how. For similar supply of know how to Byte LLC., a wholly owned Government Company in USA, STL receives annual royalty of USD 5 million. Therefore, transfer pricing provisions will be applicable as under:

Under CUP Method, ALP has to be taken as USD 5 million.

Understatement of royalty is 1 million USD, i.e., 1 Million USD x ₹ 83 = ₹ 830 lakhs or 8.3 crore.

Therefore, ₹830 lakhs is to be added to the existing total income of Indian Entity STL.

Transaction with Perfect Work Ltd. (PWL)

In PWL, STL holds 26/108 i.e., 24.074% of the voting power. Since STL holds less than 26% of the voting power, PWL is not an associated enterprise. Hence, the transfer pricing provisions would not be applicable on sales made by STL to PWL.
