

# **GUIDELINE ANSWERS**

## **PROFESSIONAL PROGRAMME**

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**GROUP 2**



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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December Session

upto 31 May of that Calendar year

June Session

upto 30 November of previous Calendar Year

# STRATEGIC MANAGEMENT AND CORPORATE FINANCE

## GROUP 2 PAPER 5

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

##### Case Study :

- (a) Ace Motors Ltd., a leading automobile manufacturer, faced growing competition from global players in the early 2000s. With rising customer expectations for quality and efficiency, the management decided to implement Total Quality Management (TQM) as a strategic approach to improve processes, reduce waste and increase customer satisfaction.

TQM Implementation Steps :

- (1) Top Management Commitment :

CEO initiated TQM as a company-wide movement. Clear communication of quality goals across departments.

- (2) Customer Focus :

Feedback systems were improved.

Regular customer satisfaction surveys were conducted.

- (3) Employee Involvement :

Quality Circles were established across all production lines. Employees received Six Sigma and Kaizen training.

- (4) Continuous Improvement (Kaizen) : Introduction of lean practices.

Waste reduction initiatives saved ₹ 150 crores in the first two years.

- (5) Use of Quality Tools :

Statistical Process Control (SPC), Pareto Analysis and Fishbone Diagrams used regularly.

ISO 9001 and ISO/TS 16949 certifications obtained.

- (6) Supplier Quality Management :

Long-term partnerships with key vendors.

Supplier audits and joint training sessions conducted.

Outcomes After 3 Years :

- Defect rate reduced by 65%
- Production lead time decreased by 20%
- Customer satisfaction score increased from 78% to 91%
- Cost savings of ₹ 320 crores over 3 years

Based on the above case study, answer the following questions :

- (i) In context with the Ace Motors Ltd., what is Total Quality Management (TQM) ? Explain any *four* key principles followed by the company.
- (ii) Mention any *four* major areas of focus for continuous improvement through Total Quality Management (TQM) used by Ace Motors Ltd. ?
- (iii) What tools did Ace Motors use under its TQM program and also mention two benefits and two challenges Ace Motors faced during TQM implementation.

*(5+2+3=10 marks)*

- (b) Kumarakom Organics Pvt. Ltd., established in 2010 in Cochin, Kerala, started as a small organic farming and retail venture. Initially, the company focused on cultivating vegetables and fruits without chemical fertilizers and sold them in local markets. Over time, the firm aspired to expand into packaged organic products, such as juices, spices, and ready-to-cook meals.

Despite having good products, the company faced many challenges. Its growth and sustainability were significantly influenced by environmental factors beyond its direct control. The government introduced subsidies for organic farming, which helped Kumarakom Organics reduce costs. However, frequent changes in food safety regulations and mandatory FSSAI labelling increased compliance costs. Export opportunities opened due to favourable trade policies in the EU for organic produce. As a result, political support boosted domestic sales, but regulatory requirements slowed down scaling.

During 2016-2019, India's growing middle class with higher disposable income increased demand for organic products. Inflation in raw material packaging (like eco-friendly cartons) raised costs. The COVID-19 pandemic (2020) disrupted supply chains, but simultaneously, health-consciousness surged, creating higher demand. In a cyclical growth environment, economic downturns hurt logistics, but rising income and demand trends fuelled expansion.

Consumers became more health-conscious, preferring chemical-free and natural products. Urban lifestyles increased demand for ready-to-cook organic meals. However, price sensitivity in rural areas limited penetration outside cities. The social trends acted as a catalyst for company's urban growth strategy.

Adoption of e-commerce platforms allowed Kumarakom Organics to reach customers nationwide. Mobile payment systems and UPI enabled smooth transactions. Use of blockchain for supply chain traceability enhanced customer trust in authenticity. Hence technology has accelerated Kumarakom's market reach and credibility.

Erratic monsoons and climate change reduced crop yields, affecting supply stability. Sustainable farming practices attracted environmentally conscious buyers. The company invested in solar-powered cold storage to reduce carbon footprint. As a result, environmental risks increased operational challenges, but sustainability initiatives strengthened brand image.

By 2024, Kumarakom Organics grew from a small farm venture into a ₹ 150 crore company, with 40% revenue from exports, 35% from online sales and the rest from retail outlets in metros. Despite facing regulatory, climatic and economic challenges, the business adapted by leveraging technology, changing consumer preferences and global trade opportunities.

Based on the above case study, answer the following questions :

- (i) Define environmental factors in the context of business growth. Give *two* examples from the Kumarakom Organics' case study.
- (ii) How did political and legal factors influence the company's business growth ?

- (iii) Mention two economic opportunities and two economic challenges faced by the company.
- (iv) Explain how technological advancements helped the company in expanding its market.
- (v) State one positive and one negative impact of climate change on Kumarakom Organics' business.

(2×5=10 marks)

### Answer 1(a)(i)

TQM is a management philosophy that views an organization as a collection of processes such as marketing, finance, design, engineering, and production, customer service, etc. thereby, focusing on meeting customer needs and organizational objectives. The simple objective of TQM is "Do the right things, right the first time, every time."

American Society for Quality Control (ASQC) defines Total Quality Management (TQM) as "a management approach to long-term success through customer satisfaction. TQM is based on the participation of all members of an organization to improving processes, products, services, and the culture they work in. TQM benefits all organization members and society.

### Key Principles of TQM followed by Ace Motors Limited

#### 1. Customer-focused

The customer ultimately determines the level of quality. No matter what an organization does to foster quality improvement – training employees, integrating quality into the design process, upgrading computers or software, or buying new measuring tools – the customer determines whether the efforts were worthwhile.

#### 2. Total Employee Involvement

All employees participate in working toward common goals. Total employee commitment can only be obtained after fear has been driven from the workplace, when empowerment has occurred, and management has provided the proper environment. High-performance work systems integrate continuous improvement efforts with normal business operations. Self-managed work teams are one form of empowerment.

#### 3. Strategic and Systematic Approach

A critical part of the management of quality is the strategic and systematic approach to achieving an organization's vision, mission, and goals. This process, called strategic planning or strategic management, includes the formulation of a strategic plan that integrates quality as a core component.

#### 4. Continual Improvement

A major thrust of TQM is continual process improvement. Continual improvement drives an organization to be both analytical and creative in finding ways to become more competitive and more effective at meeting stakeholder expectations.

### Answer 1(a)(ii)

Continuous improvement through TQM must deal not only with improving results, but more importantly with improving capabilities to produce better results in the future. The four major areas of focus for capability improvement used by Ace Motors Ltd. are:

- **Demand Generation** -by improving the feedback systems and conducting the customer satisfaction surveys.

- **Supply generation-** by establishing long term partnerships with key vendors and conducting of supplier audits and joint training sessions.
- **Operations-** by initiating TQM as company-wide movements and communicating the quality goals across departments clearly
- **People capability-** by providing Six Sigma and Kaizen training to its employees.

### **Answer 1(a)(iii)**

#### **Tools used by Ace Motors Limited under its TQM program**

- Statistical Process Control (SPC) – to monitor and control quality.
- Pareto Analysis – to identify major problem areas.
- Cause and Effect (Fishbone) Diagrams – to analyse root causes.
- ISO 9001 & TS 16949 certifications – to align with international standards.

#### **Benefits of TQM implementation**

- Reduction in defect rates by 65%
- Increased customer satisfaction from 78% to 91%

#### **Challenges faced by Company during TQM implementation**

- Resistance to change among employees initially.
- High initial cost of training and systems integration.

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

Environmental factors are the external elements comprising of political, economic, social, technological, legal, and ecological factors that influence a company's operations, opportunities, and risks. Two examples of environmental factors in context of business growth from the given case study are as under:

1. Government subsidies for organic farming (Political).
2. Increasing health-consciousness and use of Chemical free and natural products among urban consumers (Social).

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

Impact of political and legal factors on the company's business growth:

- Positive: Government subsidies for organic farming reduced farming costs; Favourable trade policies which opened export opportunities in EU.
- Negative: Frequent changes in food safety regulations and mandatory FSSAI labelling increased compliance costs.

Thus, political support aided expansion, but regulatory/legal requirements slowed down scaling.

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

Two economic opportunities and two economic challenges faced by Kumarakom Organics Pvt. Ltd.

#### **Opportunities:**

1. Rising disposable income in India boosted demand for organic products.
2. COVID-19 increased health-conscious consumption, creating higher demand.

**Challenges:**

1. Inflation in eco-friendly packaging materials increased costs.
2. Pandemic supply chain disrupted distribution.

**Answer 1(b)(iv)**

Technological advancements helped Kumarakom Organics in expanding its market in the following ways:

- Adoption of e-commerce platforms helped the company to reach customers nationwide.
- Mobile payment systems and UPI enabled smooth transactions.
- Use of Blockchain for supply chain traceability enhanced trust in authenticity of products.

Overall, technology accelerated both market reach and credibility.

**Answer 1(b)(v)**

Impact of climate change on the company is as under:

- **Positive:** Increased consumer preference for sustainable brands strengthened company's market image.
- **Negative:** Erratic monsoons and climate change reduced crop yields, affecting supply stability.

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

- (a) BPT Ltd. is a listed company liable for CSR (Corporate Social Responsibility Policy) under Section 135 of the Companies Act, 2013. The management has asked the Company Secretary about the certain activities which excludes from the ambit of statutory obligation of CSR.

As a Company Secretary, advise the management about such activities.

(5 marks)

- (b) In the context of Ansoff's Product Market Growth Matrix, identify reason for the type of growth strategies followed in the following cases :

- (i) A leading producer of toothpaste, advises its customers to brush their teeth twice a day to keep their breath fresh.
- (ii) A business giant in the hotel industry decides to enter into the dairy business.
- (iii) One of India's premier utility vehicle manufacturing company ventures to foray into foreign markets.
- (iv) A renowned auto manufacturing company launches ungeared scooters in the market.

(5 marks)

- (c) "A well-conducted execution of Business Process Reengineering (BPR) can prove to be a game-changer for an organization. BPR can revive a failing entity and lead it to the path of profit maximization. However, executing BPR may not be easy as it involves enforcing a change in the entire organization". What are the steps to be followed in this regard ?

(5 marks)

(d) What is Strategic Leadership ? What are the benefits of Strategic Planning ?

(2+3=5 marks)

### Answer 2(a)

As per rule 2(d) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely: -

- i. activities undertaken in pursuance of normal course of business of the company. However, 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 Act;
  - (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.

### Answer 2(b)

Ansoff's product market growth matrix (proposed by Igor Ansoff) is a useful tool that helps businesses decide their product and market growth strategy. This matrix further helps to analyze different strategic directions. It is built around a two by two matrix. According to Ansoff, there are four strategies that organizations might follow:

- (i) Market Penetration:** Market penetration strategy is the preferred route to growth for many businesses because its focus is on selling more of the existing products to:
- Current customers;
  - Customers similar to current customer base but who are buying competitors' products;
  - Customers similar to current customer base who have need of product but aren't buying it yet.

A leading producer of toothpaste, advises its customers to brush their teeth twice a day to keep their breath fresh. It refers to a growth strategy where business focuses on selling existing products into existing markets.

**(ii) Diversification:** This option is the most controversial since diversification involves taking new products to new customers. Diversification into unrelated markets which require new resources and capabilities.

A business giant in the hotel industry decides to enter into the dairy business. It refers to a growth strategy where a business markets new products in new markets.

**(iii) Market Development:** One of the options suggested by Ansoff is to take the current products and find new markets for them. Entering new geographic markets by moving from local to regional to national and finally international. This may require the business to acquire new capabilities including exporting, understanding different cultures and language skills.

One of India's premier utility vehicle manufacturing company ventures to foray into foreign markets. It refers to a growth strategy where the business seeks to sell its existing products into new markets.

**(iv) Product Development:** In product development, businesses continue to focus on the needs of existing customer base and also the widen customer market they represent but they seek to understand their underlying needs so they can see opportunities for new products

A renowned auto manufacturing company launches ungeared scooters in the market. It refers to a growth strategy where a business aims to introduce new products into existing markets.

## Answer 2(c)

A well-conducted execution of Business Process Reengineering can prove to be a game-changer for an organization. BPR can revive a failing entity and lead it to the path of profit maximization. However, executing BPR may not be easy as it involves enforcing a change in the entire organization. BPR comprises the following steps:

### **Define: Objectives and Framework**

There must be a clear definition of the objectives of choosing BPR. Such objectives must be clearly laid out in qualitative and quantitative terms. After defining such objectives, the requirement for change must be communicated to the employees to apprise them about the upcoming processes. This becomes important as the willingness of the employees to adopt the change is a key for the success of BPR.

### **Identify: Customer Needs**

The requirements and feedback of the customers must be given due importance while designing the BPR. It must be ensured that the new processes are able to deliver the added value to the customer.

### **Study: The Existing Process**

In order to re-engineer, the company must have to analyze its existing business process. A SWOT should be carried out to have a clear view of the strengths and weaknesses of the existing processes.

### **Formulate: A Redesigned Business Plan**

After an analysis of the prevailing business process, the modifications to be made are chalked down. These modifications form a base for the re-designing of process. Then, a plan is laid down by selecting the best alternative.

### **Implement: The Redesign**

The last step is to implement the redesigned plan. Management should make sure that the new process is operational and adopted by the team. Such a support from the team is indeed critical to the success of BPR.

### Answer 2(d)

Strategic leadership refers to a manager's potential to articulate the strategic vision for the organization, and to motivate, guide and influence his subordinates to attain the objectives of that vision. Strategic leadership can also be defined as utilizing strategy in the management of employees. It is the ability to influence organizational members and to accomplish organizational change. Strategic leaders generate organizational structure, assign resources and communicate strategic vision. Strategic leaders have to work in an uncertain environment on various strategic issues.

The main purpose of strategic leadership is strategic productivity. Another aim of strategic leadership is to generate an environment in which employees match the organization's needs in context of their individual job. Strategic leaders instill confidence to the employees in an organization to follow their own ideas, yet, moving in the direction of organisation's overall goals. Strategic leaders make better use of reward and incentive system for encouraging productive and quality employees. Functional strategic leadership is about creativity, resourcefulness, and preparing to assist an individual in realizing his objectives and goals.

### Benefits of Strategic Planning

Strategic planning can help your organization in a number of critical ways:

- **Improved results and confidence:** A proper plan may positively influence organizational performance and can contribute to a greater sense of purpose, progress and accountability among its team.
- **Focus:** Good strategic planning forces future thinking and can refocus and re-energies a disorientated organization.
- **Problem solving:** Strategic planning focuses on an organization's most critical problems, choices and opportunities.
- **Teamwork:** Strategic planning provides an excellent opportunity to build a sense of teamwork, to promote learning, and to build commitment across the organization.
- **Communication:** All stakeholders have an interest in knowing the direction in which organisation is heading and also how their contribution will fit in overall plan.
- **Greater control:** Strategic planning can provide an organisation greater control the environment in which it operates.

### OR (Alternative question to Q. No. 2)

#### Question 2A

- (i) "Transformational leadership style may be appropriate in turbulent environments, transactional leadership style may be appropriate in settled environments, while charismatic leaders work their charm to persuade others".

Comment on each of the above strategic leadership.

(5 marks)

- (ii) 'A mission statement is an enduring statement of purpose that distinguishes one business from other similar firms'. What is a mission statement and what are the questions to be considered while preparing a mission statement ?

(2+3=5 marks)

- (iii) In terms of market position, firms may be classified as Market Leader, Market Challenger, Market Follower and Market Nicher. Briefly explain these terms.

(5 marks)

(iv) Compare PERT and CPM-based on its :

- Meaning
- Orientation
- Model
- Focus
- Suitability.

(5 marks)

### Answer 2A(i)

There are following three well-defined types of strategic leadership:

#### (a) Transactional Leadership

The transactional leaders make certain that everyone is aware of the expectations for the procedures and results. They strike a balance between strategic management and leadership by gauging employee performance and inspiring them to do better. For good performance, they employ incentives like increased pay, promotions, and bonuses. But they may also discipline poor performance by cutting pay or eliminating jobs. A leadership technique like this might provide results, but not always the best ones. Nonetheless, this kind of strategic leadership is incorporated to some level in the majority of leadership philosophies. A leader's reliance on this approach affects whether or not they meet the criteria for transactional leadership.

#### (b) Transformational Leadership

Transformational leaders integrate leadership and strategy, and they use their vision to direct the employees' activities and behaviours. They affect both the organisation and the people within it to change. Such a leadership tactic entails persuading people to change. The organization's advantage is the main goal of this innovative strategy. The transformative leader builds the team's confidence while helping them recognise roles and set goals. Strategic leadership of this kind encourages action and is adaptable.

According to Northouse (2001) "transformational leadership is a process that changes and transforms people. Transformational leaders can motivate people to change to improve their circumstances".

#### (c) Charismatic Leadership

Charismatic leaders work their charm to persuade others. Charismatic leaders have the drive and passion to get their work done. While charismatic leaders share quite a few similarities with transformational leaders, the focus of their work is a change in the status quo and not necessarily a change in the organization.

### Answer 2A (ii)

A mission statement is an enduring statement of purpose that distinguishes one business from other similar firms. A mission statement identifies the scope of a firm's operations in product and market terms.

According to McGinnis, a mission statement should -

- define what the organisation is and what the organisation aspires to be;
- be limited enough to exclude some ventures and broad enough to allow for creative growth;
- distinguish a given organisation from all others;

- serve as a framework for evaluating both current and prospective activities; and
- be stated in terms sufficiently clear to be widely understood throughout the organisation.

An ideal mission statement of business should define its customers, products or services, markets, technology, philosophy and self-concept.

**Questions to be considered while preparing for a mission statement:**

1. What is the basic purpose of the organisation?
2. What is unique about the organisation?
3. What is likely to be different about the business five years down the line?
4. Who are, and who should be, the core customers?
5. What are, and what should be, the principal economic concerns?
6. What are the basic beliefs, values and philosophical priorities of the firm?

**Answer 2A(iii)**

**Market Leader:** The market leader is the one who controls significant market share. The goal of a market leader is to reinforce their prominent position through the use of branding to develop and maintain their corporate image and to restrict the competitor's brand. Market leaders may adopt unconventional or unexpected approaches to building growth and their tactical responses are likely to include: product proliferation; diversification; multi-branding; erecting barriers to entry; vertical and horizontal integration and corporate acquisitions.

**Market Challenger:** The market challenger holds the next highest market share in the industry, following closely the most dominant player. Their market posture is generally offensive because they have less to lose and more to gain by taking risks. They will compete 'neck to neck' with the market leader in an effort to grab their market share. Their overall strategy is to gain market share through product, packaging and service innovations and new market.

**Market Follower:** Followers are generally content by taking a backseat and follow the policy of wait and watch. They rarely invest in their own funds in R&D and sit and relax to watch market leaders to bring out novel and innovative products and afterwards adopt a "me-too" approach. Their strategy is to maintain their market position by preserving existing customer base. Their strategy is to maintain steady profits by controlling costs.

**Market Nicher:** The market nicher occupies a small niche in the market in order to avoid 'neck to neck' competition. Their objective is to build strong ties with the existing customer base and develop strong loyalty with them. Their strategy is to develop and build the smaller segment and protect it. Tactically, nichers are likely to improve the product or service offering, leverage cross-selling opportunities, offer value for money and build relationships through superior after sales service, service quality and other related value adding activities.

**Answer 2A(iv)**

Basis for Comparison	PERT	CPM
<b>Meaning</b>	PERT is a project management technique, used to manage uncertain activities of a project	CPM is a statistical technique of project management that manages well defined activities of a project

<b>Orientation</b>	Event-oriented	Activity-oriented
<b>Model</b>	Probabilistic Model	Deterministic Model
<b>Focus</b>	Time	Time-cost trade-off
<b>Suitability</b>	Research and Development Project	Non-research projects like civil construction, ship building etc.

### PART-II

#### Question 3

- (a) Norton Ltd. manufactures steel rods and is now considering to purchase a new aluminum smelting plant. This initial cost of the plant is ₹ 20,00,000. It has a useful life of 5 years with a residual value of ₹ 1,00,000. Production and sales from the new plant are expected to be 1,00,000 units per year. Other estimates are as follows :

Selling price      ₹ 150 per unit

Direct cost        ₹ 100 per unit

Fixed cost (including depreciation) is ₹ 8,00,000 per annum. Marketing and promotion cost not included in the above will be ₹ 1,00,000 and ₹ 1,60,000 for years 1 and 2, respectively. Additionally, investment in debtors and stocks will increase in year 1 by ₹ 1,50,000 and ₹ 2,00,000, respectively. Creditors will also increase by ₹ 1,00,000 in year 1. Thus, debtors, stocks and creditors will be recouped at the end of the fifth year.

The cost of capital is 18%. Corporate tax is 30% and is paid in the year in which profits are made. Depreciation is tax deductible. The company follows straight line method of depreciation. Assume working capital is invested at the start of the year.

Required :

- (i) Estimate the net cash inflows after tax over the useful life of the project.
- (ii) Calculate the Net Present Value and Profitability Index of the project.
- (iii) Advise Norton Ltd. whether the plant should be purchased. Justify with reasoning.

The PV factors at 18% are :

Year	1	2	3	4	5
PV Factor	0.847	0.718	0.609	0.516	0.437

(5+2+1=8 marks)

- (b) Compute the Drawing Power for Cash Credit Limit granted to Mukund by Laxmi Bank for the month of March 2025 from the following information :

Particulars	Amount (₹)
Value of stocks	50,000

Value of debtors (including debtors of ₹ 5,000 for an invoice dated 18.11.24)	45,000
Value of creditors for goods	15,000
Sanctioned limit	45,000

Margin on stock is 20% and on debtors is 50%

**Note :** Debtors older than 3 months are ineligible for calculation of drawing power.

(3 marks)

(d) The following information is available for Vision Ltd. :

Particulars	
Cost of Production	₹ 15,48,000
Cost of goods sold	₹ 14,61,000
Average stock of work-in-progress	₹ 94,600
Average stock of finished goods	₹ 2,43,500
Administration and Selling Expenses	₹ 4,14,000
Receivables collection period	36 days
Raw material storage period	65 days
Creditors payment period	63 days

You are required to calculate the working capital requirement by operating cycle method. Assume 1 year = 360 days.

(4 marks)

### Answer 3 (a)

Calculation of net cash inflows after tax and Net Present Value and Profitability Index of the project

Amount in ₹

Years	1	2	3	4	5
Units	1,00,000	1,00,000	1,00,000	1,00,000	1,00,000
Sales (₹ 150 per unit) (I)	1,50,00,000	1,50,00,000	1,50,00,000	1,50,00,000	1,50,00,000
<b>Cost</b>					
Direct Cost (₹ 100 per unit)	1,00,00,000	1,00,00,000	1,00,00,000	1,00,00,000	1,00,00,000
Marketing Cost	1,00,000	1,60,000	-	-	-
Depreciation	3,80,000	3,80,000	3,80,000	3,80,000	3,80,000

Fixed Cost	4,20,000	4,20,000	4,20,000	4,20,000	4,20,000
Total Cost (II)	1,09,00,000	1,09,60,000	1,08,00,000	1,08,00,000	1,08,00,000
Profit (I-II)	41,00,000	40,40,000	42,00,000	42,00,000	42,00,000
Tax @ 30%	12,30,000	12,12,000	12,60,000	12,60,000	12,60,000
Profit After tax	28,70,000	28,28,000	29,40,000	29,40,000	29,40,000
Add back depreciation	3,80,000	3,80,000	3,80,000	3,80,000	3,80,000
Cash inflow after tax	32,50,000	32,08,000	33,20,000	33,20,000	33,20,000
Add: WC released					2,50,000
Add: Residual value of machine					1,00,000
<b>Net cash inflow after tax</b>	<b>32,50,000</b>	<b>32,08,000</b>	<b>33,20,000</b>	<b>33,20,000</b>	<b>36,70,000</b>
Present value factor	0.847	0.718	0.609	0.516	0.437
Present value cash inflow ₹	27,52,750	23,03,344	20,21,880	17,13,120	16,03,790

Net Present Value = Present value cash inflow - initial cash outflow

$$= ₹ 27,52,750 + ₹ 23,03,344 + ₹ 20,21,880 + ₹ 17,13,120 + ₹ 16,03,790 - ₹ 22,50,000$$

$$= ₹ 81,44,884$$

**Initial investment** = ₹ 22,50,000 (assumed working capital invested at start of the year)

**Profitability Index (PI)** = 
$$\frac{\text{Sum of discounted cash inflows}}{\text{Initial cash outlay}}$$

$$= ₹ 1,03,94,884 / ₹ 22,50,000 = 4.62$$

**Advise:** Since the plant has a positive NPV and Profitability Index is >1, therefore, it should be purchased.

**Answer 3(b)**

#### Computation of Drawing power of Mukund

For the month of March 2025

Amount in ₹

A. Stocks	
Value of stocks at realizable value	50,000
Less: Value of creditors for goods	15,000
Value of paid stocks	35,000

Less: Margin @20%	7,000
<b>Drawing Power (A)</b>	<b>28,000</b>
<b>B. Debtors</b>	
Value of Debtors	45,000
Less: Ineligible Debtors (Debtors older than 3 months)	5,000
Eligible Debtors	40,000
Less: Margin @50%	20,000
<b>Drawing Power (B)</b>	<b>20,000</b>
<b>Total Drawing Power (A + B)</b>	<b>48,000</b>

The sanctioned limit given in the question is ₹45000 whereas drawing power as per the above working is ₹ 48000. So drawing power would be restricted to sanctioned limit i.e ₹45000.

### Answer 3(c)

Operating Cycle = R + W + F + D - C

Where,

R = Raw material storage period = 65 days

W = Work-in-progress Inventory holding period

F = Finished goods storage period

D = Receivables (Debtors) collection period = 36 days

C = Credit period allowed by suppliers (Creditors) = 63 days

Work-in-progress Inventory holding period (W)

= Average WIP inventory/ Average cost of production per day

= ₹94,600/ (₹ 15,48,000/360 days)

**= 22 days**

Finished goods storage period (F)

= Average stock of finished goods/ Average Cost of Goods Sold per day

= ₹ 2,43,500 / (₹ 14,61,000/ 360 days)

**= 60 days**

Net Operating Cycle = 65+22+60+36-63 days = **120 days**

No. of operating cycles in year

= No. of days in year/ Operating cycle period

= 360 days/ 120 days

**= 3 times**

Amount of working capital required

$$\begin{aligned}
 &= \text{Annual operating cost/ Number of Operating Cycles} \\
 &= (\text{₹ } 14,61,000 + \text{₹ } 4,14,000) / 3 \\
 &= \text{₹ } 6,25,000
 \end{aligned}$$

#### Question 4

(a) A firm has credit sales of ₹ 360 lakh and its average collection period is 30 days. The financial controller estimates that bad debt losses are around 2% of credit sales. The firm spends ₹1,40,000 annually on debtor's administration. These are the avoidable costs. A Factoring firm has offered to buy the firm's receivables. The factor will charge 1% commission and will pay an advance against receivables on an interest @ 15% p.a. after withholding 10% as reserve. Advise the firm whether it should avail factoring services. Assume 360 days in a year.

(5 marks)

(b) What are the conditions to issue Redeemable Preference Shares ? Which are the companies that are permitted to issue Redeemable Preference Shares ?

(3+2=5 marks)

(c) ABC Ltd. wants to make an Initial Public Offer (IPO) and to list its shares on NSE in April 2025.

The following information is available :

(1) Net Tangible Assets :

- 2022 : ₹4 crore
- 2023 : ₹3.5 crore
- 2024 : ₹2.8 crore

(2) Average Operating Profits (last 3 years) :

- 2022 : ₹ 5 crore
- 2023 : ₹ 6 crore
- 2024 : ₹ 4 crore

(3) Net Worth :

- 2022 : ₹ 1.5 crore
- 2023 : ₹ 1.2 crore
- 2024 : ₹ 1.3 crore

(4) The company changed its name in 2024. In FY 2024, 55% of total revenue came from the new line of business.

(5) Proposed IPO size : ₹ 20 crore.

(6) Pre-issue Net Worth = ₹ 1.3 crore.

Based on the above details answer the following questions :

(i) Analyse whether ABC Ltd. satisfies the conditions under Regulation 6(1) (Track Record Route) of SEBI (ICDR) Regulations, 2018 to bring IPO in April 2025 ?

- (ii) Under what circumstances, IPO can be brought under Regulation 6(2) of SEBI (ICDR) Regulations, 2018 (Book Building Route) by ABC Ltd. ?

(4+1=5 marks)

#### Answer 4(a)

##### Working Notes:

Average level of receivables = ₹ 360 lakhs x 30/360 = ₹ 30 lakhs

Factoring commission = 1% of ₹ 30,00,000 = ₹30,000

Reserve = 10% of ₹30,00,000 = ₹3,00,000

**Total (i) = ₹3,30,000**

Thus, the amount available for advance is:

Average level of receivables = ₹ 30,00,000

Less: Total (i) from above = ₹ 3,30,000

(ii) Amount available for advance = ₹ 26,70,000

Less: Interest @ 15% p.a. for 30 days = ₹ 33,375

Net amount of advance available = ₹26,36,625

#### Evaluation of Factoring Proposal

Particulars	Amount in ₹	Amount in ₹
<b>(A) Savings (Benefit) to the firm</b>		
Cost of credit administration		1,40,000
Cost of bad debt losses	2% of 360 Lakhs	7,20,000
Total annual savings		<b>8,60,000</b>
<b>(B) Cost to the firm</b>		
Factoring Commission [Annual Credit Sales x % of Commission (or calculated annually)]	30,000 x 360/30	3,60,000
Interest charges	33,375 x 360/30	4,00,500
<b>Total annual cost</b>		<b>7,60,500</b>
<b>Net annual Benefit to the firm (A-B)</b>		<b>99,500</b>

Since the savings to the firm exceed the cost to the firm on account of factoring, therefore, the proposal is acceptable.

#### Answer 4(b)

Condition to issue redeemable preference shares in India,

- the Articles of Association authorizes the issue.
- a special resolution passed by shareholders.

- Redeemable preference share has a maturity date on which date the company will repay the capital amount to the preference shareholders.
- The paying back of capital is called redemption dividend.
- Preferences share shall be redeemed within a period not exceeding 20 years.

However, infrastructure a company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding 20 years but not exceeding 30 years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

NBFC has to comply with the RBI guidelines / directions in addition to the Companies Act, 2013.

Further, the following companies are permitted to issue redeemable preference shares:

- a) Private Company
- b) Public Company
- c) Banks

#### Answer 4(c)

##### (i) Eligibility under Regulation 6(1) of SEBI (ICDR) Regulations, 2018 – Track Record Route

###### a) Net Tangible Assets:

- Condition - at least three crore rupees, calculated on a restated and consolidated basis, in each of the preceding three full years (of twelve months each).
- Given – 2022: ₹4 Crore, 2023: ₹3.5 crore, 2024: ₹2.8 crore

Condition not satisfied.

###### b) Average Operating Profits:

- Condition – at least ₹ 15 crore, calculated on a restated and consolidated basis, during the preceding three years (of 12 months each), with operating profit in each of these preceding 3 years.
- Given – 2022: ₹5 Crore, 2023: ₹6 crore, 2024: ₹4crore

Average =  $(₹5 \text{ cr} + ₹6 \text{ cr} + ₹4 \text{ cr}) \div 3 = ₹5 \text{ crore}$ .

Condition not satisfied.

###### c) Net Worth

- Condition – at least ₹ 1 crore in each of the preceding three full years (of 12 months each), calculated on a restated and consolidated basis.
- Given – 2022: ₹1.5 Crore, 2023: ₹1.2 crore, 2024: ₹1.3 crore

Condition satisfied.

- d) Condition for Name Change by the Company-** If the company has changed its name within the last one year, at least 50% of the revenue, calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by its new name.

In Financial Year 2024, the company earns 55% of total revenue from the new line of business. Hence, the Company satisfies the condition.

Since the company fails 2 out of 4 conditions, it is not eligible under Track record route under Regulation 6(1) of SEBI (ICDR) Regulations, 2018.

**(ii) Eligibility under Regulation 6(2) of SEBI (ICDR) Regulations, 2018– Book Building Route**

An issuer not satisfying the condition stipulated in Regulation 6(1) of SEBI (ICDR) Regulations, 2018 shall be eligible to make an initial public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least 75% of the net offer to qualified institutional buyers and to refund the full subscription money if it fails to do so.

**Question 5**

(a) What are the amendments made by SEBI vide amendment to Master Circular for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) dated May 15, 2024, related to :

- (i) The board nomination rights to unitholders of REITs and InvITs (August 06, 2024),
- (ii) Review of statement of investor complaints and timeline for disclosure of statement of deviations(s) (August 22, 2024).

(2+3=5 marks)

(b) Info Tech Ltd., an unlisted public company, has a paid-up equity share capital of ₹10 Crores (1 Crore shares of ₹ 10 each fully paid-up).

The company wishes to reward its Chief Technology Officer (CTO) for developing a patented software which has significantly improved the performance and revenues of the company. The company decides to issue sweat equity shares to the CTO. The company has not issued sweat equity shares so far.

Following details are available :

- Current Market Price of share = ₹ 250
- Face Value of share = ₹ 10
- Number of sweat equity shares to be issued = 1,00,000 shares
- These shares will be issued to the CTO at a premium of 50%.

Based on the above information answer the following :

- (i) Verify whether the proposed issue is within statutory limits or not.
- (ii) Compute the post-issue share capital and percentage holding of sweat equity in it.
- (iii) Explain any two conditions for the issue of sweat equity shares under Section 54 of Companies Act, 2013.

(1+2+2=5 marks)

(c) SEBI vide its circular dated (July 09, 2024) specified the Information to be filed by schemes of Alternative Investment Funds (AIFs) availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs.

What are the informations to be filed by schemes of AIFs availing dissolution period/ additional liquidation period and conditions for in-specie distribution of assets of AIFs ?

(5 marks)

**Answer 5(a)****(i) Amendment related to Board nomination rights to unitholders of REITs/InvITs (August 06, 2024)**

- Eligible Unitholder(s) shall be entitled to nominate only one Unitholder Nominee Director, subject to the unitholding of such Eligible Unitholder(s) exceeding the specified threshold.
- If the right to nominate one or more directors on the Board of Directors of the Manager/ Investment Manager is available to any entity (or to an associate of such entity) in the capacity of shareholder of the Manager/Investment Manager or lender to the Manager/Investment Manager or the REIT/InvIT (or its HoldCo(s) or SPVs), then such entity in its capacity as unitholder, shall not be entitled to nominate or participate in the nomination of a Unitholder Nominee Director.
- SEBI vide this circular stated that the above restrictions relating to right to appoint a unitholder director shall not be applied if the right to appoint a nominee director is available in terms of clause (e) of sub-regulation (1) of regulation 15 of the SEBI (Debenture Trustees) Regulations, 1993.

**(ii) Amendment related to Review of statement of investor complaints and timeline for disclosure of statement of deviation(s) (August 22, 2024).**

- To improve ease of doing business related to activities of InvITs and REITs and to align with the provisions of SEBI LODR Regulations, SEBI has amended its Master Circular for Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) dated May 15, 2024.
- It is prescribed that the Trustee and the Board of Directors/Governing Body of the Manager shall ensure that all investor complaints are redressed by the Manager in timely manner and statement shall be placed, on a quarterly basis, before the Board of Directors/Governing Body of the Manager and the Trustee for review.  
  
However, the statement of deviation shall also be placed before the Trustee and the Board of Directors/Governing Body of the Manager for review.
- Pursuant to such review, the statement shall be submitted to the stock exchange. Such submission to the Stock Exchange shall be made within twenty one days from the end of each quarter.

**Answer 5(b)****(i) Statutory Limits**

Paid-up share capital = ₹10 Crores (1 Crore shares × ₹10 each).

- 15% of paid-up capital = ₹1.5 Crores (15 lakh shares)
- Proposed issue = 1,00,000 shares × ₹10 = ₹10 Lakhs

It is within the 15% annual limit and much below the 25% overall cap. (Info Tech Ltd. has not issued sweat equity shares so far)

**(ii) Post-Issue Share Capital**

Existing share capital = 1 Crore equity shares of ₹10 each i.e ₹10 Crore

Sweat equity issue = 1,00,000 shares × ₹10 = ₹10 Lakhs.

Post-issue capital = ₹10 Cr + ₹0.1 Cr = ₹10.1 Cr

Total number of Shares as per post Issue capital = ₹10.1 Crore/ ₹10 = 1.01 crore.

Sweat equity shares as % of post issue capital total: (1 lakh ÷ 101 lakh) x 100 = 0.99%

**(iii) According to Section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled:**

- (a) The issue is authorized by a special resolution passed by the company.
- (b) The resolution specifies the number of shares, current market price, consideration, if any and the class or classes of directors or employees to whom such equity shares are to be issued.
- (c) The sweat equity shares of a company whose equity shares are listed on a recognized stock exchange are issued in accordance with the Regulations made by SEBI in this regard and if they are not listed the sweat equity shares are to be issued in accordance with Rule 8 of the Companies (Share Capital and Debenture) Rules, 2014.
- (d) The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

**Answer 5(c)**

SEBI vide circular dated (July 09, 2024) specified the Information to be filed by schemes of Alternative Investment Funds (AIFs) availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs.

- A. Information Memorandum for schemes of AIFs entering into Dissolution Period**– The information memorandum for a scheme of an AIF entering into dissolution period shall be submitted to SEBI in terms of Regulation 29B (2) of SEBI (Alternative Investment Funds ) Regulations, 2012 before expiry of the liquidation period or additional liquidation period of the scheme, as the case may be. SEBI has also specified the format for information memoranda and due diligence certificate.
- B. Information to be submitted by schemes of AIFs availing additional liquidation period** – In terms of regulation 29(9A) of AIF Regulations, if the liquidation period for a scheme of an AIF has expired or is expiring within three months from the date of notification of the SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2024 (i.e., on or before July 24,2024), such schemes may be granted an additional liquidation period, subject to conditions and in the manner as may be specified by SEBI. In this regard, Schemes of AIFs which are intending to avail the additional/fresh liquidation period in terms of aforesaid provisions, shall submit information to SEBI regarding the same as per the prescribed format given in the circular for grant of the additional liquidation period.
- C. In specie distribution of investments of AIFs** – With respect to carry out in specie distribution of investments of a scheme of an AIF in terms of Regulation 29(8) of AIF Regulations, it is clarified that such in specie distribution (other than the aforesaid mandatory in specie distribution), shall be carried out after obtaining approval of at least 75% of the investors by value of their investment in the scheme of the AIF.

The manager, trustee and key management personnel of AIF and manager shall be responsible for compliance with the provisions prescribed above.

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

**Question 6**

(a) Explain the changes made by SEBI vide its circular dated 3rd July, 2024 in the provisions pertaining to denomination of issuance and trading of non-convertible securities.

(5 marks)

(b) List the documents required for listing approval for equity shares allotted upon conversion of FCCBs issued by the Companies.

(5 marks)

(c) SEBI vide circular "SEBI (Research Analysts) (Third Amendment) Regulations, 2024 [Notification No. SEBI/LAD-NRO/GN/2024/220 dated December 16, 2024] ' has made certain changes in the provisions related to the following :

(i) The capital adequacy requirement for the research analyst

(ii) Appointment of compliance officer.

Explain the changes made in this context.

(2+3=5 marks)

**Answer 6(a)**

SEBI vide circular dated 3rd July, 2024 modified the relevant clauses of Chapter V of the Master Circular dated May 22, 2024, issued by SEBI which prescribes provisions pertaining to denomination of issuance and trading of non-convertible securities.

SEBI vide this circular has made the following changes:

1. This amendment inserts a provision allowing the issuance of debt securities or non-convertible redeemable preference shares at a face value of ₹ 10,000 on a private placement basis, subject to specific conditions that include the appointment of at least one Merchant Banker, ensuring the security is interest/ dividend bearing with fixed maturity, and allowing various credit enhancements like guaranteed bonds, Standby Letter of Credit (SBLC) backed securities, and others.
2. The amendment permits several credit enhancements to make these securities more attractive to investors. These include guaranteed bonds, partially guaranteed bonds, SBLC backed securities, debt backed by pledges of shares or other assets, and more. Credit Rating Agencies (CRAs) are tasked with verifying the documentation related to these enhancements to ensure they are unconditional, irrevocable, legally enforceable, and that the support provider has a lower probability of default compared to the issuer.
3. For issuers with valid shelf placement memoranda or General Information Documents (GID) as of the effective date of the circular, funds can be raised through trade placement memoranda or Key Information Documents at a face value of ₹10,000, provided due diligence is carried out by a Merchant Banker.

**Deletion of clauses:**

The circular deletes clauses 2.1 and 2.2 of Chapter V of the Master Circular, which previously mandated face values of ₹1 lakh and ₹1 crore for listed securities traded on stock exchanges or OTC basis, respectively. Clause 2.3 is modified to state that the trading lot of listed debt securities and non-convertible redeemable preference shares issued on a private placement basis will always be equal to their face value.

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

Documents required for listing approval for equity shares allotted upon conversion of FCCBs issued by the Companies:

1. Letter of Application (i.e. by Listed companies applying for listing of further issue) duly completed. (In case of conversion of FCCBs only post allotment distribution schedule is required to be submitted).
2. Brief particular of the new securities issued as per prescribed format.
3. Certified true copy of the Board resolution in which the equity shares were allotted.
4. List of allottees and the number of equity shares allotted.
5. Shareholding Pattern as per the format prescribed under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 giving details of pre and post allotment.
6. Processing Fee [Processing fee is not payable on the first conversion, where the company has paid the same at the time of obtaining prior approval under Regulation 28(1) of the SEBI (LODR), Regulations, 2015. In case prior approval obtained after 01/04/2017, the aforesaid Processing Fees is not applicable].
7. Additional Annual Listing Fee, if applicable, on enhanced capital.
8. Confirmation by the Managing Director/ Company Secretary as per enclosed format by Exchange.
9. Certified true copy of letter issued by the overseas Stock Exchange granting listing/ trading permission to the FCCBs.
10. Certified true copy of the resolution in which the Board of the company or the Committee of Directors of the company decided to open the proposed issue of FCCBs.
11. Auditor's Certificate confirming the floor price for the proposed issue and receipt of funds against the said issue.
12. A copy of the final offering circular (printed copy as well as pdf file on CD), duly certified by the Managing Director/ Company Secretary.
13. Detailed valuation report with related workings/calculations on the basis of which company proposes to acquire the foreign company.

**Note:** Documents at Sr. Nos. 9 to 13 are required to be submitted only at the time of filing the first application in respect of any offer document.

All pages of the /details provided should be serially numbered, stamped and certified by the authorized signatory of the company.

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

SEBI vide circular SEBI (Research Analysts) (Third Amendment) Regulations, 2024 dated December 16, 2024 made the following amendments pertaining to funding related aspects:

#### **Capital Adequacy requirement for the Research Analyst**

The capital adequacy requirement for the research analyst is substituted with deposit requirements under regulation 6(vi) and regulation 8. Regulation 8 is reproduced below:

##### **“Deposit.**

- (1) A research analyst shall maintain a deposit of such sum as specified by the Board from time to time.

- (2) The deposit shall be maintained with a scheduled bank, marked as lien in favour of a body or body corporate recognised by the Board for the purpose of administration and supervision of research analysts in accordance with Regulation 14 of these regulations.

However, such deposit shall be available for utilization in case the research analyst fails to pay dues emanating out of arbitration and conciliation proceedings, if any, under the Online Dispute Resolution Mechanism or such other mechanism as may be specified by the Board.

### **Appointment of Compliance Officer (Regulation 26)**

A non-individual research analyst or research entity shall appoint either:

- (i) a compliance officer; or
- (ii) an independent professional who is a member of ICSI, ICAI or ICMAI or member of any other professional body as may be specified by the SEBI, provided that such a professional holds a relevant certification from NISM, as specified by the Board who shall be responsible for monitoring the compliance of the provisions of the Act, these regulations and circulars issued by the SEBI.

Where independent professional referred above is appointed for monitoring compliance, the principal officer shall submit an undertaking to the SEBI or the body or body corporate recognised under Regulation 14 of these regulations to the effect that principal officer shall be responsible for monitoring the compliance in respect of the requirements of the Act, regulations, notifications, guidelines, instructions issued by the SEBI.

### **OR (Alternative question to Q. No. 6)**

#### **Question 6A**

- (i) Calculate Current ratio from the following information of a trading concern :

- Projected Annual Sales : ₹ 6,50,000
- Percentage of Net Profit on sales : 25%
- Average Credit period allowed to debtors : 10 Weeks
- Average Credit period allowed by creditors : 4 Weeks
- Average Stock holding in terms of sales requirement : 8 Weeks
- Company operates 52 weeks per year

(4 marks)

- (ii) What is meant by Securitization ? Which parties are involved in the process of Securitization ?

(2+4=6 marks)

- (iii) Explain the following methods used by banks to assess working capital requirements of a borrower :

- (a) Maximum Permissible Banking Finance Method (Tandon Committee)
- (b) Turnover Method (Nayak Committee).

(3+2=5 marks)

**Answer 6A(i)****Amount in ₹**

<b>Current Assets</b>	
Debtors (10 weeks) at cost (₹ 4,87,500 x 10 weeks) / 52 Weeks	93,750
Stock (8 Weeks) (₹ 4,87,500 x 8 Weeks) / 52 Weeks	75,000
Total Current Assets	1,68,750
<b>Current Liabilities</b>	
Creditors (₹ 4,87,500 x 4 Weeks) / 52 Weeks	37,500
<b>(i) Current Ratio (₹ 1,68,750 / ₹ 37,500)</b>	<b>4.5: 1</b>

**Working Notes:**

$$\begin{aligned} \text{Cost} &= \text{Sales} - \text{Net Profit} \\ &= ₹ 6,50,000 - 25\% \text{ on } ₹ 6,50,000 = ₹ 4,87,500 \end{aligned}$$

**Alternative Answer****Assuming the debtor at sales value****Amount in ₹**

<b>Current Assets</b>	
Debtors (10 weeks) at sales value (₹6,50,000x10weeks)/52 Weeks	1,25,000
Stock (8 Weeks) at cost (₹ 4,87,500 x 8 Weeks) / 52 Weeks	75,000
Total Current Assets	<b>2,00,000</b>
<b>Current Liabilities</b>	
Creditors (₹ 4,87,500 x 4 Weeks) / 52 Weeks	37,500
<b>(i) Current Ratio (₹2,00,000 / ₹37,500)</b>	<b>5.33:1</b>

**Working Notes:**

$$\begin{aligned} \text{Cost} &= \text{Sales} - \text{Net Profit} \\ &= ₹ 6,50,000 - 25\% \text{ on } ₹ 6,50,000 = ₹ 4,87,500 \end{aligned}$$

**Answer 6A(ii)**

Securitization is the transformation of financial assets into securities. Securitization is used by financial entities to raise funding other than what is available via the traditional methods of on-balance-sheet funding. Securitization is a technique used to convert illiquid assets/claims into tradable securities.

In other words, Securitization is the process of pooling and repackaging of homogenous illiquid financial assets into marketable securities that can be sold to investors. The process leads to the creation of financial instruments that represent ownership interest in, or are secured by a segregated income producing asset or pool of assets.

## Parties involved in Securitisation

Primary Parties -

- The Originator (Banks/FIs who has lent loan against properties)
- SPVs (Securitisation Company or reconstruction Company)
- Investors (To whom securities are issued, which is a participative interest against the pool of receivables which is bought by the SPVs from the originator).

Besides above parties the following are involved in the Process of securitization.

- The obligator (i.e., original borrower of the loan)
- Rating agency
- Administrator

## Answer 6A(iii)

**a) Maximum Permissible Banking Finance Method (Tandon Committee) :** A committee headed by Mr. P.L. Tandon, ex-chairman of PNB, was constituted with view to suggest improvement in the existing cash credit system. The Committee submitted its report on guidelines for follow up of credit in August 1974, suggesting three methods of lending as follows:

- *1st Method of Lending:* 75% of the working capital gap (Working Capital Gap = Total current assets- Total current liabilities other than bank borrowings) is financed by the bank and the balance 25% of the Working Capital Gap considered as margin is to come out of long-term source i.e., owned funds and term borrowings.
- *2nd Method of Lending:* Bank will finance maximum up to 75% of total current assets (TCA) and borrower has to provide a minimum of 25% of total current assets as the margin out of long-term sources. This will give a minimum current ratio of 1.33:1.
- *3rd Method of Lending:* This is same as 2nd method of lending, but excluding core current assets from total assets and the core current assets are financed out of long-term funds of the company. The term 'core current assets' refers to the absolute minimum level of investment in current assets, which is required at all times to carry out minimum level of business activity.

**b) Turnover Method (Nayak Committee) :** This method of assessing working capital requirement of a firm is given by "Nayak Committee". The committee headed by Mr. P.R. Nayak examined the adequacy of institutional credit to SSI sector and gave its recommendations which are as under:

Under this method, bank credit for working capital purposes for borrowers requiring fund based limits up to ₹5 crore for Small Scale Industries borrowers and ₹2 crore in case of other borrowers, may be assessed at minimum of 25% of the projected annual turnover of which should be provided by the borrower (i.e. minimum margin of 5% of the annual turnover to be provided by the borrower) and balance 4/5th (i.e. 20% of the annual turnover) can be extended by way of working capital finance.

The projected turnover or output value may be interpreted as projected gross sales which will include excise duty also.

Since the bank finance is only intended to support the need based requirement of a borrower, if the available Net Working Capital (net long term surplus funds) is more than 5% of the turnover the former should be reckoned for assessing the extent of bank finance.

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# CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY

## GROUP 2 PAPER 6

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

Alkasa Lifesciences Limited (ALF Ltd.), a public limited company, is a healthcare conglomerate, with its operations in four major verticals—Pharmaceutical Manufacturing, Medical Equipment, Wellness and Nutrition Products and Diagnostics. ALF Ltd.'s, 75-year-old traditional Pharma business, is the backbone of the company. However, over the past few years, the company has expanded its operations through the Wellness and Nutrition division which has experienced rapid growth, driven by rising demand for preventive health products. Evercare Path Labs, a wholly owned subsidiary, is yet another diversification venture of ALF Ltd. which though is a high-growth unit but lacks synergy with the other pharma activities.

The stakeholders have raised concerns that the company's diversified structure might dilute the overall performance and valuation of the company. Investing too much in expansion without a clear strategy can make the business vulnerable to market changes or operational failures, increasing the risk of substantial financial losses. Hence, they suggest to shed off the non-core units to focus on core areas. But the management feels a strong sense of ownership and pride over the units they have personally developed and nurtured, making it difficult to let them go. Hence the suggestion of divestiture is completely unacceptable to them.

In response to this deadlock, the Board of Directors have hired Mr. Agrim Basu as their Strategic advisor for exploring strategic options to unlock the value of the high-growth divisions and improving focus on its core pharmaceutical operations. Mr. Basu has suggested a scheme explaining that the company may opt for a divestiture, capital restructuring, buyback and acquisitions/mergers as part of a strategic initiative to enhance shareholder value and optimize operational focus. Together, these steps will reflect proactive financial management and strategic clarity, positioning the company for sustainable long-term growth while maintaining investor trust and market competitiveness.

Convinced with the suggestions of Mr. Basu, the following scheme is formulated :

- Divest Evercare Path Labs or Separate Evercare Path Labs for value unlocking (via carve-out) as diagnostics business no longer aligns with ALF Ltd.'s long-term strategic direction.
- Use proceeds from above step to repay high-interest debt of ₹ 500 crore to improve debt-equity ratio and further support financial stability.
- Further, a buyback of shares under Section 68 of the Companies Act, 2013, utilizing ₹ 800 crores of the proceeds. Improved EPS from buyback may help in market perception during future takeover bids, potentially reducing acquisition cost.
- With remaining proceeds and a stronger financial position post-buyback, ALF Ltd. will be all set for mergers/acquisition.

The process of merging with another company or acquiring a company is complex. In addition to the legal ramifications, companies must be aware of the potential tax implications as well as ensuring that the terms of the deal benefit both parties.

ALF Ltd. has created a team of strategic advisors, lawyers and professionals to negotiate on their behalf in order to obtain the best possible deal within the framework of the applicable laws.

After rounds of deliberations and due diligence of various options proposed by the special team, ALF Ltd. selected Debonya Limited, for acquisition, as this was the company which could offer ALF Ltd., a growth potential to expand the market share, gain access to new R&D and automation processes, and above all achieve operational synergies in its core pharma manufacturing sector. Eventually ALF Ltd. acquired Debonya Limited in a business combination on 1st April, 2025.

Based on the above facts, answer the following questions :

- (a) Stakeholders suggest that instead of diverting capital and effort into many different areas, the company should consolidate its resources and management focus more effectively into strengthening its core competencies whereas management does not want to leave their high growth hard earned units.

As their strategic advisor, you could remove this deadlock between management and stakeholders by explaining them the difference between full divestiture and an equity carve-out.

Which one out of the above did you suggest to unlock the value of ALF's high growth but non-core business unit—Evercare Path Labs, so that the decision is acceptable to both—stakeholders and management. Also explain how did you present the rest of your strategy to both of them to gain approval for debt restructuring, buyback and acquisition too.

(5 marks)

- (b) As per the plan suggested by Mr. Agrim Basu, the company successfully used a part of the sale proceeds for the buyback under Section 68 of the Companies Act, 2013, complying with all regulatory provisions.

You as the head of legal department of ALF Ltd., need to draw the management's attention towards Regulation 11 of the Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018, that mandates the companies to extinguish and physically destroy securities certificates bought back.

(5 marks)

- (c) Heading the special team assigned with the task of proposing and finalising a merger/ acquisition, you very well understand that there are host of factors from the economic, commercial and legal perspective, which require consideration before initiating a merger or amalgamation exercise. Create a detailed list of such factors before initiating the assigned task.

(5 marks)

- (d) At the time of preacquisition legal due diligence of Debonya Limited by the special team, it came to light that Debonya Limited is facing a lawsuit filed by a customer alleging allergical nature of its products with a potential liability of ₹ 30,00,000. Hence, as part of the acquisition agreement, the sellers of Debonya Limited provided an indemnification to Alkasa Lifesciences Limited for the reimbursement of any losses greater than ₹ 12,00,000. At the acquisition date, Alkasa Lifesciences Limited recognises the fair value of the contingent liability of ₹ 30,00,000 in the acquisition accounting. Calculate the amount of indemnification asset while doing

the acquisition accounting in Alkasa Lifesciences Limited. Also brief the management about the concept and treatment of indemnification asset and discuss under what circumstances such assets are recognized.

(5 marks)

### Answer 1(a)

Divestiture means selling or disposal of assets of the company or any of its business undertakings/divisions, usually for cash (or for a combination of cash and debt). Divestiture will allow the company to shed non-core assets, unlocking capital that can be redeployed in more profitable and emerging business opportunities. Equity carve-outs are referred to a percentage of shares of the subsidiary company being issued to the public. This method leads to a separation of the assets of the parent company and the subsidiary entity. In equity carve out the key benefit is that the parent company can sell a minority stake (e.g., via an IPO) while still maintaining control over the rest.

As a strategic advisor an equity carve-out is suggested over a complete divestiture because it unlocks the subsidiary's value by establishing a market price, generates capital without giving up full control and at the same time allows a clearer focus on core operations for both entities. The carve out option satisfies the management who does not wish to lose control over their nurtured units and stakeholders who wish to unlock values to utilise those resources on core areas.

Further, the following reasoning was being given to gain approval for debt restructuring, buyback and acquisition:

Capital/Debt restructuring will help improve return ratios and align the capital structure with the company's growth strategy. A share buyback can be used to return excess cash to shareholders, signal management's confidence in the company's future, and improve EPS and ROE. All mergers and acquisitions have one common goal to create synergy that makes the value of the combined companies greater than the sum of the two parts.

### Answer 1(b)

*Regulation 11 of Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 2018 deals with the Extinguishment of certificate and other closure compliances. It states that:*

- (i) The company shall extinguish and physically destroy the securities certificates so bought back in the presence of a registrar to an issue or the Merchant Banker and the secretarial auditor within fifteen days of the date of acceptance of the shares or other specified securities.

It may be noted that the company shall ensure that all the securities bought-back are extinguished within seven working days of expiry of buy-back period.

*Explanation:* The aforesaid period of fifteen working days shall in no case extend beyond seven working days of expiry of buy-back period.

- (ii) The shares or other specified securities offered for buy-back if already dematerialised shall be extinguished and destroyed in the manner specified under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996, and the bye-laws, the circulars and guidelines framed thereunder.
- (iii) The company shall, furnish a certificate to the Board certifying compliance as specified in sub-regulation (i) above, and duly certified and verified by:
  - a) the registrar and whenever there is no registrar, by the merchant banker;
  - b) two directors of the company, one of whom shall be a managing director, where there is one; and

c) the secretarial auditor of the company,

Explanation: This certificate shall be furnished to the Board within seven working days of the extinguishment and destruction of the certificates.

- (iv) The company shall furnish the particulars of the securities certificates extinguished and destroyed under sub-regulation (i), to the stock exchanges where the shares of the company are listed within seven days of extinguishment and destruction of the certificates.
- (v) Where a company buys back its shares or other specified securities under these regulations, it shall maintain a register of the shares or securities so bought, the consideration paid for the shares or securities bought back, the date of cancellation of shares or securities, the date of extinguishing and physically destroying the shares or securities and such other particulars as may be prescribed in sub-section (9) of section 68 of the Companies Act.

### **Answer 1(c)**

Merger or amalgamation is undertaken for acquiring cash resources, eliminating competition, saving on taxes or influencing the economies of large-scale operations. Therefore, there are host of factors, which require consideration before initiating a merger or amalgamation exercise. A detailed list of the primary factors requiring consideration before initiating a merger or amalgamation from the economic, commercial and legal perspective is explained as follows:

*(i) Identification of Parties*

Will one or more businesses be transferred to an existing firm or a newly formed entity? Consider drafting heads of terms, do you require a confidentiality agreement? Do you require an exclusivity agreement? Review financial liability of the parties - undertake appropriate searches and enquiries.

*(ii) Due Diligence*

Carry out legal, commercial, tax and financial due diligence on the parties entering into the transaction.

This will help in identifying risk areas along with any necessary consent you will need to obtain.

*(iii) Any third-party consents required?*

Ascertain if any third-party consents or no objections would be required such as from banks, business contracts, partner/shareholder consents. These should emerge from due diligence. Consider also regulatory consents/ licences that may be required.

*(iv) Taxation*

It will be necessary to ascertain the most suitable tax structure for the transaction and, in particular, the way in which the consideration should be structured, at an early stage, therefore consider consulting tax advisors.

*(v) Risk*

Sharing of risk – What kind of indemnities/warranties/representations be considered? Should there be a cap on such indemnities and warranties?

*(vi) Will the transaction impact on existing loan/finance arrangements?*

Check loan documents and constitution documents to see whether any proposed borrowing would be a breach of any existing funding. What will happen in relation to third party funding of the Seller business? Confirm that there are no restrictions on the disposal of the target business or any of its assets. How will the merged business be funded?

*(vii) Existing Charges/Modifications over the assets to be acquired*

Are there any mortgages, charges or debentures over any of the business assets? If yes, obtain copies and consider how they are to be satisfied/discharged. If there are floating charges, obtain certificates of non-crystallisation / release. Whether there is any pledge on shares? Obtain a Search Report from a Practicing Company Secretary.

*(viii) Guarantees and indemnities (bank or other)*

Has the Seller given or received any guarantees or indemnities in relation to the business? If yes, then obtain copies (including details of arrangements) and consider in particular, how to ensure the business continues to have the benefit of relevant guarantees.

*(ix) Licences*

Will the Buyer have all other licences which it needs to operate the business?

*(x) Supply contracts*

Will supply contracts be transferred or need to be terminated? How will this be done?

*(xi) What IP is used in the business?*

Obtain a full list of trademarks, service marks, patents, designs, domain names, copyright and other registered and unregistered intellectual property used in the business. Carry out trade mark and patent searches as may be appropriate through an IPR Attorney.

### **Answer 1(d)**

The seller in a business combination may contractually indemnify the acquirer for the outcome of a contingency or uncertainty related to all or part of a specific asset or liability. For example, the seller may indemnify the acquirer against losses above a specified amount on a liability arising from a particular contingency; in other words, the seller will guarantee that the acquirer's liability will not exceed a specified amount. As a result, the acquirer obtains an indemnification asset. The acquirer shall recognise an indemnification asset at the same time that it recognises the indemnified item measured on the same basis as the indemnified item, subject to the need for a valuation allowance for uncollectible amounts.

An indemnification asset represents the acquirer's contractual right to reimbursement from the seller for certain liabilities. It is recognised at fair value, separately from the liability, under Ind-AS 103, and arises only when there is a contractual indemnity, measurable liability, and enforceable right to reimbursement.

Alkasa Lifesciences Limited acquires Debonya Limited in a business combination on 1st April, 2025. Debonya Limited is being sued by one of its customers for allergical nature of its products for Rs. 30,00,000.

The sellers of Debonya Limited provide an indemnification to Alkasa Lifesciences Limited for the reimbursement of any losses greater than Rs. Rs. 12,00,000. At the acquisition date, Alkasa Lifesciences Limited recognises the fair value of the contingent liability of Rs. 30,00,000 in the acquisition accounting.

In the acquisition accounting Alkasa Lifesciences Limited should also recognise an indemnification asset of Rs. 18,00,000 (Rs. 30,00,000 – Rs. 12,00,000).

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

(a) Vrisha Ltd., a company listed on the NSE has a total number of 11,00,00,000, issued and fully paid-up equity shares as on 31st May, 2025, out of which Retail and Other Public Shareholders hold 2,57,50,000 shares, Mutual Funds hold 40,00,000 shares, Foreign Portfolio Investors (FPIs) hold 32,50,000 shares and Insurance Companies hold 5,50,000 shares. Rest of the shares are held by Promoter and Promoter Group. Explain, how is the maximum permissible non-public shareholding derived, based on the minimum public shareholding requirement under the Securities Contracts (Regulations) Rules 1957 ("SCRR"). Also determine whether Vrisha Ltd. is compliant with the maximum permissible non-public shareholding norms. Support your answer with calculations.

(5 marks)

(b) There was an inter-se transfer of shares of 0.30% between 2 (two) promoters. However, as a result of the inter-se transfer, the shareholding of one of the promoters (i.e. the purchaser) ("Noticee") increased from 24.74% to 25.04%, thereby breaching the threshold limit of 25%, as provided under regulation 3(1) read with 3(3) of Takeover Regulations. The total shareholding of the promoter group did not change and it remained at around 45%. The Noticee argued that the above-mentioned acquisition does not trigger the applicability of either regulation 3(1) or 3(3) of the Takeover Regulations, as the said acquisition of shares by the Noticee was an inter-se transfer among the promoter entities and the overall shareholding of the promoter group, of which the Noticee is a part, remained unchanged after the said acquisition. Decide the matter with reference to a decided case law.

(5 marks)

(c) Under the framework of Sections 230 to 232 of the Companies Act, 2013, in case of a merger or amalgamation, the meetings of shareholders and creditors are conducted after obtaining and in compliance with the NCLT's directions. Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case maybe, the Second Motion Application for sanction of the scheme praying for appropriate orders and directions is filed as per section 230 read with section 232 of the Companies Act, 2013 [Rule 15 of the Companies (Compromise, Arrangement and Amalgamation) Rule, 2016].

As the advisor to the management, explain who is responsible for filing the Second Motion Application, and within what time frame must it be filed ?

(5 marks)

(d) Under the Companies Act, 2013, the concept of a "small company" was introduced to promote ease of doing business for entities with limited financial and operational scale. You are a large consulting firm and tasked with assessing whether the following companies qualify as "small companies" for the financial year 2024-25, as per Section 2(85) of the Companies Act, 2013 (post-September 2022 amendment) so as to enable them to enjoy various compliance relaxations and benefits. Give reason for your classification.

Name of the Company	Paid up capital (in crores)	Turnover (in crores)	Notes relating to the relevant company
Agoya Pvt. Ltd.	4	47	Wholly owned by family members.

Excelibur Services Pvt. Ltd.	3.96	36.6	51% owned by Joy Pvt. Ltd.
Glider Pvt. Ltd.	2	25	A company incorporated under a Special Act
Jamna Pvt. Ltd.	4	40	Registered under Section 8
Gorda Private Limited	3.66	38.2	Wholly owned by family members.

(5 marks)

**Answer 2(a)**

*Maximum permissible non-public shareholding in a listed company*

Maximum permissible non-public shareholding is derived based on the minimum public shareholding requirement under the Securities Contracts (Regulations) Rules, 1957 ("SCRR"). Rule 19A of SCRR requires all listed companies (other than public sector companies) to maintain public shareholding of at least 25% of share capital of the company. Thus, by deduction, the maximum number of shares which can be held by promoters i.e. (Maximum permissible non-public shareholding) in a listed company (other than public sector companies) is 75% of the share capital.

Retail and Other Public Shareholders	= 2,57,50,000 shares,
Mutual Funds holding	= 40,00,000 shares,
Foreign Portfolio Investors (FPIs)	= 32,50,000 shares
Insurance Companies holdings	= 5,50,000 shares
Percentage of shareholding other than promoter group	= $\frac{335,50,000}{1100,00,000} \times 100$ = 30.5%
Percentage of Promoter Shareholding	= 100 % - 30.5% = 69.5%

This percentage of the promoter group in the company which is well within the Maximum permissible non-public shareholding norms.

Thus, Vrisha Ltd is compliant with Maximum permissible non-public shareholding norms.

**Answer 2(b)**

The facts given in the question are similar to a SEBI order in the matter of *M/s. Patels Airtemp (India) Ltd, July 25, 2018*

SEBI held that the 2 (two) promoters in this case cannot be held to be 'persons acting in concert' because the persons must have a common objective or purpose of acquisition of shares or voting rights. In the instant case, the acquisition in question was an inter se transfer of shares from one promoter entity to another promoter entity, which implies that the promoter entities, including the Noticee, did not have a common objective or purpose of acquisition but were rather acting in opposite directions, where one promoter entity had purchased the shares and another entity had sold the same shares. Hence, SEBI rejected the Noticee's claim that it was acting in concert with other promoter entities, while acquiring the said shares. Since the Noticee had acquired shares as a result of which its individual shareholding had increased from 24.74% to 25.04% of the total shareholding of the Target Company (even though the overall shareholding of the promoter group

remains unchanged), the threshold limit provided under regulation 3(1) of the Takeover Regulations was breached. SEBI ordered the Noticee to make an open offer and also pay interest @ 10% (ten percent) per annum along with the offer price to the public shareholders.

Aggrieved by the SEBI order Noticee filed an appeal with Securities Appellate Tribunal (SAT).

1. The appeal was partly allowed by SAT and directed the to make public announcement to acquire shares of the target company and to pay interest at the rate of 10 percent as detailed in the order is hereby set aside.
2. Instead it is hereby directed that the appellant shall transfer 2000 shares in open market within a period of 4 weeks and shall deposit an amount of Rs.3,60,300 in the Investor Protection and Education Fund established by SEBI within a period of six weeks from the date of this order.
3. In default, the amount shall carry interest at the rate of 12 percent p.a. from the date of this order till the date of deposit.

### Answer 2(c)

Rule 15 of the Companies (Compromise, Arrangement and Amalgamation) Rule, 2016 provides as follows:

- (1) Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case maybe with or without modification, the company (or its liquidator), shall, within seven days of the filing of the report by the chairperson, present a petition to the tribunal in *Form No.CAA.5* for sanction of the scheme of compromise or arrangement.
- (2) Where a compromise or arrangement is proposed for the purposes of or in connection with scheme for the reconstruction of any company proposed for the purposes of or in connection with scheme for the reconstruction of any company or companies or for the amalgamation of any two or more companies, the petition shall pray for appropriate orders and directions under section 230 read with section 232 of the Act.
- (3) Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or member as the case may be, with the leave of the tribunal, to present the petition and the company shall be liable for the cost thereof.

### Answer 2(d)

For Financial Year (F.Y.) 2024-25, a small company is defined under Section 2(85) of the Companies Act, 2013, as a private company with paid-up share capital not exceeding ₹4 crore and annual turnover not exceeding ₹40 crores as per profit and loss account for the immediately preceding financial year. This definition excludes holding companies, subsidiary companies, Section 8 (charitable) companies, and companies governed by special acts.

Name of the company	Paid up capital (in crores)	Turnover (in crores)	Notes	Answer for whether it is a small company or not	Reason
Agoya Pvt. Ltd.	4	47	Wholly owned by family members	NO	Turnover exceeding ` 40 crores.

Excelibur Services Pvt. Ltd.	3.96	36.6	51% owned by Joy Pvt. Ltd.	NO	Subsidiary company
Glider Pvt. Ltd.	2	25	A company incorporated under a Special Act	NO	Governed by special acts
Jamna Pvt.ltd.	4	40	Registered under Section 8	NO	Section 8 (charitable) companies
Gorda Pvt.ltd	3.66	38.2	Wholly owned by family members	YES	A private company with paid-up share capital not exceeding Rs.4 crore and annual turnover not exceeding Rs.40 crores.

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

### Question 2A

- (i) "While the Companies Act, 2013, provides the enabling provision for cross border mergers, such mergers trigger a range of compliance obligations under other key legislations also, including the Foreign Exchange Management Act (FEMA), 1999 and the Competition Act, 2002."

Justify the statement explaining how these laws regulate the cross-border mergers beyond the provisions of the Companies Act, 2013.

(5 marks)

- (ii) "Demerger is a method of corporate restructuring by which a business unit or subsidiary of a company becomes an independent entity from its parent's entity. The parent firm distributes shares of subsidiary to its shareholders through a stock dividend. In most cases demerger unlocks hidden shareholder value". Comment on applicability of IND-AS 103 for Demerger Transactions.

(5 marks)

- (iii) Governa Ltd. is a company with two classes of equity shareholders : Class A (founders and promoters) and Class B (public investors). Both classes initially held equal voting rights and dividend entitlements. However, the Board of Directors pass a resolution to vary the rights of Class B shareholders—reducing their voting power and prioritizing dividend pay-outs to Class A shareholders.

A group of Class B shareholders, holding 12% of the total equity, challenges this move, claiming the variation in unfair and prejudicial. The company argues that the changes are necessary for long-term strategic control and investor confidence.

As a legal advisor to the minority Class B shareholders, critically analyze the legal framework of the Companies Act, 2013 governing the variation of rights of equity shareholders.

(5 marks)

- (iv) M/s W Inc. a foreign company holds 100 shares in M/s I Ltd., an Indian company, @ ₹ 10 per share for last five years and the market value of such shares is ₹ 3500/- per share, and transfers the same, in case of a demerger, to another resulting foreign company M/s R Plc., explain how such transaction will be taxed for the purpose of capital gain under section 45 of Income Act, 1961.

(5 marks)

### Answer 2A(i)

#### 1. Foreign Exchange Management Act, 1999

- The Foreign Exchange Management (Non-Debt Instrument) Rules, 2019 and Foreign Exchange Management (Overseas Investment) Rules, 2022 & Regulations, 2022 are extremely important pieces of legislation for allowing foreign investment in India and The Regulations govern acquisition/transfer of equity instruments by non-residents and overseas investments by Indian residents, thereby, directly impacting the structuring of cross-border mergers.
- In addition to this, the Reserve Bank of India (the RBI) has notified Foreign Exchange Management (Cross-Border Merger) Regulations, 2018 under the Foreign Exchange Management Act, 1999. These Regulations specifically deal with cross border mergers and contain provisions pertaining to mergers, demergers, amalgamations and arrangements between Indian companies and foreign companies. These regulations also discuss the concepts of inbound and outbound investments.
- If the foreign company is a JV/WOS of an Indian Company, then it is required to adhere to the conditions mentioned in (Overseas Investment) Rules & Regulations, 2022. Further, if the inbound merger of the JV/WOS leads to the acquisition of a subsidiary of the JV/WOS, then it is required to comply with the ODI Regulations, specifically regulations 6 and 7. If in an outbound merger, shares are being acquired by a person resident in India, then such acquisition becomes subject to the ODI Regulations as prescribed by the RBI.

#### 2. The Competition Act, 2002:

- The Competition Commission of India (CCI) regulates the mergers in order to prevent the rise of monopolistic mergers. While mergers help in creating economies of scale and lead to increase in profits, they may also contribute to the creation of monopolistic structure. CCI examines combinations that may cause an appreciable adverse effect on competition (AAEC). Hence, mergers are made subject to the competition laws of the country.
- The CCI has to assess and inquire into any merger which may have an adverse impact on the healthy competition in the market. While making such assessment as to the adverse effects the commission takes account of a number of factors such as actual and potential level of competition through imports in the market, extent of barriers to entry into the market, level of combination in the market etc.
- Even a likelihood of causing of adverse impact is adequate for the competition commission to rule that the merger is creating an adverse impact. If the merged enterprise created post a cross-border merger possesses assets worth more than US \$ 1 bn, or turnover more than US \$ 3 bn; or the group to which the merged enterprise belongs possesses assets worth more than US \$ 4 billion, or turnover more than US \$ 12 billion then the competition commission is required to examine such combination.

- Conflict of Jurisdictions is another such problem wherein whether or not the merger would affect the competition in the market positively or negatively would depend on the market situation which is unique to every country.

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

Ind AS 103, which deals with Business Combinations, does not directly apply to demergers in the same way it applies to mergers or acquisitions. While demergers involve the division of a company, they are not considered a business combination under the standard's definition unless the resulting entities are under common control.

A demerger involves transferring a part or all of a company's undertaking to another entity. It can be structured as a transfer of assets and liabilities to an existing company or a newly formed one.

Ind AS 103 defines a business combination as the acquisition of control of one or more businesses.

*Applicability of Ind AS 103:* Ind AS 103 applies to transactions where one entity (the acquirer) obtains control of another entity (the acquiree).

*Demergers and Common Control:* When a demerger results in entities under common control, Ind AS 103 is not directly applicable. In such cases, the accounting is often done using the "pooling of interests" method, where assets and liabilities are carried at their existing book values.

*Demergers and Unrelated Entities:* If a demerger involves transferring a business to an unrelated entity, it may be viewed as an acquisition from the perspective of the receiving entity. In such cases, Ind AS 103 might be relevant for the receiving entity, requiring fair valuation of the acquired assets and liabilities.

In conclusion: While Ind AS 103 is a crucial standard for business combinations, its direct applicability to demergers depends on the specific structure and whether the resulting entities are under common control. If the demerger involves an unrelated entity and the acquisition of control, then Ind AS 103 may be relevant for that specific transaction.

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

*Securities with Differential Rights:*

Section 48 of the Companies Act, 2013 deals with the variation of shareholders' rights. This section deals with the procedure involved, when a company intends to vary rights attached with any class of shareholders. The features are as follows:

1. *Approval of class of shareholders* - The rights attached to the shares of any class may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class —
  - (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
  - (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class.
2. *Impact on rights of other class* - The section provides that if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.
3. *Cancellation of variation* - Variation may be cancelled if, holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the

special resolution for the variation. They may apply to the Tribunal to cancel the variation, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal. It is provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose. The decision of the Tribunal on any such application shall be binding on the shareholders. The company shall, within thirty days of the date of the order of the Tribunal, file a copy thereof with the Registrar.

### Answer 2A(iv)

“Capital Gains” under section 45 of the Income Tax Act, 1961 are defined as any profits or gains arising from transfer of a capital asset and are chargeable to tax under the head “Capital Gains.”

“Transfer” includes sale, exchange, relinquishment, or extinguishment of rights in a capital asset.

*Tax concession to a foreign demerged company [Section 47(vic) of Income Tax Act, 1961*

Where a foreign company holds any shares in an Indian company and transfers the same, in case of a demerger, to another resulting foreign company, such transaction will not be regarded as transfer for the purpose of capital gain under section 45 if the following conditions are satisfied:

- (a) the shareholders holding not less than three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and
- (b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated:

Provided that the provisions of Sections 230 to 232 of Companies Act, 2013 shall not apply in case of demergers referred to in this Clause.

Therefore, such transaction of transfer of shares is not subject to tax for the purpose of capital gains under section 45 of the Income Tax Act, 1961

## PART-II

### Question 3

- (a) Mr. X, a registered valuer, takes assignment of M/s ABC Ltd. for valuation of certain property of the company on 15th March, 2025 at fees of ₹ 5 lakhs. Mr. X, submits his valuation report in April, 2025 and fees cleared in June, 2025. Subsequently, it was discovered that Mr. Y, father of Mr. X, was a director of the company, retired on 28th February, 2023. Vice President Legal wants to file a suit for such non-disclosure of interest and wants refund of fees, but the Finance director is of an opinion that as it is more than two years, no action can be taken. Advise the company citing the provisions of Section 247 of the Companies Act, 2013.

(5 marks)

- (b) XYZ Tech Services, a mid-sized IT support and software solutions provider, has decided to explore the possibility of selling the business to a strategic buyer or investor. With stable revenue streams, consistent profits, and a growing customer base, the owners believe it is the right time to capitalize on the company's value. To determine a fair selling price and support negotiations, the company engages you as a professional valuation expert to conduct a business valuation using the Income Approach—specifically the Discounted Cash Flow (DCF) method.

XYZ Tech Services is projected to generate the following cash flows during the next five years :

Year	Forecast Free Cash Flows (in ₹)
2025	14,00,000
2026	15,60,000
2027	18,20,000
2028	20,90,000
2029	23,50,000

Assuming the discount rate to be 10% and the terminal value of the business as ₹ 1,10,00,000, compute the estimated valuation of XYZ Tech Services. Assuming the exit year is Year 2029.

PV Factors @ 10% :

Year 1 : 0.909	Year 2 : 0.826	Year 3 : 0.751	Year 4 : 0.683	Year 5 : 0.621
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(5 marks)

### Answer 3(a)

Section 247(2) of the Companies Act, 2013 states that

The valuer appointed under sub-section (1) shall, —

(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as valuer or three years after the valuation of assets was conducted by him.

(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be liable to a penalty of fifty thousand rupees

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4) Where a valuer has been convicted under sub-section (3), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

Therefore, in the given case, action can be taken against the registered valuer for penalty, fine, refund of fees, payment of damages as stated above.

### Answer 3(b)

Present Value of Cash Flows & Terminal Value

Year	Cash Flow (Rs.)	PV Factor @10%	PV (Rs.)
2025	14,00,000	0.909	12,72,600

2026	15,60,000	0.826	12,88,560
2027	18,20,000	0.751	13,66,820
2028	20,90,000	0.683	14,27,470
2029	23,50,000	0.621	14,59,350
Terminal value	1,10,00,000	0.621	68,31,000
Estimated valuation of XYZ Tech Services			1,36,45,800

**Question 4**

(a) The cost approach of business valuation is useful, for asset intensive firms, valuing holding companies as well as distressed entities that are not worth more than their overall net tangible value. Comment on the statement and discuss the circumstances where the cost approach is used by the valuer for business valuation.

*(5 marks)*

(b) A Ltd. is considering the acquisition of B Ltd. and management estimates that the acquisition will create a synergy worth ₹ 220 lakhs. The following information is provided :

Particulars	A Ltd.	B Ltd.
Value of the company ` (Lakhs)	3840	1050
Number of shares (Lakhs)	160	70
Value per share ( ` )	24	15

Management of A Ltd. offers cash of ₹ 17/- per share to B Ltd. Determine consideration paid, acquisition premium (i.e., gain of B Ltd.), acquirer's gain (i.e., gain of A Ltd.)

*(5 marks)***Answer 4(a)**

The cost approach provides an indication of value using the economic principle that a buyer will pay no more for an asset than the cost to obtain an asset of equal utility, whether by purchase or by construction, unless undue time, inconvenience, risk or other factors are involved. This approach tends to determine the business value on the basis of value of assets of the business.

It is specifically useful for valuing business that are not worth more than their overall net tangible value e.g.

- asset intensive firms, e.g. physical assets (e.g., real estate, machinery) dominate value. Examples: manufacturing, infrastructure
- holding companies - when the company's value is derived from its investments and subsidiaries, not operations.
- distressed entities.- when the business is no longer a going concern and liquidation or net asset value is more relevant.

The cost approach should be applied and afforded significant weight under the following circumstances:

- (a) participants would be able to recreate an asset with substantially the same utility as the subject asset, without regulatory or legal restrictions, and the asset could be recreated quickly enough that a participant would not be willing to pay a significant premium for the ability to use the subject asset immediately (nothing special in the assets).
- (b) the asset is not directly income-generating and the not in unique nature of the asset makes using an income approach or market approach unfeasible.
- (c) The value lies primarily in tangible assets

The methodologies adopted under cost approach are as under:

- (a) Replacement Cost Method
- (b) Reproduction Cost Method
- (c) Summation Method-Sum of part Method.

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

Consideration paid by A Ltd. = Cash offer per share \* number of shares

$$= ₹17/- * ₹70 \text{ lakh} = ₹ 1190 \text{ lakh}$$

Pre-merger value of B Limited = ₹ 15/- \* 70 lakh = ₹ 1050 lakh

Acquisition premium (Gain to B Ltd. shareholder) = Consideration paid – pre-merger value

$$= ₹1190 \text{ lakh} - ₹1050 \text{ lakh}$$

$$= ₹140 \text{ lakh}$$

#### **Alternatively**

Acquisition Premium (Gain to B Ltd. Shareholders) can be calculated as follows also:

$$₹17 - ₹15 = ₹2 \text{ per share}$$

$$= 70 \text{ lakhs shares} * ₹2 = ₹140 \text{ lakhs}$$

Acquirer's gain = Value of synergy - Acquisition premium paid

$$= ₹220 \text{ lakh} - ₹140 \text{ lakh} = ₹ 80 \text{ lakh}$$

### **PART-III**

#### **Question 5**

- (a) Guari Ferros Pvt. Ltd. (GFPL), a mining company based in Madhya Pradesh, held a mining lease over 500 hectares of iron ore-rich land. The lease was granted under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). The lease was originally due to expire in June 2025, though eligible for extension through a mandatory extension approval from the State Government for continued operations. Facing significant financial stress due to market downturns and loan defaults, GFPL was admitted into a Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016, after a Section 7 application was filed by a bank in October 2024. The NCLT Bench appointed an Interim Resolution Professional (IRP) to oversee the management of the company during CIRP. Recognizing that the mining lease was a key asset necessary for the revival of the company, the IRP submitted a formal request for its extension to the State Government of Madhya Pradesh. However, the State rejected the application, citing environmental violations, breach of compliance norms, and public interest concerns under the MMDR Act.

This decision effectively rendered the mining operations unviable, threatening the success of the CIRP.

The IRP approached the NCLT, seeking to invalidate the State's decision, arguing that the rejection violated the spirit of the moratorium under Section 14 of IBC and hampered the possibility of a successful resolution. The State, on the other hand, contended that lease renewals under the MMDR Act are sovereign in nature and do not fall under the jurisdiction of NCLT/NCLAT.

In the background of the matter, discuss the tenability of arguments put forward by the IRP of Guari Ferros Pvt. Ltd. (GFPL), under the provisions of the Insolvency and Bankruptcy Code, 2016, citing a relevant case law.

*(5 marks)*

- (b) The petitioner, Manwaari Lal, acting through his proprietary concern Manwaari Photo Co., filed a petition under Section 7 of the IBC seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against Nobivio Infotech Pvt. Ltd.

The above dispute arose out of an agreement whereby the petitioner was appointed as a non-exclusive distributor for the sale and promotion of mobile phone products of Nobivio Infotech Pvt. Ltd. Under the terms of the agreement, the petitioner was required to pay a security deposit of ₹ 5 crore, which was refundable upon termination of the agreement. Crucially, the agreement stipulated that the deposit would accrue interest at the rate of 20% per annum. The relationship between the parties later on deteriorated, and eventually the distribution agreement was terminated. Following the termination, the petitioner formally demanded the refund of the security deposit along with interest. However, Nobivio Infotech Pvt. Ltd. allegedly failed to honour the repayment obligation, leading the petitioner to issue a demand notice and subsequently file a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, before the National Company Law Tribunal (NCLT). New Delhi Bench.

The petitioner asserted that the failure to return the deposit constituted a default in repayment of financial debt, and thus sought initiation of the Corporate Insolvency Resolution Process (CIRP).

In response, Nobivio Infotech Pvt. Ltd. disputed the classification of the amount as "financial debt," claiming that the deposit was commercial in nature and not a borrowing. Quoting the definition of "Financial Debt" under the provisions of Insolvency and Bankruptcy Code, 2016, discuss whether an interest-bearing security deposit made under a commercial distribution agreement qualifies as 'financial debt' under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, thereby enabling the creditor to initiate the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor ?"

*(5 marks)*

- (c) IBBI has collaborated with the Indian Banks' Association (IBA) to facilitate the auction of assets through the eBKray platform which is presently owned and managed by PSB Alliance Private Limited (a consortium of 12 public sector banks). eBKray has been conducting auctions for assets mortgaged to public sector banks under the SARFAESI Act for the past five years. Comment with reference to IBBI Circular dated 29th October, 2024.

*(5 marks)*

- (d) "The moratorium under the Insolvency and Bankruptcy Code (IBC) isn't absolute and has exceptions. Specifically, proceedings against personal guarantors, criminal cases involving

fraud or misrepresentation, and writ petitions before High Courts are not covered by the moratorium. Additionally, certain transactions or agreements may be excluded by the Central Government's notification in consultation with regulators." What are the Exceptions to Moratorium pursuant to Section 14(3) of the IBC 2016 ? Does this provision apply to personal guarantor ?

(5 marks)

### **Answer 5(a)**

In *M/s Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Others* [2019 SCC Online SC 1542], one of the issues before the Supreme Court was whether the Adjudicating Authority (AA) had the power under the Insolvency and Bankruptcy Code, 2016 to review the order passed by the Government of Karnataka during the moratorium period, rejecting the auto extension of a mining lease granted by it to the Corporate Debtor. The Supreme Court observed, among other things, that the moratorium under section 14 did not impact the right of the government to refuse extension of the lease. It observed that the purpose of section 14 was to preserve the status quo and not to create a new right.

Even section 14(1)(d) of the IBC, 2016 prohibits, during the period of moratorium, the recovery of any property by the owner/ lessor will not go to the rescue of the corporate debtor since what is prohibited is only right not to be dispossessed, but not the right to have renewal of the lease of such property. It was further observed that this right not to be dispossessed will have nothing to do with the rights conferred by a mining lease especially on government land. It was noted that what was granted to the Corporate Debtor was not an exclusive possession of the land in question so as to enable the RP to invoke section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016.

Hence, the arguments put forward by the IP were not tenable and the State Government lawfully rejected the lease extension during an active CIRP.

The NCLT and NCLAT are specialist forums dealing with insolvency-related issues. However, they do not have jurisdiction over matters that arise under public law, such as disputes involving state authorities, unless expressly provided.

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

The issue in the given question is that- whether an interest-bearing security deposit paid under a commercial distribution agreement qualifies as "financial debt" under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 (IBC), thereby enabling initiation of CIRP under Section 7.

Section 5(8) of the Insolvency and Bankruptcy Code, 2016 defines "Financial Debt" which means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes –

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;

- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause [Section 5(8)].

Yes, an interest-bearing security deposit made under a commercial distribution agreement qualifies as 'financial debt' under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, thereby enabling the creditor to initiate the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor.

NCLT, New Delhi Bench vide its order dated 11th October 2021 in case of *Magicon Impex Pvt. Ltd* observed that, the amount which has been released pursuant to Agreement in the form of Security Deposit and the same is interest bearing, which means it is carrying consideration of time value of money having commercial effect of a borrowing. Therefore, in our view the "debt" claimed is a "Financial Debt" within the definition of Section 5(8)(f) of Insolvency and Bankruptcy Code, 2016.

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

*Centralized Electronic Listing and Auction Platform for the Sale of Assets under Liquidation Process (IBBI Circular dated 29th October, 2024)*

*The circular has sought for a centralised listing and auction platform where details of all assets under liquidation of CD are continuously available to the public provides an effective solution to the problems arising from use of various auction platforms by the liquidators to sell the assets and thereby making the details of a company's assets public only at the time of the auction notice. This practice leads to information asymmetry, as potential buyers have limited time to assess the value of the assets, often resulting in lower recovery rates. This circular shall come into force with effect from 01st November 2024*

*Regulation 33 (1) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that, "The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I." Further, Clause (7) of Para 1 of Schedule I of the Liquidation Regulation provides that, "From a date to be notified through circular by the Board, the liquidator shall sell the assets only through an electronic auction platform empanelled by the Board."*

To address the challenges, IBBI has collaborated with the Indian Banks' Association (IBA) to facilitate the auction of assets through the eBKray platform which is presently owned and managed by PSB Alliance Private Limited (a consortium of 12 public sector banks). eBKray has been conducting auctions for assets mortgaged to public sector banks under the SARFAESI Act for the past five years.

Accordingly, PSB Alliance has developed a module within the eBKray platform to facilitate the listing and auction of assets under Insolvency and Bankruptcy Code, 2016. This centralized platform offers detailed information on corporate debtor assets, including photographs, videos, and geographical coordinates. By enhancing transparency and efficiency through advanced technology, eBKray aims to increase bidder participation, streamline operations, and maximize returns for creditors while improving outcomes for bidders.

### Answer 5(d)

Section 14(1) of the Insolvency and Bankruptcy Code, 2016 imposes a moratorium during the Corporate Insolvency Resolution Process (CIRP) whereas section 14(3) of the Code provides for exceptions where moratorium shall not apply i.e. the provisions of sub-section (1) shall not apply to —

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

In exercise of the powers conferred by clause (a) of sub-section (3) of section 14 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby notifies that the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016, shall not apply to

- transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters. (MCA notification dated 3rd October, 2023)
- where the corporate debtor has entered into any of the following transactions, arrangements or agreements, namely: -
  - (i) the Production Sharing Contracts, Revenue Sharing Contracts, Exploration Licenses and Mining Leases made under the Oilfields (Regulation and Development) Act, 1948 and rules made thereunder; and
  - (ii) any transactions, arrangements or agreements, including Joint Operating Agreement, connected or ancillary to the transactions, arrangements or agreements referred to in clause (i) (MCA notification dated 14<sup>th</sup> June, 2023)

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

#### Question 6

(a) Angad had taken a business loan of ₹ 70 lakhs from DNF Bank Ltd., secured by his commercial property. His business faced a tough time due to stiff competition and global recession and hence he could not repay his instalments in time. Due to continued default in repayment, DNF Bank Ltd. classified the loan as a Non-Performing Asset (NPA) and decided to exercise its rights under the SARFAESI Act, 2002. DNF Bank Ltd. assigned the loan (along with the secured interest) to an Asset Reconstruction Company (ARC) named Faith Assets Ltd. under Section 5 of the SARFAESI Act.

DNF Bank Ltd. did not issue any notice to Mr. Angad, informing him about the assignment of the debt to Faith Assets Ltd. (ARC).

After a recent successful order, Angad managed to arrange ₹ 15 lakhs to partly repay his loan and has come to pay the money to DNF Bank Ltd. As an advisor to DNF Bank, advise the Branch Manager whether the bank can accept this money from Angad and if so, in what capacity ? Answer the question explaining the provisions of Section 6 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(5 marks)

(b) Authorised representatives are the agents/trustees of the creditors/class of creditors they represent and must act in accordance with their instructions.

Enumerate the role and duty of the AR (under Section 21(6), Section 21(6A), or Section 24(5)) as set out in Section 25A of the Insolvency and Bankruptcy Code (IBC), 2016.

(5 marks)

- (c) ABC Industries Pvt. Ltd., a small manufacturing company, has defaulted on loan repayments to its financial creditor, Zeal Bank Ltd. However, due to its viability and ongoing operations, Zeal Bank proposes to initiate a Pre-Packaged Insolvency Resolution Process (PPIRP) under Chapter III-A of the IBC, 2016. Upon admission of the application by the Adjudicating Authority, the process formally commences. The Resolution Professional (RP), appointed as per the Code, is now required to comply with certain immediate obligations under the law in relation to public announcement.

Enumerate the provisions related to declaration of moratorium and public announcement during pre-packaged insolvency resolution process as per Section 54E of the Insolvency and Bankruptcy Code (IBC), 2016.

(5 marks)

- (d) SA Limited ("Respondent") required commercial supply of natural gas, the Respondent and SG Limited ("Appellant") entered into a gas sales agreement ("GSA"), where under the Appellant had the obligation to supply natural gas. In the meanwhile, the Respondent approached Board for Industrial and Financial Reconstruction ("BIFR") to get it declared as a 'sick unit' in terms of the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"), which was allowed by BIFR.

However, shortly thereafter, on December 1, 2016, SICA was repealed and IBC was enacted. The Appellant issued a demand notice on April 1, 2017 under Section 8 of IBC, demanding payment of operational debt. The respondent declined its liability to pay the amount demanded. The Appellant filed an application under Section 9 of IBC ("Application") before National Company Law Tribunal, Ahmedabad ("NCLT") seeking initiation of corporate insolvency resolution process ("CIRP") of Respondent. NCLT dismissed the Appellant's Application on 2 (two) grounds—(a) Application being barred by limitation, and (b) existence of a 'pre-existing dispute' between the parties. Aggrieved by the Order of NCLT, the Appellant preferred an appeal before the National Company Law Appellate Tribunal ("NCLAT"), which was also dismissed. Therefore, the Appellant appealed before the Supreme Court.

- (1) Whether, in computation of the period of limitation in an application under Section 9 of IBC, the period during which the operational creditor's right to proceed against or sue the corporate debtor that remained suspended by virtue of Section 22(1) of SICA can be excluded, as provided under Section 22(5) of SICA ?
- (2) Whether there was a pre-existing dispute between the parties, warranting dismissal of Application under Section 9 of IBC at the threshold ?

Decide the matter with reference to a case law.

(5 marks)

### Answer 6 (a)

Section 6 of SARFAESI Act, 2002 states that:

- (1) the bank or financial institution may, if it considers appropriate, give a notice of acquisition of financial assets by any asset reconstruction company, to the concerned obligor and any other concerned person and to the concerned registering authority including Registrar of Companies in whose jurisdiction the mortgage, charge, hypothecation, assignment or other interest created on the financial assets had been registered.

- (2) Where a notice of acquisition of financial asset under sub-section (1) is given by a bank or financial institution, the obligor, on receipt of such notice, shall make payment to the concerned asset reconstruction company, as the case may be, and payment made to such company in discharge of any of the obligations in relation to the financial asset specified in the notice shall be a full discharge to the obligor making the payment from all liability in respect of such payment.
- (3) Where no notice of acquisition of financial asset under sub-section (1) is given by any bank or financial institution, any money or other properties subsequently received by the bank or financial institution, shall constitute monies or properties held in trust for the benefit of and on behalf of the asset reconstruction company, as the case may be, and such bank or financial institution shall hold such payment or property which shall forthwith be made over or delivered to asset reconstruction company, as the case may be, or its agent duly authorised in this behalf.

Therefore, DNF Bank can accept the money from Angad following the above provisions.

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

Section 25A of the Insolvency and Bankruptcy Code, 2016 provides that Authorized Representative (AR) shall have

- under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24, the right to participate and vote in meetings of the Committee of Creditors on behalf of the financial creditors he represents in accordance with the prior voting instructions of such financial creditors obtained through physical or electronic means;
- the duty to circulate the agenda and minutes of the Committee of Creditors meeting to the financial creditors he represents;
- the duty to not act against the interests of the financial creditors he represents and always act in accordance with their prior instructions;
  - (a) If the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:
  - (b) if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor. (Sub-section 3)
- under sub-section (6A) of section 21, cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote. This duty is applicable notwithstanding anything to the contrary contained in sub-section (3)

It is provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of subsection (3).

- the duty to file with the Committee of Creditors any voting instructions received by way of physical or electronic means from the financial creditors he represents;
- the duty to ensure that the appropriate voting instructions of the financial creditors he represents are correctly recorded by the Interim Resolution Professional or Resolution Professional.

**Answer 6(c)**

Section 54E of the Insolvency and Bankruptcy Code, 2016 deals with Declaration of moratorium and public announcement during prepackaged insolvency resolution process. It states that:

The Adjudicating Authority shall, on the pre-packaged insolvency commencement date, along with the order of admission under section 54C -

- (a) declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall, mutatis mutandis applies, to the proceedings under this Chapter;
- (b) appoint a resolution professional -
  - (i) as named in the application, if no disciplinary proceeding is pending against him; or
  - (ii) based on the recommendation made by the Board, if any disciplinary proceeding is pending against the insolvency professional named in the application.
- (c) cause a public announcement of the initiation of the prepackaged insolvency resolution process to be made by the resolution professional, in such form and manner as may be specified, immediately after his appointment.

(2) The order of moratorium shall have effect from the date of such order till the date on which the prepackaged insolvency resolution process period comes to an end.

**Answer 6(d)**

*The present case is similar to the case of Sabarmati Gas Limited vs. Shah Alloys Limited Case no.: Civil Appeal No. 1669 of 2020 Decision Date: 4th January, 2023*

The Hon'ble Supreme Court interpreted the provision related to limitation of time that section 238A of Insolvency and Bankruptcy Code, 2016 renders the provision of Limitation Act applicable to the computation of the period of limitation in regard to proceedings before the NCLT.

Decision in the case of *B.K. Educational Services Private Limited* was referred by the Hon'ble Supreme Court, that the period of limitation is three years from the right to apply accrues but the delay is condonable on sufficient grounds as provided under Section 5 of the Limitation Act.

Sufficient cause is the cause for which a party could not be blamed. As such, in the absence of provisions for exclusion of the period of suspension of legal proceedings, the same can be excluded and is sufficient cause for condoning the delay under Section 5 of the Limitation Act.

Hon'ble Court held that question of condonation of delay is not considered it will result in injustice as the party was statutorily prevented from initiating action against the industrial company concerned.

Moreover, for an application filed under section 7 or 9 of Insolvency and Bankruptcy Code, 2016, the date of coming into force of Insolvency and Bankruptcy Code, 2016 i.e., 01.12.2016 would not form the trigger point of limitation and the period of limitation for an application for initiating of CIRP under Section 9, Insolvency and Bankruptcy Code, 2016 would be three years from the date when the right to apply accrues as provided by Article 137 of the Limitation Act.

Furthermore, the Hon'ble Supreme Court concluded that there was a pre-existing dispute between the parties.

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

- (i) What are the Reliefs that may be granted upon Application for Recognition of a Foreign

Proceeding as per Article 19 of UNCITRAL Model Law ? Enumerate the effects of Recognition of a foreign main Proceeding as per Article 20 of UNCITRAL Model Law.

(5 marks)

- (ii) Anuja Tools Pvt. Ltd., a registered MSME, is facing severe cash flow issues and wants to initiate a Pre-Packaged Insolvency (PPIRP), a cost-effective and speedy resolution process. They engage Mr. Yugam Sharma, a registered IP, as their proposed RP. Section 54B outlines the duties of an Insolvency Professional (IP) who is proposed to be appointed as the Resolution Professional (RP) in a PPIRP. These duties are carried out before the application is filed with the Adjudicating Authority (NCLT). The section ensures that only viable cases reach the tribunal, and necessary due diligence is done to prevent abuse of the process.

Elucidate the duties of Mr. Yugam Sharma under Section 54B(1) of the Insolvency and Bankruptcy Code, 2016.

Also mention at what point will his duties under Section 54B(1) come to an end ?

(5 marks)

- (iii) Marina Tech LLP was incorporated in 2019 by three partners, Mr. A, Ms. B, Mr C to provide technology consulting services.

By 2024, due to lack of business activity and sustained financial losses, the partners decided to discontinue operations.

Believing that the LLP had no outstanding liabilities, they opted for voluntary strike-off under Rule 37(1)(b) of the LLP Rules, 2009. They passed a resolution for strike-off, filed Form 24 with the Registrar of Companies (ROC), submitted affidavits declaring no pending liabilities, attached a CA-certified Statement of Accounts showing zero assets and dues, executed indemnity bonds agreeing to indemnify the ROC against future claims.

In March 2025, after public notice and no objections, Marina Tech LLP was officially struck off from the register. Two months later, a vendor, New IT Solutions, sent an email to all the designated partners claiming that payment of ₹ 9 lakhs for software licenses supplied in 2023 has not been made despite repeated reminders. The directors replied that the LLP is no more in existence and hence they are not liable to make the payment now. Eventually, New IT Solutions approached the NCLT for the same. The creditor presented email records, an invoice, and delivery conformations.

Comment in the light of provisions of The Limited Liability Partnership Act, 2008 read with rule 37 of the Limited Liability Partnership Rules, 2009 whether the designated partners are still liable to make payment to New IT Solutions ?

(5 marks)

- (iv) Tripti Organics Ltd., a company engaged in manufacturing tools and small machines, used in organic farming, was admitted into Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code (IBC), 2016, on 15th January 2025, following a default of ₹ 112 crore to its financial creditors.

The Resolution Professional (RP), appointed by the NCLT, invited resolution plans and received one plan—from Tools and Tech Pvt. Ltd.

The resolution plan outlined the measures for asset maximization. The resolution plan also included a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor. The plan also demonstrated compliance with all provisions of the law, as specified by the Board. The plan

clearly demonstrated that it is feasible and viable and addressed the root cause of the default.

The COC (Committee of Creditors), with 86% voting in favour, approved the plan and submitted it to the Adjudicating Authority (NCLT) for approval.

However, the resolution plan was rejected by the NCLT as it did not provide for the following :

- (a) the term of the plan and its implementation schedule;
- (b) the management and control of the business of the corporate debtor during its term; and
- (c) adequate means for supervising its implementation.

Tools and Tech Pvt. Ltd. contented that the rejection by NCLT for such shortcomings is unfair and unjustified and intends to file an appeal with NCLAT. As a counsel for Tools and Tech Pvt. Ltd., discuss whether the rejection by NCLT is valid ? What is the best course of action available to Tools and Tech Pvt. Ltd. in such scenario ?

(5 marks)

### **Answer 6A (i)**

According to Article 19 of the UNCITRAL, from the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including: -

- (a) Staying execution against the debtor's assets;
- (b) entrusting the administration or realization of all or part of the debtor's assets located in a State to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and
- (c) any relief mentioned in Article 21.

Relief available under Article 19 is provisional in the sense that, the relief terminates when the application for recognition is decided upon; however, the court is given the opportunity to extend the measure, as provided in Article 21. The court may refuse to grant relief under this Article if such relief would interfere with the administration of a foreign main proceeding.

*Article 20 enumerates the Effects of Recognition of a Foreign main Proceeding as follows:*

Once foreign proceeding is recognized which is a foreign main proceeding, the following are the effects:

- (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
- (b) execution against the debtor's assets is stayed; and
- (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

The effects provided by Article 20 are not discretionary in nature. These flow automatically from recognition of the foreign main proceeding. The automatic effects under Article 21 apply only to main proceedings.

However, the Article 20 does not affect

- the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.
- the right to request the commencement of a proceeding under [identify laws of the enacting State relating to insolvency] or the right to file claims in such a proceeding.

### **Answer 6A(ii)**

*Duties of resolution professional before initiation of pre-packaged insolvency resolution process. (Section 54B)*

As per Section 54 B (1) of the Insolvency and Bankruptcy Code, 2016, the insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54A, namely: -

- (a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of section 54A;
- (b) file such reports and other documents, with the Board, as may be specified; and
- (c) perform such other duties as may be specified.

*When will the duties of insolvency professional under Section 54B (1) of the Code cease?*

Section 54B (2) of the Insolvency and Bankruptcy Code, 2016 provides the following circumstances:

- (a) If the corporate debtor fails to file an application for initiating prepackaged insolvency resolution process within the time period as stated under the declaration referred to in clause (f) of subsection (2) of section 54A; or
- (b) the application for initiating prepackaged insolvency resolution process is admitted or rejected by the Adjudicating Authority, as the case may be.

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

*Affidavit*

As Per Section 75 of the Limited Liability Partnership Act, 2008 read with rule 37 of the Limited Liability Partnership Rules, 2009 an affidavit signed by the designated partners, either jointly or severally, to the effect that the limited liability partnership has no liabilities and indemnifying any liability that may arise even after striking off its name from the Register is filed with an application to ROC.

*Provision for realization of amount due:*

The ROC, before passing an order for striking off of the name of the LLP, should satisfy that sufficient provision has been made for the realization of all amount due to the limited liability partnership and for the payment or discharge of its liabilities and obligations by the limited liability partnership within a reasonable time. The ROC can obtain necessary undertakings from the designated partner or partner or other persons in charge of the management of the limited liability partnership. Notwithstanding the undertakings, the assets of the limited liability partnership shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the limited liability partnership from the Register.

*Liabilities of Partners to be continued after Striking Off*

Yes, the liability of all designated partners of the limited liability partnership would continue and may be enforced as if the limited liability partnership had not been dissolved.

**Answer 6 A(iv)**

Section 30 (2) of the Insolvency and Bankruptcy Code, 2016 casts an obligation on the Resolution Professional to examine each resolution plan received by him to confirm that each resolution plan (c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) provides for the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force

(f) conforms to such other requirements as may be specified by the Board. Further section 30(3) provides for that he shall present to the committee of creditors for its approval such resolution plans which confirm the conditions referred to in sub-section (2).

Regulation 38 of CIRP Regulations provides for mandatory contents of the resolution plan which includes:

(a) the term of the plan and its implementation schedule;

(b) the management and control of the business of the corporate debtor during its term; and

(c) adequate means for supervising its implementation.

Since the resolution plan did not provide for the above, it was correctly rejected by NCLT.

The best course of action in this case will be to remove the objections and obtain the approval of Committee of Creditors (COC) again and after that resubmit to NCLT for approval.

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# ARBITRATION, MEDIATION & CONCILIATION

## GROUP 2 ELECTIVE PAPER 7.1

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

In January 2024, Aarohan Pharma Private Ltd ('Aarohan'), a reputed pharmaceutical manufacturer, entered into a contract with Pentagon Lifesciences Ltd ('Pentagon') for the development and supply of a new line of oncology drugs. The contract, valued at ₹ 150 crore, contained detailed provisions on regulatory approvals, manufacturing timelines, quality control standards, penalties for delay, variation in technical specifications and dispute resolution. Clause 21 of the agreement stipulated that disputes would be resolved through arbitration under the Arbitration and Conciliation Act, 1996, with Hyderabad as the seat and proceedings governed by CIAC Rules. By April 2024, disagreements surfaced as Aarohan alleged that Pentagon delayed release of milestone-based payments and failed to provide timely approvals for raw material sourcing protocols, leading to cost overruns. Pentagon countered that Aarohan had missed regulatory submission deadlines, used substandard excipients in certain trial batches, and ignored directions from the joint project monitoring committee. Quality inspections conducted by Pentagon revealed compliance defects in two pilot production runs, which Pentagon relied on to withhold further payments. Tensions escalated and after weeks of negotiation, the parties signed a Settlement Agreement on July 15, 2024. Pentagon agreed to pay Aarohan ₹ 30 crore in full and final settlement of all claims, while Aarohan agreed to transfer all partially developed product dossiers and trial data to another manufacturer appointed by Pentagon. However, the settlement did not expressly reaffirm or exclude the arbitration clause.

In October 2024, Aarohan, aggrieved that the compensation did not cover its actual R&D and manufacturing expenses, issued a Notice of Arbitration invoking Clause 21 of the original contract. Pentagon objected, contending that the settlement agreement had superseded the original contract and extinguished the arbitration clause. Further, Pentagon challenged Aarohan's nominated arbitrator, citing the arbitrator's past professional ties with Aarohan's counsel. Aarohan then approached the Court seeking constitution of an arbitral tribunal, supporting its application with correspondence, invoices and the disputed settlement terms.

Based on the above facts, answer the following questions :

- (a) Discuss the general conditions typically included in pharmaceutical R&D and supply contracts.
- (b) Explain the essential contents which Aarohan's notice must include under the Arbitration and Conciliation Act, 1996 and institutional rules.
- (c) Elucidate the legal grounds on which Pentagon can challenge the appointment of Aarohan's nominated arbitrator.
- (d) Draft an agreement to submit the dispute to an arbitral tribunal, assuming necessary facts.
- (e) Outline the essential components in drafting an affidavit in support of Aarohan's application before the court for appointment of an arbitrator.

(5 marks each)

**Answer 1(a)**

General Conditions are an inherent part of the Contracts. They govern the entire contract by establishing the general risks, liabilities and obligations of the contracting parties and the administrative procedures for the administration of the contract. Pharmaceutical R&D and supply contracts are high-value commercial contracts involving regulatory compliance, intellectual property, confidential data, and long-term performance obligations. General conditions typically included in such a contract are:

1. Definitions and Interpretation - This clause provides a list of defined terms used throughout the contract to ensure clarity and consistency.
2. Execution, correlation, and intent – This clause ensures that all the documents of the contract are properly signed by the parties. Correlation and intent further ensure that all relevant conditions, including technical requirements, regulatory standards, and scope of work, has been correlated by the parties.
3. Ownership and Intellectual Property - This clause governs intellectual property ownership and licensing in documentation. In pharmaceutical contracts, this clause is critical to prevent unauthorized replication.
4. Confidential nature of documents and information - This clause defines what constitutes confidential information, prescribes obligations to protect such information and restricts disclosure to third parties. These confidentiality obligations survive even post-termination.
5. Prohibition on assignment, modifications - This clause restricts parties from assigning or transferring their rights and obligations or modifying the original contract without prior consent of the other party.
6. Indemnification - Indemnity provisions allocate risk and liability between the parties. In pharmaceutical contracts, indemnities cover regulatory non-compliance, product defects, intellectual property infringement, breach of confidentiality etc.
7. Encumbrances and liens - It prevents claims from third parties on the right to use the supplied goods, equipment or raw material by ensuring ensures that such goods, equipment, or material supplied under the contract are free from liens, charges, or third-party encumbrances.
8. Force majeure; other changes in conditions - Force majeure provisions excuse non-performance or delay due to events beyond a party's reasonable control, such as government actions, pandemics, strikes, regulatory shutdowns, or supply chain disruptions.
9. Termination – It specifies the circumstances under which the contract may be terminated, e.g., material breach, regulatory non-compliance etc.

**Answer 1(b)**

Aarohan's notice must include the following essential contents under the Arbitration and Conciliation Act, 1996 and institutional rules:

- The names and contact information of the parties involved in the dispute.
- A statement indicating that the dispute will be resolved through arbitration, rather than through litigation in a court of law.
- A brief summary of the dispute, including the relevant facts and any legal or contractual provisions that are relevant to the dispute.
- A request for a specific form of relief or remedy, such as monetary damages, injunctive relief, or specific performance.

- The rules and procedures that will govern the arbitration, including any designated arbitration organization, the location of the arbitration, and the number of arbitrators who will be appointed.
- A copy of the arbitration agreement, if any, that the parties have previously entered into.
- A deadline for responding to the notice and for selecting an arbitrator or arbitrators if necessary.
- A statement indicating that the parties agree to abide by the decision of the arbitrator or arbitration panel and to waive any right to appeal the decision.
- A statement requesting the other party to nominate an arbitrator, in case of a two-arbitrator panel or to agree on the appointment of a presiding arbitrator in case of a three-arbitrator panel.
- A statement indicating that if the other party does not respond to the notice within a specified time period, the initiating party may proceed with the appointment of an arbitrator or arbitrators on its own.
- It is important to note that the specific requirements for a notice to arbitration in India may vary depending on the arbitration agreement, the applicable law, and the rules or procedures that apply to the arbitration.

### **Answer 1(c)**

Section 12 of the Arbitration and Conciliation Act, 1996 provides for the Grounds for challenge.

According to section 12(1), when a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

- (a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and
- (b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

According to section 12(3), an arbitrator may be challenged only if—

- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
- (b) he does not possess the qualifications agreed to by the parties.

Further, according to section 12(5), notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator.

In the given situation, Aarohan's nominated arbitrator, may be challenged by Pentagon on the ground of having past relationship with parties or counsel of the parties. The law does not treat every prior association as disqualifying; however, where the arbitrator has significant professional engagements with the counsel of any party, such as regularly appearing as senior counsel with them, frequently being appointed as arbitrator at the instance of that counsel, sharing chambers

or office space, having ongoing advisory or consultancy arrangements, or having financial or business associations, the apprehension of bias becomes reasonable.

Similarly, where the arbitrator has previously advised the counsel or their firm on issues closely connected to the subject matter of the dispute, or has been professionally dependent on the counsel for briefs or appointments in the recent past, such relationship may too be acted upon and be a ground for challenge.

## Answer 1(d)

### ARBITRATION SUBMISSION AGREEMENT

#### Arbitration Submission Agreement

This Arbitration Submission Agreement ("Agreement") is made on this \_\_\_ day of \_\_\_\_\_, 2024, by and between:

1. Aarohan Pharma Private Limited, a company incorporated under the Companies Act, 2013, having its registered office at \_\_\_\_\_ ("Aarohan"); and
2. Pentagon Lifesciences Limited, a company incorporated under the Companies Act, 2013, having its registered office at \_\_\_\_\_ ("Pentagon").

(Aarohan and Pentagon are hereinafter collectively referred to as the "Parties" and individually as a "Party").

#### Recitals

- The Parties entered into a Contract dated January \_\_\_, 2024 relating to the development and supply of oncology drugs.
- Disputes arose between the Parties concerning payment delays, quality compliance, and performance obligations, leading to execution of a Settlement Agreement dated July 15, 2024.
- The Settlement Agreement did not expressly exclude the arbitration clause contained in Clause 21 of the original Contract.
- The Parties now mutually agree to submit their disputes to arbitration in accordance with this Agreement.

#### 1. Reference to Arbitration

The Parties hereby agree that all disputes, claims, and differences arising out of or in connection with the Contract dated January \_\_\_, 2024, the Settlement Agreement dated July 15, 2024, and any related dealings between the Parties shall be referred to and finally resolved by arbitration.

#### 2. Arbitral Tribunal

The arbitral tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator within 30 days of execution of this Agreement, and the two appointed arbitrators shall jointly nominate the presiding arbitrator.

#### 3. Seat and Venue

The seat of arbitration shall be Hyderabad, India, and the venue of proceedings shall ordinarily be at Hyderabad, unless otherwise agreed by the Parties and the tribunal.

#### 4. Governing Law and Rules

The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996

and the CIAC Rules as in force on the date of commencement of arbitration. The governing law of this Agreement shall be the laws of India.

#### 5. **Binding Effect**

The award rendered by the arbitral tribunal shall be final and binding on the Parties.

#### 6. **Continuation of Obligations**

Except as modified herein, the terms of the Settlement Agreement and the Contract shall remain binding on the Parties pending final resolution through arbitration.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Arbitration Submission Agreement on the date first written above.

For Aarohan Pharma Private Ltd.

\_\_\_\_\_  
Authorized Signatory

For Pentagon Lifesciences Ltd.

\_\_\_\_\_  
Authorized Signatory

#### **Answer 1(e)**

##### **Essential components in drafting an affidavit in support of Aarohan's application before the court for appointment of an arbitrator**

- At the top, write the name of the court, tribunal in which the affidavit is to be submitted, along with the allotted case/suit no.
- Mention the names of parties in brief.
- As a heading/title of the document, mention 'AFFIDAVIT' in the bold and underlined font.
- Thereafter give the details of the deponent (the person who is testifying as to the truth of submissions made by him, in the main petition) such as the name of the deponent and his father, age of deponent and his residential address, followed by 'Do solemnly affirm and declare as under.'
- In the first paragraph after the introduction, the deponent has to mention that he/she is the plaintiff or the defendant (as the case may be) in the suit for which the affidavit is being submitted and he has to make a declaration that he is fully aware and conversant with the facts of the case and can testify for the same.
- In the second paragraph, mention that the petition or submission made in the petition has been drafted by the counsel of the deponent and that the contents have been read over in vernacular language, with detailed explanation made to the deponent, along with consequences of the same, been explained to him.
- Mention in brief the circumstances of the suit or the submission made by the deponent. In case the main petition already contains the details, the same need not be repeated in the affidavit and one can mention that 'contents of the petition are not being repeated here for sake of brevity and therefore one shall consider the same as a part of this affidavit.'
- Lastly, state that it is the deponent's true and correct statement, followed by a paragraph about verification, which will state that contents of the affidavit are true and correct to the deponent's knowledge and that nothing material has been concealed.

## Question 2

- (a) The dispute arose from an **International Exclusive Distributor Agreement** signed in May 2016 between Disortho S.A.S., a Colombian company, and Meril Life Sciences Private Limited, an Indian company, for distributing medical products in Colombia. The agreement contained two seemingly contradictory clauses that created jurisdictional confusion :

**Clause 16.5** stated that the agreement “shall be governed by and construed in accordance with the laws of India and all matter pertaining to this agreement....will be subject to the jurisdiction of courts in Gujarat, India”.

**Clause 18** provided for disputes to be resolved through “Arbitration by either party for final settlement in accordance with the Arbitration and Conciliation Center of the Chamber of Bogota DC” with arbitration taking place in Bogota and awards governed by Colombian law.

With reference to a decided case law, how will you determine jurisdiction in international commercial arbitration when contractual clauses conflict.

(5 marks)

- (b) The genesis of the dispute lies in a notification dated 28.07.2006 issued by the Central Government under Section 3A(1) of the National Highways Act, 1956 (“NH Act”), acquiring land in Baghpat, Uttar Pradesh. While some land was acquired through due notification, possession of an additional portion was taken without formal acquisition, as per notification dated 08.02.2007. Aggrieved by the lack of compensation for such acquisition, the Petitioners filed a Writ Petition before the Delhi High Court seeking quashing of the acquisition and payment of compensation.

Pursuant to the Court's directions, compensation was awarded in 2019. Dissatisfied with the quantum, the Petitioners approached the District Collector, Division Meerut under Sections 3G(5) and 3G(7) of the NH Act, seeking enhanced compensation. The claim was rejected on 16.10.2020, leading to the filing of a Section 34 petition under the A&C Act before the Delhi High Court.

The Respondents raised a preliminary objection to the maintainability of the petition on the ground of lack of territorial jurisdiction, arguing that the arbitration proceedings, land, and prior actions all occurred within Baghpat, U.P., and hence, only the local court there would have jurisdiction.

With reference to a decided case law, comment :

- (1) Can a writ petition be considered as an “earlier application” under Section 42 of the Arbitration and Conciliation Act, 1996, to confer exclusive jurisdiction on a particular court ?
- (2) What is the scope of Section 42 in determining jurisdiction where arbitration arises under a special statute like the National Highways Act ?

(5 marks)

- (c) The dispute arose between Bentwood Seating System (P) Ltd. (the Appellant) and the Airport Authority of India (AAI) (the Respondents) over a contract for the supply and maintenance of baggage trolleys at various airports. The Respondents alleged that the Appellant had obtained the contract using forged documents.

Initially, an arbitral tribunal was set up to resolve the matter. The tribunal ruled in favor of the Appellant, setting aside AAI's termination order. However, AAI challenged this decision

under section 34 of the Arbitration and Conciliation Act, alleging that the fraud committed by the Appellant had not been adequately adjudicated.

AAI also filed a criminal complaint, claiming that the Appellant had submitted forged performance certificates from foreign airports to qualify for the tender. The matter eventually reached the Delhi High Court, which ruled that such serious allegations of fraud required examination by civil courts.

Based on a decided case law, examine how the fraud allegation can nullify the effect of the Arbitration Agreement ?

(5 marks)

### Answer 2(a)

The facts of the given situation are based on the case *Disortho S.A.S. v. Meril Life Sciences Private Limited* decided by Supreme Court on 18th March, 2025.

In these type of cases, three distinct legal systems which come into play when a dispute occurs:

- (i) *lex-contractus*, the law governing the substantive contractual issues;
- (ii) *lex arbitri*, the law governing the arbitration agreement and the performance of this agreement; and
- (iii) *lex-foi*, the law governing the procedural aspects of arbitration.

These legal systems may either differ or align, depending on the parties' choices. Further, there may be internal splits within these legal systems, such as for *lex arbitri*.

The Hon'ble Supreme Court has also referred to the following International cases in this case:

In *Enka Insaat Ve Sanayi AS v. OOO Insurance Company Chubb*, the UK Supreme Court examined this legal issue and divergent opinions surrounding it. One line of precedents suggest that the *lex contractus* should govern the arbitration agreement. Although the arbitration agreement is separable from the main contract, it is not completely detached from it. Conversely, there is case law indicating that the law of the seat of arbitration should typically govern the arbitration agreement. *Enka Insaat* (supra) follows the principles stipulated in *Sulamérica Cia Nacional De Seguros S.A. and Others v. Enesa Engenharia S.A. and Others*, which it observes straddles both views.

Further, the Supreme Court has validated the three-stage enquiry test as mentioned in *Sulamérica* case, which are:

- (i) express choice,
- (ii) implied choice and
- (iii) closest and most real connection.

Therefore, the law applicable to the arbitration agreement can be:

- (a) the law chosen by the parties to govern it or
- (b) in the absence of such a choice, the system of law with which the arbitration agreement is most closely connected.

The principles as laid down in this judgement can be referred for determining the jurisdiction in international commercial arbitration when contractual clauses conflict.

**Answer 2(b)**

(1) The facts of the given situation is based on case law between *Hariram & Ors v. National Highway Authority of India & Ors.* decided by Supreme Court on 4th April, 2025.

In view of the decision in this case, a writ petition cannot be construed as an “earlier application” under Section 42 of the Arbitration and Conciliation Act, 1996. The primary ground of the petitioner’s claim of jurisdiction in the present petition, is the invocation of Section 42 of the Arbitration and Conciliation Act, 1996 (A&C Act).

Section 42 of Arbitration and Conciliation Act, 1996: Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

In the present case, the previous proceedings were in the nature of a writ petition. It is apposite to state that a writ petition cannot be construed as an “earlier application” under Section 42 of the Arbitration Act to decide jurisdiction as the very nature of a writ petition is to challenge an administrative action or a legal decision, not to initiate arbitration proceedings; Section 42 specifically refers to an “application made in a Court with respect to an arbitration agreement,” which implies an initial application to commence or regulate arbitration, rather than a challenge to an existing decision. Citing the judgment in *Dipankar Singh & Ors. v. UOI through NHAI, 2019 SCC OnLine Del 11121*, the Court reiterated that a Writ Petition cannot be equated with an application under Part I of the Arbitration Act. In that case, too, it was held that despite parties approaching the Delhi High Court under Writ jurisdiction, only the courts where the arbitral proceedings took place had jurisdiction under Section 34. The Court clarified that Section 42 applies strictly to applications made “with respect to an arbitration agreement” under the Arbitration Act, such as those under Sections 9, 11, or 34, not to writ petitions under Article 226 or 227.

(2) In the case of *Hariram & Ors v. National Highway Authority of India & Ors.* the Hon'ble Apex Court have held that territorial jurisdiction lies with the court within whose jurisdiction the subject matter of the suit is situated, as well as the courts within whose jurisdiction the dispute resolution process, i.e., arbitration, is conducted. Furthermore, it has been consistently held that the moment the seat of arbitration is designated, it is akin to an exclusive jurisdiction clause. The legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. In *National Highway Authority of India and Another v. Jagpal Singh Allahabad High Court* held that under National Highway Act, Sections 3G(5)/3G(7) arbitration by District Collector occurs where land/proceedings are located (Baghpat, UP); thus, Baghpat civil court has exclusive jurisdiction for Section 34, not Delhi High Court despite NHAI HQ or prior writ.

The Supreme Court has clarified that where arbitration is triggered under a special statute, such as Sections 3G(5) and 3G(7) of the National Highways Act, the determination of jurisdiction to be guided by:

- The place where the arbitration proceedings are conducted,
- The location of the subject matter (i.e., the acquired land),
- The court which would ordinarily have jurisdiction over the arbitral award under Section 34.

Section 42 does not override the jurisdictional scheme of a special statute, nor does it permit forum selection based on prior constitutional proceedings. Its application is limited to ensuring procedural certainty within arbitration proceedings governed by the Arbitration Act, not to expand jurisdiction on the basis of writ litigation.

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

The facts of the given situation are based on case law *Bentwood Seating System (P) Ltd. v. Airport Authority of India & Anr* decided by High Court of Delhi on 11th March, 2025.

In this case the issue for consideration of the Hon'ble Delhi Court was whether the Ld. Sole Arbitrator ought to have permitted the parties to lead evidence and adjudicate the issue of fraud, or is the decision taken by the Ld. Sole Arbitrator that the issue which arises for consideration in this case is non-arbitrable.

The Ld. Sole Arbitrator by way of the Impugned Award held that the Appellant had played a fraud on the Respondents in getting the Tender and the extent of fraud is such, that it would be difficult for the Ld. Sole Arbitrator, which is not a Court, to summon witnesses from various governmental authorities and foreign companies. The Arbitrator held that the fraud in the present case cannot be confined to the internal matters/affairs of the parties herein. The allegations of fraud of the documents which pertains to fabrication of documents of foreign companies and governmental authorities cannot be adjudicated upon or examined by the Arbitral Tribunal which does not have the wherewithal of a Court. The Ld. Sole Arbitrator placed reliance on the judgments passed by the Apex Court in *Vidya Drolia and Others v. Durga Trading Corporation*, (2021) 2 SCC 1, *Avitel Post Studioz Limited and Others v. HSBC PI Holdings (Mauritius) Limited*, (2021) 4 SCC 713 and *A. Ayyasamy v. A. Paramasivam & Ors.*, (2016) 10 SCC 386.

The Hon'ble High Court said that the Apex Court(in the cases referred) was of the opinion that cases where serious frauds are involved that has to be treated as non-arbitrable and it is only the Civil Court which take such matters. However, where the allegations of fraud simplicitor and such frauds are merely alleged then it is not necessary to nullify the affect of the Arbitration Agreement of the parties and such issues can be determined by the Tribunal.

The Hon'ble High Court was of the opinion that the present case is not on the ground of fraud simplicitor. The facts of the case are extremely serious and they do make out a case for criminal offence. The plea of fraud is of such a nature that it permits the entire contract including the agreement to arbitrate as the issue goes to the validity of the entire contract which contains the Arbitration Clause itself.

### **Question 3**

- (a) A petition was instituted under the Arbitration and Conciliation Act, 1996 for appointment of a sole arbitrator in a dispute between AMP Group (petitioner) and JRS Group (respondent). The arbitration clause formed part of a written agreement executed between the parties. During proceedings, an attempt was made to bring SRG Group, a non-signatory, within the ambit of the arbitration clause on the basis that it had been actively involved in the negotiation, execution and performance of the contract.

Based on a case law, assess whether SRG Group can legitimately be bound by the arbitration agreement.

(5 marks)

- (b) Gayatri Balasamy and M/s ISG Novasoft Technologies Limited had entered into a contractual relationship that led to the arbitration of disputes between them. Following disagreements regarding the execution of the contract, disputes arose, prompting the invocation of the

arbitration process as per the Arbitration and Conciliation Act, 1996. The arbitral tribunal made its award based on the submissions and evidence presented by both parties. However, the award was challenged by the Appellant, which resulted in a protracted legal battle, necessitating judicial intervention to address the limitations and scope of modification powers under Section 34 of the Act. The complexities intensified as conflicting judgments emerged from various courts regarding whether judiciary powers could extend to modifying arbitral awards, thus leading to the Supreme Court's involvement to seek clarity on this critical issue.

The legal action commenced when Gayatri Balasamy sought to set aside the arbitral award through a petition under Section 34 of the Arbitration and Conciliation Act, citing various grounds that questioned the validity and reasoning of the award. The central legal issue that arose was whether the courts possessed the authority to modify an arbitral award or if their powers were strictly limited to setting aside the award based on the specified grounds. This led to differing judicial interpretations over the years and generated substantial debate surrounding the appropriate judicial oversight in arbitration matters, ultimately resulting in the Supreme Court's referral for a larger Bench to resolve these pivotal questions of law.

Based on a decided case law, examine :

- (1) Whether courts have power under Sections 34 and 37 of the Arbitration Act to modify arbitral awards.
- (2) Whether the power to set aside an award includes an inherent power to modify the award.

(5 marks)

- (c) Nexa Engineering Private Ltd ("Nexa"), a company specializing in the manufacture of prefabricated steel structures and heavy engineering components, and Harbor Constructions Ltd ("Harbor"), a major infrastructure developer, had entered into a contract in 2020 for the supply of customized steel beams, girders, and modular engineering goods required for the construction of elevated tracks in a metro rail project.

The contract contained an arbitration clause governed by the Arbitration and Conciliation Act, 1996. Nexa supplied several consignments under the contract and raised invoices, but Harbor withheld payment, alleging that some components were not in conformity with project specifications. Nexa, disputing this allegation, invoked arbitration and filed its statement of claim for recovery of the outstanding dues with interest. Harbor filed its statement of defence, maintaining that Nexa's supplies were defective and caused project delays. After filing its statement of claim, Nexa failed to attend subsequent hearings. The arbitral tribunal, invoking Section 32(2)(c), terminated the proceedings on the ground that continuation had become unnecessary. Nexa challenged this order, contending that mere absence from hearings cannot be treated as abandonment of claims.

With reference to a case law, discuss whether the arbitral tribunal is justified in terminating the proceedings.

(5 marks)

### Answer 3(a)

The facts of the given situation is based on the case of *Ajay Madhusudan Patel & Ors. v. Jyotrindra S. Patel & Ors.*, 2024 INSC 710, decided by Supreme Court on 20.09.2024.

This petition was filed under Section 11(6) read with Section 11(9) of the Arbitration and Conciliation Act, 1996 ("the Act, 1996") seeking appointment of a Sole Arbitrator under an Agreement entered into between the petitioner AMP Group and respondent JRS Group.

An important issue in this case was Whether the SRG Group, being a non-signatory to the FAA, should also be referred to arbitration along with the AMP and JRS Groups?

The Hon'ble Apex Court in *Cox and Kings* held that the definition of "parties" under Section 2(1)(h) read with Section 7 of the Act, 1996 includes both the signatory as well as non-signatory parties. Persons or entities who have not formally signed the arbitration agreement or the underlying contract containing the arbitration agreement may also intend to be bound by the terms of the agreement. Further, the requirement of a written agreement under Section 7 of the Act, 1996 does not exclude the possibility of binding non-signatory parties if there is a defined legal relationship between the signatory and non-signatory parties. Therefore, the issue as to who is a "party" to an arbitration agreement is primarily an issue of consent. Actions or conduct could be an indicator of the consent of a party to be bound by the arbitration agreement. This aspect is also evident from a reading of Section 7(4)(b) which emphasises on the manifestation of the consent of persons or entities through actions of exchanging documents.

It is evident that the intention of the parties to be bound by an arbitration agreement can be gauged from the circumstances that surround the participation of the non-signatory party in the negotiation, performance, and termination of the underlying contract containing such an agreement. Further, when the conduct of the non-signatory is in harmony with the conduct of the others, it might lead the other party or parties to legitimately believe that the non-signatory was a veritable party to the contract containing the arbitration agreement. However, in order to infer consent of the non-signatory party, their involvement in the negotiation or performance of the contract must be positive, direct and substantial and not be merely incidental. Thus, the conduct of the non-signatory party along with the other attending circumstances may lead the referral court to draw a legitimate inference that it is a veritable party to the arbitration agreement.

Therefore, considering the complexity involved in the determination of the question whether the SRG Group is a veritable party to the arbitration agreement or not, we are of the view that it would be appropriate for the arbitral tribunal to take a call on the question after taking into consideration the evidence that may be adduced by the parties before it and the application of the legal doctrine as elaborated in the decision in *Cox and Kings*.

In view of this case, it can be said that SRG Group may legitimately be bound by the arbitration Agreement.

### **Answer 3(b)**

The facts of the given situation are based on the case of *Gayatri Balasamy v. M/s. ISG Novasoft Technologies Limited* decided by Supreme Court on 30th April, 2025.

The Hon'ble Supreme Court in this case has said that to deny courts the authority to modify an award particularly when such a denial would impose significant hardships, escalate costs, and lead to unnecessary delays would defeat the *raison d'être* of arbitration. This concern is particularly pronounced in India, where applications under Section 34 and appeals under Section 37 often take years to resolve.

The court opined that modification represents a more limited, nuanced power in comparison to the annulment of an award, as the latter entails a more severe consequence of the award being voided *in toto*. Read in this manner, the limited and restricted power of severing an award implies a power of the court to vary or modify the award. It will be wrong to argue that silence in the 1996 Act, as projected, should be read as a complete prohibition.

The court also opined that the Section 34 court can apply the doctrine of severability and modify a portion of the award while retaining the rest. This is subject to parts of the award being separable, legally and practically, as stipulated in Part II of our Analysis.

The apex court also said that the courts need not engage in any fact-finding exercise. By acknowledging the Court's power to modify awards, the judiciary is not rewriting the statute. We hold that the power of judicial review under Section 34, and the setting aside of an award, should be read as inherently including a limited power to modify the award within the confines of Section 34.

Notwithstanding Section 33, the Apex Court affirmed that a court reviewing an award under Section 34 possesses the authority to rectify computational, clerical, or typographical errors, as well as other manifest errors, provided that such modification does not necessitate a merits-based evaluation. There are certain powers inherent to the court, even when not explicitly granted by the legislature. The scope of these inherent powers depends on the nature of the provision, whether it pertains to appellate, reference, or limited jurisdiction as in the case of Section 34. The powers are intrinsically connected as they are part and parcel of the jurisdiction exercised by the court.

The Hon'ble court held that inadvertent errors, including typographical and clerical errors can be modified by the court in an application under Section 34. However, such a power must not be conflated with the appellate jurisdiction of a higher court or the power to review a judgment of a lower court.

The Apex Court held that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award.

The questions of law referred to by *Gayatri Balasamy* were answered by the Hon'ble Supreme Court stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award. This limited power may be exercised under the following circumstances:

- I. when the award is severable, by severing the "invalid" portion from the "valid" portion of the award.
- II. by correcting any clerical, computational or typographical errors which appear erroneous on the face of the record;
- III. post award interest may be modified in some circumstances; and/or
- IV. Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power.

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

The facts of the given situation are similar of the case of *Dani Wooltex Corporation & Ors. versus Sheil Properties Pvt. Ltd. & Anr.* decided by Supreme Court on 16th May, 2024.

In this case, it was laid down that under clause 32(2)(c) of Arbitration and Conciliation Act, 1996, the mere existence of a reason for terminating the proceedings is not sufficient. The reason must be such that the continuation of the proceedings has become unnecessary or impossible.

In this case, the issue was about the legality and validity of the order of termination of the arbitral proceedings under clause (c) of sub-section (2) of Section 32 of the Arbitration and Conciliation Act, 1996.

Section 32 provides for the termination of the arbitral proceedings in the following contingencies:

- On making final arbitral award;
- On the Claimant withdrawing his claim as provided under clause (a) of subsection (2) of Section 32;

- Parties agreeing on termination of arbitral proceedings as provided under clause (b) of subsection (2) of Section 32; or
- When the Arbitral Tribunal finds that the continuation of proceedings has become unnecessary or impossible for any other reason, as provided under clause (c) of subsection (2) of Section 32.

Therefore, clause (c) of subsection (2) of Section 32 can be invoked for reasons other than those mentioned in subsection (1) of Section 32 and clauses (a) and (b) of subsection (2) of Section 32. Under clause (c), the mere existence of a reason for terminating the proceedings is not sufficient.

The reason must be such that the continuation of the proceedings has become unnecessary or impossible.

If the party fails to appear for a hearing after filing a claim, the learned Arbitrator cannot say that continuing the arbitral proceedings has become unnecessary. Abandonment by the claimant of his claim may be grounds for saying that the arbitral proceedings have become unnecessary. However, the abandonment must be established. Abandonment can be either express or implied. Abandonment cannot be readily inferred. One can say that there is an implied abandonment when admitted or proved facts are so clinching and convincing that the only inference which can be drawn is of the abandonment. Mere absence in proceedings or failure to participate does not, per se, amount to abandonment. Only if the established conduct of a claimant is such that it leads only to one conclusion that the claimant has given up, his/her claim can an inference of abandonment be drawn. Merely because a claimant, after filing his statement of claim, does not move the Arbitral Tribunal to fix a date for the hearing, it cannot be said that the claimant has abandoned his claim. The reason is that the Arbitral Tribunal has a duty to fix a date for a hearing. If the parties remain absent, the Arbitral Tribunal can take recourse to Section 25 which gives the arbitral tribunals the power to continue hearing arguments if the respondent does not provide a statement of defence. The arbitral tribunal may also decide to treat the respondent's failure to submit the Statement of Defence as a forfeiture or waiver of their claim under this Section. Hence, failing to submit a statement of claim or statement of defence would negatively affect any party's standing before the arbitral tribunal.

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

**Question 4**

- (a) "Section 29B of the Arbitration and Conciliation Act, 1996, introduces a "fast track procedure" for resolving disputes through arbitration. This procedure allows parties to opt for a quicker, more streamlined process, typically involving a sole arbitrator and primarily relying on written submissions rather than oral hearings." What are the key features of section 29B ?

*(5 marks)*

- (b) Indus Biotech Private Limited issued Optionally Convertible Redeemable Preference Shares (OCRPS) to Kotak India Venture (Offshore) Fund through share subscription and shareholders agreements. When Indus opted for a Qualified Initial Public Offering (QIPO), Kotak chose to convert its preference shares into equity shares in accordance with regulation 5(2) of SEBI (ICDR) Regulations, 2018. However, a dispute emerged over the calculation and conversion formula for this transformation. Kotak claimed a 30% stake in the paid-up share capital of the equity shares upon conversion, while Indus argued for only a 10% stake.

The central issue in this dispute revolved around whether Kotak's exercise of redemption options constituted a 'default' under the Insolvency and Bankruptcy Code (IBC), allowing them to initiate insolvency proceedings against Indus using a Section 7 petition as a financial

creditor. Indus contended that discussions regarding the conversion of shares, rather than redemption, had taken place, and until a resolution was reached on the disagreement about the percentage of equity shares to be allocated, there was no obligation to repay, thus implying no 'debt' or 'default' under the IBC.

In response to Kotak's Section 7 petition, Indus filed an Arbitration Application under Section 8 of the Arbitration and Conciliation Act, 1996, with the aim of resolving the dispute through arbitration. The National Company Law Tribunal (NCLT) granted this Arbitration Application, directing the parties to engage in arbitration and subsequently dismissing the Section 7 petition. Kotak, dissatisfied with the NCLT's ruling, sought redress from the Supreme Court.

Whether it is permissible to file an application for arbitration under Section 8 of the Arbitration and Conciliation Act after an insolvency resolution petition under Section 7 of the IBC has been admitted ?

(5 marks)

- (c) A dispute arose between InfoTeck Global Services Ltd. ("InfoTeck") and NextGen Power Solutions Private Ltd ("NextGen") concerning enforcement of an arbitration clause in an IT implementation and service contract executed in 2020. Under the contract, InfoTeck was engaged to design and implement a customized Enterprise Resource Planning (ERP) system and provide integrated IT support services for NextGen's energy distribution business. The agreement included milestones for delivery, penalties for delay and contained a detailed arbitration clause governed by the Arbitration and Conciliation Act, 1996. When disputes arose over alleged breaches and non-payment of invoices, InfoTeck invoked arbitration and filed a petition under Section 11(6) for appointment of a sole arbitrator. NextGen objected at the threshold, contending that the contract was inadmissible in evidence, as it had not been duly stamped under the Indian Stamp Act, 1899 and therefore, no arbitral proceedings could validly commence. Is NextGen's contention valid ? Discuss with reference to a case-law.

(5 marks)

#### Answer 4(a)

##### Key Features of Section 29B of the Arbitration and Conciliation Act, 1996

1. **Voluntary Adoption:** Parties must mutually agree in writing to use the fast track procedure, either at the time of the arbitration agreement or later.
2. **Sole Arbitrator:** The parties can agree to have a sole arbitrator decide the dispute.
3. **Written Pleadings and Documents:** The arbitral tribunal primarily relies on written submissions and documents provided by the parties.
4. **Limited Oral Hearings:** Oral hearings are only conducted if all parties request them or if the tribunal deems them necessary.
5. **Time-bound Award:** The award must be made within six months from the date the tribunal enters upon the reference.
6. **Fee Arrangements:** The fees payable to the arbitrator and the manner of payment are agreed upon by the arbitrator and the parties.
7. **Optional:** The fast track procedure is optional and requires mutual consent from all parties involved.
8. **Cost-effectiveness and Time Savings:** The procedure aims to be cost-effective and time-saving compared to traditional arbitration.

### Answer 4(b)

The issue is whether an application under Section 8 of the Arbitration and Conciliation Act, 1996 can be entertained after an insolvency resolution petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) has been admitted.

As per the scheme of the IBC, insolvency proceedings are intended to be time-bound and are initiated for the purpose of determining the existence of a financial debt and default. The IBC does not contain any provision mandating reference of disputes to arbitration, nor does it subordinate insolvency proceedings to arbitral processes. On the contrary, Section 238 of the IBC gives it an overriding effect over other laws.

In *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* (Supreme Court, 26.03.2021), the Supreme Court clarified the legal position regarding the interface between arbitration and insolvency proceedings. The operative holding of the Court is that:

- An application under Section 7 of the IBC must first be examined by the Adjudicating Authority (NCLT) to determine whether a financial debt and default exist.
- Till the Section 7 petition is admitted, the insolvency proceedings do not attain the character of proceedings *in rem*.
- If the NCLT comes to the conclusion that no default is made out, the Section 7 application is liable to be dismissed, and in such a situation, the dispute may be referred to arbitration, provided there is a valid arbitration agreement.

However, once a Section 7 petition is admitted, the Corporate Insolvency Resolution Process (CIRP) commences, the proceeding becomes *in rem*, and the rights of all stakeholders are affected. At that stage, reference to arbitration under Section 8 of the Arbitration Act is not permissible, as it would defeat the object, timelines, and collective nature of the insolvency process.

Thus, an application under Section 8 of the Arbitration and Conciliation Act cannot be filed or entertained after the admission of a Section 7 IBC petition. Arbitration is permissible only prior to admission, and only where the Adjudicating Authority finds that no default exists.

In light of the Supreme Court's ruling in *Indus Biotech*, arbitration under Section 8 is barred after admission of insolvency proceedings under Section 7 of the IBC, but may be permitted before admission, if the dispute does not disclose a debt or default.

### Answer 4(c)

The facts of the given situation are similar to the case of *N. N. Global Mercantile Private Limited v. M/s Indo Unique Flame Ltd. Ors.* In this case, the court observed that exercise of power coupled with duty under Section 33 of the Stamp Act (Indian Stamp Act, 1899) cannot be accused of judicial interference in contravention to Section 5 of the Arbitration and Conciliation Act (the Act) and further that it shall not be confused with examination whether an arbitration agreement or arbitration clause in the said instrument, exists so as to appoint arbitrator in invocation of the power under Section 11(6) of the Act. In that view of the matter, the provisions under Section 11(6A) or 16 of the Act cannot act as a rider for the exercise of the said power under Section 33 of the Stamp Act.

The Bar under Section 35 of the Stamp Act on admission of instruments not duly stamped in evidence, as is evident from proviso (a) to it, is *not permanent and is curable* by following procedures provided thereunder and making an endorsement as provided under Section 42(1) of the Stamp Act.

In the above matter, it can therefore be said that Arbitration Agreement may be taken as valid by the courts after Payment of appropriate duty and that should not be taken as Judicial Intervention.

In view of the above discussion, it may be said that the contention of NextGen is not valid.

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

- (i) A matter has come up for arbitration wherein the IGRP Investor Grievances Redressal Panel has rejected the claim of the applicant for losses suffered for about ₹ 3,75,000/- due to mishandling of trading in derivatives by the representative of respondent, the trading member. The applicant is a Doctor by profession. He is having trading account with respondent which is a stock broking company since the year 2019. In the month of October-November 2022 an employee of respondent, who was assigned as Applicant's Relationship Manager (RM) advised to trade in derivatives. The Applicant informed that he was not an expert in the field but RM assured that she would deal on his behalf.

The applicant suffered a loss of approximately ₹ 80,000/- in the beginning, he directed her to stop trading and further directed her to revive the losses. She assured that she will recover losses and thereafter will stop trading in derivatives. Despite recovery of said loss, she continued to deal and further purchased 30 lots, no stop loss was demarcated and applicant suffered a loss of ₹ 1,50,000/-. The applicant directed the employee not to deal any further, but she assured that she will recover losses incurred and purchased 250 shares of Adani Green which started losing due to the Hindenburg report. She did not sell these shares despite request by the applicant resulting in huge losses. The respondent trading member has opposed the claim. The account opening form of the applicant—claimant has been filed to show that he became registered constituent since June 2020.

Is there any opportunity of winning the matter of the applicant before arbitrator ? Explain.

(5 marks)

- (ii) X, an eminent arbitration practitioner having substantial knowledge and experience in institutional arbitration, both domestic and international, has been nominated as a member of the Arbitration Council of India by the Central Government. Subsequently, it was found that X has acquired such financial interest as is likely to affect prejudicially his functions as a Member and hence the Central Government removed X and Y was appointed in his place. Advise X, when a member of the council can be removed.

(5 marks)

- (iii) "Section 57 of the Arbitration and Conciliation Act, 1996, plays a pivotal role in ensuring the enforcement of foreign arbitral awards governed by the Geneva Convention. By establishing clear conditions for enforcement, it protects the interests of both parties and upholds India's commitment to international arbitration. While challenges remain, continued reforms and judicial clarity can further enhance the section's effectiveness, fostering greater confidence in India's arbitration regime." Mention conditions for enforcement of foreign awards as provided under section 57(1). Can the enforcement of an award be refused by the Court even if all the conditions under section 57(1) are fulfilled ?

(5 marks)

**Answer 4A(i)**

The facts of the given situation are based on the matter of Arpit Mehra vs. Kotak securities Ltd. This arbitration matter was filed by applicant against respondent Kotak Securities Ltd. for setting aside the order dated 15.05.2023 of Investor Grievance Resolution Panel (IGRP).

The IGRP has rejected the claim on a sound reasoning that applicant himself was doing online and off-line trading. There is nothing to show that trading was done by the trading member without the

consent or knowledge of applicant for which contract notes and emails & SMSs are available. A person involved in trading may earn or lose. There is nothing to show that respondent is under any legal obligation to compensate the losses. Before any such trade, the risk factor is to be considered. Since the applicant- claimant is doing online trading he is always in a position to act according to his wishes. Even if anyone promises to recover the loss, the act of trading must be done with full caution. The applicant has submitted that after purchase of Adani Green shares, he asked for its disposal but the representative of Respondent, failed to do so. Nothing prevented him to dispose it as he had earlier traded online. In suffering huge losses, responsibility cannot be attributed to the respondent in the absence of any documented condition for indemnity. The findings of IGRP deserve to be confirmed.

The Arbitrator rejected the arbitration application claiming Rs. 3,73,276/ -. No orders as to cost.

In view of the matter discussed above, it may be said that the chances of winning of applicant depends upon the actual facts and the evidences.

#### **Answer 4A(ii)**

##### **Removal of Member**

Section 43G(1) of Arbitration and Conciliation Act, 1996 provides that the Central Government may, remove a Member from his office if he –

- (a) is an un-discharged insolvent; or
- (b) has engaged at any time (except Part-time Member), during his term of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member;** or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has become physically or mentally incapable of acting as a Member.

Further according to Section 43G(2) notwithstanding anything contained in sub-section (1), no Member shall be removed from his office on the grounds specified in clauses (d) and (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

In view of the above provision, it may be said that Mr. X cannot be removed without referring the matter to Supreme Court.

#### **Answer 4A(iii)**

##### **Conditions for enforcement of foreign awards covered by the Geneva Convention**

Section 57 of Arbitration and Conciliation Act, 1996(the Act) imposes conditions for enforcement of foreign awards.

Section 57(1) states that in order that a foreign award may be enforceable under this Chapter, it shall be necessary that—

- (a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;

- (b) the subject-matter of the award is capable of settlement by arbitration under the law of India;
- (c) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
- (d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
- (e) the enforcement of the award is not contrary to the public policy or the law of India.

Section 57(2) states that even if the conditions laid down in section 57(1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that—

- (a) the award has been annulled in the country in which it was made;
- (b) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration.

Section 57(3) states that if the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (a) and (c) of subsection (1) and clauses (b) and (c) of sub-section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

Therefore, it can be said that even if all the conditions under section 57(1) of the Act are satisfied, court can refuse the enforcement of the award.

## PART-II

### Question 5

Luminex Technologies Private Ltd ('Luminex'), a Bengaluru-based software company, entered into a five-year service contract with Helios Infrastructure Ltd ('Helios'), a Noida-based construction firm, for the supply of customized project management software. Within two years, disputes arose when Helios alleged that the software failed to integrate with its existing systems, causing delays and financial losses. Luminex denied liability, asserting that Helios had repeatedly altered specifications, leading to additional costs and project overruns. Being a listed company, Helios lodged a formal complaint with the stock exchange. Before escalation, both parties were advised to attempt e-mediation through the newly established Online Dispute Resolution (ODR) portal. Recognizing the advantages, both parties consented to proceed with this process and a mediator was appointed.

At the outset, the mediator directed the parties to execute a mediation agreement, setting out the framework of the process. Luminex readily agreed, but Helios expressed hesitation, fearing that signing such an agreement might prejudice its rights in any subsequent arbitration or litigation. Further differences arose over the mode of mediation. Luminex preferred ad-hoc mediation, citing flexibility and lower costs, while Helios insisted on institutional mediation under a SEBI-accredited centre, emphasizing structured procedures and enforceability. With no consensus reached, the parties were left to balance efficiency, cost and legal certainty before proceeding.

Based on the above facts, answer the following questions :

- (a) Draft a mediation agreement for resolution of dispute between Luminex and Helios, assuming necessary facts. (7 marks)
- (b) Explain the concept of e-mediation, highlighting its benefits and challenges. (4 marks)
- (c) Outline the distinction between ad-hoc mediation and institutional mediation. (4 marks)

### Answer 5(a)

#### Mediation Agreement

This Mediation Agreement ("Agreement") is entered into on this \_\_\_ day of \_\_\_\_\_, 202X, between:

- I. Luminex Technologies Private Ltd.** (hereinafter referred to as the "First Party"), having its registered office at [.....];
  - II. Helios Infrastructure Ltd.** (hereinafter referred to as the "Second Party"), having its registered office at [.....];
- (collectively referred to as "the Parties") and

**III. Mr./Ms. [Mediator's Name]**, appointed as Mediator (hereinafter referred to as the "Mediator").

#### 1. Purpose

The Parties agree to resolve their disputes arising out of the Service Contract dated [.....] through mediation, in good faith, with the assistance of the Mediator.

#### 2. Voluntary Nature

Mediation is a voluntary process. Either Party may withdraw at any time by written notice to the Mediator and the other Party.

#### 3. Role of Mediator

The Mediator shall act impartially, facilitate discussions, and assist the Parties in reaching a mutually acceptable settlement. The Mediator shall not impose any decision or award.

#### 4. Confidentiality

All communications, documents, and disclosures made during mediation shall remain confidential and shall not be admissible in any judicial or arbitral proceedings, except as required by law or to enforce a settlement agreement.

#### 5. Timelines

The mediation proceedings shall commence within 7 days of this Agreement and shall, as far as possible, be concluded within 60 days, unless extended by mutual consent of the Parties.

#### 6. Costs

The Parties shall share the mediator's fees and other administrative expenses equally, unless otherwise agreed in writing.

**7. Settlement Agreement**

Any settlement reached shall be reduced to writing, signed by the Parties, and shall be binding as a contract between them.

**8. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of India.

**Signed on this \_\_\_ day of \_\_\_\_\_, 202X**

\_\_\_\_\_

For Luminex Technologies Private Ltd.

Authorised signatory

\_\_\_\_\_

For Helios Infrastructure Ltd.

Authorised signatory

\_\_\_\_\_

Mediator

**Answer 5(b)**

E-mediation refers to the use of electronic communication and technology to facilitate the resolution of disputes between parties. It is a form of online dispute resolution (ODR) that allows people to participate in mediation from different locations and through various digital means, such as video conferencing, email, instant messaging, or web-based platforms.

E-mediation can be used to resolve a wide range of disputes, including consumer complaints, workplace conflicts, family disputes, and international disputes. The process typically involves a neutral third party mediator who helps the parties communicate, identify their needs and interests, explore options, and reach a mutually acceptable solution. The mediator may use various tools and techniques to facilitate the process, such as online whiteboards, document sharing, and virtual breakout rooms.

According to UNCITRAL 'Technical Notes on Online Dispute Resolution 2017' there are three stages in the ODR process:

- First stage – a technology enabled negotiation – parties to the dispute attempting to negotiate directly to resolve the matter;
- Second stage – facilitated settlement stage – mediator to communicate with disputants to arrive at an amicable settlement;
- Third stage – commencement of ODR proceedings – parties will be informed of the process by a neutral third party appointed.

E-mediation can offer several benefits over traditional face-to-face mediation, including convenience, accessibility, cost-effectiveness, and time savings. However, it also poses some challenges, such as ensuring the security and privacy of the communication, dealing with technical issues, and maintaining the same level of rapport and trust between the parties and the mediator.

**Answer 5(c)**

Ad-hoc mediation and institutional mediation are two different types of mediation that differ in several ways. Here are the key differences between ad-hoc mediation and institutional mediation:

- **Definition:** Ad-hoc mediation refers to mediation that is arranged on an as-needed basis and is not part of a formalized dispute resolution process. Institutional mediation, on the other hand, is mediation that is provided by a formal organization or institution termed as mediation service provider.
- **Structure:** Ad-hoc mediation is typically more flexible and informal than institutional mediation. The mediator may be selected by the parties or appointed by a court or other authority, and the mediation may take place in a variety of settings, such as a mediator's office, a conference room, or even online. Institutional mediation, on the other hand, typically follows a set of established procedures and protocols, and may be conducted in a specific location or online platform.
- **Expertise:** Ad-hoc mediators may or may not have specific expertise or training in mediation, depending on how they are selected. Institutional mediators, on the other hand, are typically trained and certified in mediation, and may have specific expertise in certain types of disputes or industries.
- **Cost:** Ad-hoc mediation may be less expensive than institutional mediation, as the parties may only pay for the mediator's services and any associated costs, such as room rental or travel expenses. Institutional mediation may involve additional costs, such as administrative fees, overhead costs, and other expenses associated with the formal organization providing the mediation services. However, the cost of institutional mediation may be offset by the infrastructure, technical expertise and human resource assistance provided by such institutions.
- **Availability:** Ad-hoc mediation may be more readily available than institutional mediation, as the parties can arrange for mediation as needed. Institutional mediation, on the other hand, may have limited availability depending on the resources and schedule of the mediation service provider. In Ad-hoc mediation you can directly liaison with the mediator regarding availability. In institutional mediation, it will be routed through mediation service provider.

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

**Question 6**

- (a) "When parties are involved in serious conflict and want to avoid a costly court battle, understanding the different types of mediation can help them choose the best resolution path. Each mediation approach, from traditional negotiation-based formats to more structured hybrids like mediation vs. arbitration, follows unique principles based on the nature of the dispute. Before selecting a mediator, it's essential to understand how various mediation styles work".

Explain the Med-Arb and Arb-Med types of mediation.

*(5 marks)*

- (b) "Even though mediation is speedier, more cost-effective and offers greater possibility of preserving the relationship between disputing parties, the existing mediation framework in India has not allowed for reaping its full potential. The Supreme Court highlighted some glaring drafting errors in Section 89 in its landmark judgement in the Afcons Infrastructure Ltd. case." What are the difficulties confronted by the Mediator while implementing the process of mediation ?

*(5 marks)*

- (c) Plinto Ltd is facing a complex workplace dispute involving cultural differences and

gender-related concerns among employees. To ensure a fair and effective resolution, the management has decided to adopt a co-mediation approach by engaging experts from diverse fields.

As a corporate advisor, explain how co-mediation can enhance the dispute resolution process in such scenarios.

(5 marks)

### Answer 6(a)

#### Med- Arb

This is a process that combines mediation and arbitration. In a med-arb process, the parties attempt to resolve their dispute through mediation first. If they are unable to reach a settlement, the mediator becomes an arbitrator and makes a binding decision on the remaining issues. Sam Kagel first coined this hybrid alternate dispute resolution mechanism by mixing two-methods 'mediation and arbitration' into one 'Med-Arb' for settling the San Francisco Nurses' Strike in the 1970s.

#### Arb-Med

This is the opposite of med-arb. In an arb-med process, the parties first go through arbitration, where an arbitrator makes a binding decision on the disputed issues. If the parties are unable to accept the arbitrator's decision, they can then go through mediation to attempt to reach a settlement.

This procedure keeps the pressure on parties to come to a resolution while removing the worry expressed in med-arb regarding the misuse of personal information. It should be noted that the arbitrator or mediator cannot modify her previous decision in light of fresh information from the mediation.

### Answer 6(b)

Despite mediation being a speedy, cost-effective and relationship-preserving dispute resolution mechanism, mediators in India face several structural and practical difficulties in its effective implementation.

#### 1. Legislative and Procedural Ambiguities under Section 89 CPC

One of the primary difficulties faced by mediators arises from ambiguities in Section 89 of the Code of Civil Procedure, 1908. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.* (2010), the Supreme Court highlighted drafting defects, particularly the incorrect use of the terms "mediation" and "judicial settlement" and the lack of clarity regarding the stage and manner of referral to mediation. Although the Law Commission of India, in its 238th Report, recommended suitable amendments, these have not been implemented, leading to uncertainty in mediation referrals.

#### 2. Low and Improper Referral of Cases to Mediation

Mediators often face difficulties due to inadequate and inconsistent referrals by courts. Data from High Court Mediation Centres shows limited utilisation of mediation indicating that Section 89 CPC is not being used to its full potential.

#### 3. Uncertainty Regarding Enforceability of Mediation Settlements

Another major difficulty is the lack of clarity regarding enforcement of mediation outcomes. The Supreme Court in *Afcons Infrastructure* clarified that court-referred mediation settlements must be placed before the court and are governed by Section 21 of the Legal Services Authorities Act, 1987. However, enforceability of pre-litigation or ad-hoc mediation settlements remains unclear, discouraging parties and lawyers from relying on mediation.

#### 4. Absence of Mediation Culture and Prevailing Misconceptions

Mediators also face resistance due to widespread misconceptions that mediation reflects weakness or provides inferior justice compared to litigation. Lack of awareness and the adversarial mindset of parties often result in unwilling participation, thereby limiting the scope of meaningful mediation.

Thus, mediators in India operate within a fragmented legal and institutional framework marked by procedural ambiguity, low referrals, enforceability concerns and limited awareness. These challenges highlight the need for a comprehensive statutory framework to strengthen mediation and enhance its effectiveness.

#### Answer 6(c)

Co-mediation can be extremely helpful in many disputes, especially those involving complex disputes as well as delicate topics like gender, conflicts between cultures, or the interaction of various subject areas. A co-mediation involves a team of mediators, rather than just one, who are experts in different areas of the dispute.

A specific, concentrated strategy that attends to gender, language and ethnic confrontations, or family conflicts by a professional in those subjects helps mediators organise and completely understand the information that is exchanged on the table. It also gives the parties multiple points of contact to help the mediator steer the conversation through informed questioning and follow-ups.

#### Advantages:

- Each person brings unique strengths, skills, and experience to the mediation process. Co-mediators can share resources, provide opportunities for consultation, and reduce mediator fatigue.
- Two mediators are twice as likely to share some of the parties' characteristics, potentially making the process feel more balanced and approachable. Matching can happen based on race, gender, age, or other factors. A young single mother in a dispute with a middle-aged male, for example, may feel more at ease and confident if one mediator is also female, rather than two middle-aged male mediators.
- Co-mediators can serve as role models for cooperative and constructive communication. This could serve as a model for the parties to follow.
- Co-mediation checks mediator bias, for example, through undue client influence - Co-mediation can alleviate the mediator's burden of responsibility and tension. Two mediators can share tasks while giving each other breathing room.
- Co-mediation can be used to train and develop less experienced mediators in a less exposed environment, as well as to encourage self-learning and the development of existing skills. All mediators should be able to learn from other people's approaches.

#### *Or (Alternate Question to Q. No. 6)*

#### Question 6A

- (i) Appellant M.R. Krishna Murthi was only 18 years of age when he suffered a severe accident on the 26th of May in the year 1988 while traveling with his mother from Delhi to Mussoorie. A crash had occurred where the other vehicle was negligent in driving it crushed his left leg. After three major surgeries, he still has metal plates and screws in the femur. The District Government Hospital of Muzaffarnagar certified him as permanently disabled at 40 percent.

He filed a compensation claim at the Motor Accident Claims Tribunal (MACT) which was transferred to Patiala House Courts at New Delhi. The case spent its last day on 23rd of May in the year 2007, after this MACT came up with a judgment awarding ₹ 8,48,000 including interest at 7% for 10 years, noting the procedural delays and dismissals in default. The report concluded the liability with respect to the insurer, driver, and vehicle owner. Notably, the Tribunal considered delays caused due to the petition being dismissed in default on two separate occasions.

Based upon judicial pronouncements, explain the significant considerations in the realm of motor accident compensation.

(5 marks)

- (ii) Artificial intelligence (AI) for helping mediate disputes has begun to gain traction. Although it might not yet be commonplace, it is on its way to playing a pivotal role in conflict resolution, providing mediators with tools and functionalities that streamline the mediation process, offer data-driven insights, and help manage communications and negotiations. The use of AI in mediation looks both promising and transformative and presents opportunities and challenges for mediators.

Explain the benefits and limitations of AI-Powered Tools and Functions in Mediation. (5 marks)

- (iii) Giga Ltd, a mid-sized manufacturing company, is facing a dispute with one of its key suppliers over delayed payments and revised contract terms. To resolve the matter amicably, the Board of Directors has appointed Zoya, a Company Secretary, to lead the negotiation process with the supplier. As she prepares for the negotiation, Zoya understands that a well-structured approach is crucial to achieving a mutually beneficial outcome.

Outline the key steps which Zoya should follow for preparation and conducting negotiation effectively.

(5 marks)

### Answer 6A(i)

The facts of the given situation are similar to the case of *M.R. Krishna Murthi v. New India Assurance Co. Ltd.* [(2020) 15 SCC 493, (India), 27] which is relating to justice for road accident victims.

The significant considerations in the realm of motor accident compensation may *inter alia* include the following:

1. Negligence: Fatal accidents trigger prosecution of the driver who was negligent and rash in driving which caused the accident.
2. Loss of earning: Loss of earning should not only be based on present employment status. The loss of future earning also should to be assessed.
3. Pain and suffering: Pain and suffering is an important aspect in the cases of Motor Accident Claims.
4. Medical expenses: The Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.
5. Disability: The disability aspect should be properly evaluated.

### Answer 6A(ii)

The use of Artificial Intelligence (AI) in the Mediation process is considered to be the future of Dispute resolution.

**I) AI in ODR can be used as follows:**

- A. Decision Support System (DSS): A DSS can perform simple activities ranging from compiling data to more complex analysis, like suggesting the best strategy for the fairest possible outcome.
- B. Expert System (ES): Another way in which AI can be used is as an expert system. An expert system would have the capability to work at the standard of humans and may even be able to exceed the standard. Such a system will be capable of learning by itself and develop knowledge with each case. They differ on the ground that a DSS would assist a human, whereas an expert system would be able to decide and give advice as a human.

**II) Software and Tool**

Support tools are becoming increasingly popular among practitioners. With expert systems, contracts can be analysed in minutes as compared to hours taken by a human. Famous Software/tools which are known and recognised globally are SmartSettle, Adjusted Winner, eBrevia, etc.

**Benefits of AI-powered Tools**

Artificial Intelligence (AI) is a field that uses computer science and robust datasets to solve problems. It includes sub-fields like machine learning and deep learning that are commonly associated with AI. In mediation, the first priority of the neutral party is to make the disputing parties feel comfortable and confident in their confidentiality. AI programs could provide an advantage in this aspect as people might feel more at ease sharing personal information with a non-human party, especially when dealing with sensitive issues like matrimonial disputes. This could benefit parties who don't want their details disclosed to a third person. However, it raises concerns about confidentiality. AI has the potential to reduce the burden on courts since the volume of civil cases in India is high, and many of them can be resolved through alternative dispute resolution (ADR). AI in online dispute resolution (ODR) could make the process more accessible to those who can't afford litigation or physical ADR, especially since miscommunication is a common cause of disputes in civil cases.

**Limitations**

The confidentiality of physical ADR processes is not full proof, as there is always a possibility of information being leaked by the parties or a third party, whereas AI-based systems are vulnerable to cyber-attacks and security breaches. AI systems can be used in two ways, manual data entry or voice commands, both of which can be attacked through the internet. Furthermore, the development cost of such technology is expected to be high and unlikely to be offered at a low cost.

The lack of emotions in AI systems can prove to be a drawback in family disputes. Human communication involves more than just words, and robots may not be able to consider factors that the parties don't mention. Although some robots can analyze non-verbal cues, they may come at a high cost. Another challenge is that AI may not understand colloquial language, different accents, or mixed languages that people use in communication, especially in India, where the use of local languages and the mixing of languages is common. Developing AI to accommodate these complexities will also increase development costs. Therefore, AI as a neutral party or representative may not be as efficient as human beings.

Mediation and other alternative dispute resolution methods are seen as a way of bringing back the "human element" to dispute resolution and moving away from the rather mechanical adversarial system wherever possible. Humans communicate not only from their words but also their tone, facial expressions, etc. The efficiency of AI as a full-fledged neutral party or a representative will not

be very high. There are certain robots that can analyse such signs and react accordingly; however, the cost they come at may be very high.

Another problem that an AI neutral party or representative comes with is the syntax of the language. AI may not be able to understand the colloquial language in which we speak. There might be problems with the accent the person speaks in or the mixing up of the languages. There are times when a language like Hindi mixes with the local language, and it leads to a totally new colloquial language, with words from multiple languages and flexible rules of grammar. Developing AI to suit these requirements will further increase the cost of development.

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

The outcomes of the negotiation depend upon how well a negotiator prepares for it. A negotiation starts when the intention of the parties gets to “problem solving” and not holding onto their ego and clashes. When the parties take a step for resolving their disputes through negotiation, the responsibility of the negotiator to resolve their dispute increases. Therefore, a negotiator should prepare well in advance for the negotiation so that desired goals can be achieved through proper communication.

#### **Preparation for effective negotiation:**

- Try to control the outside influences. Negotiation should happen in a quiet and calm atmosphere with no interference.
- Give proper introduction to the parties in Negotiation.
  - Describe the process to the parties.
  - Discuss the time available.
  - Lay down ground rules.
- Understand the interests and expectations of the parties to the Negotiation.
- Assess the nature of relationship of the parties.
- Identify the issues to be discussed.

#### **Conducting negotiation effectively**

*Information regarding:*

- Actively listen the parties.
- Ask questions.
- Identify the areas of Agreement and Disagreement between the parties.
- Set the stage for problem solving.
- Study their responses to initiate the resolution.
- While having a “problem - solving approach” share the information with the parties after taking caution.
- Explain the parties rationale and benefit of resolving the dispute.
- Segregate the information to come to solution.

Bargaining

- Deal with one issue at a time.
- Compare the proposals given by the parties.

- Leave room for concessions.
- Don't lose track of underlying interests.
- Don't apply pressure on the parties for resolution. Remain Party Centric.
- Break impasse between the parties.
- Don't rush conclusions.

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# GST AND CORPORATE TAX PLANNING

## GROUP 2 ELECTIVE PAPER 7.2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

All the references to sections in Part II 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

(a) Amit Solutions LLP a registered person under GST in Jaipur, Rajasthan. They provide following details of Inward and Outward supplies made during the period :

- (1) It received services of Nitin Kumar & Associates (firm of Advocates) for legal matter of recovery from one of its debtors on 05.10.2024 for ₹ 12,75,000. Invoice raised on 10.10.2024 by Nitin Kumar & Associates.

Particulars	Amit Solutions LLP	Nitin Kumar & Associates
Payment debited and credited into Bank respectively	16.12.2024	17.12.2024
Recorded in books of account	25.12.2024	20.12.2024

- (2) Amit Solutions LLP provided services of a business facilitator to HSPL Bank for ₹ 1,57,500 in Jaipur.
- (3) Services provided to Z Ltd. registered in Jodhpur, Rajasthan of ₹ 18,95,000.
- (4) Amit Solutions LLP paid ₹ 2,56,000 for the health insurance of its staff, following the internal policy of the firm.
- (5) Amit Solutions LLP paid ₹ 4,25,000 for sponsorship of an event organized in Bikaner, Rajasthan to Mr. Srihari an individual.
- (6) Amit Solutions LLP paid ₹ 1,24,500 for goods purchased from NM Ltd a registered dealer.

All figures mentioned above are exclusive of tax, wherever applicable.

All inward and outward supplies are intra-state supplies except where specifically mentioned. All inward supplies are used for taxable goods and services only. Applicable GST rates are 18% IGST and 9% CGST and SGST each.

Based on information provided above case study in the context of CGST Act, 2017, you are required to :

- (i) Time of supply for services received from Nitin Kumar & Associates for payment of tax.  
(5 marks)
- (ii) Determine the value of GST and tax to be paid under RCM by Amit Solutions LLP related to above supplies.  
(5 marks)

(iii) Determine the net minimum GST liability of Amit Solutions LLP related to above supplies.  
(5 marks)

(b) In case of BTL Ltd, Summary Assessment under Section 64 of the CGST Act, 2017 is initiated. According to GST Officer, BTL Ltd. has provisional GST Liability.

BTL Ltd. has availed Cash Credit facility from Bank. GST Officer, without any approval from higher authority, passed an order to provisionally attach the Cash Credit Account for two years.

Discuss whether action of GST Officer is justified ?

(5 marks)

(c) KBN Inc., a readymade garment manufacturing company based in UK, intends to launch its new fashion collection products in India. However, the company wishes to know the fashion sense of Indians before launching its products in India. For this purpose, KBN Inc. has approached MNR Consultants, Ahmedabad (Gujarat) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian fashion industries.

The survey is to be solely based on the oral replies of the surveyees. They will not be provided any sample by KBN Inc. to wear.

MNR Consultants will be paid in convertible foreign exchange for the assignment. With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service ?

(5 marks)

**Answer 1(a)(i)**

Time of Supply for services received from Nitin Kumar & Associates
Supply of service on legal matter by the firm of advocates is taxable under RCM Hence Services of Nitin Kumar & Associates for legal matter is covered under RCM
Time of supply for services under reverse charge is earlier of (a) date of payment or (date of payment is earlier of i. payment recorded in the books of recipient of services and ii. date on which payment is debited from bank account of the recipient.) (b) date immediately following 60 days of issue of invoice by the supplier. (61st day) in case where the invoice is issued by the supplier (c) the date of issue of invoice by the recipient, in cases where invoices is to be issued by the recipient.
Since, the date of issue of invoice by the recipient i.e. (Amit Solution LLP) is not mentioned and assuming Nitin Kumar and Associates is registered person. Therefore, the time of supply is determined as follows: Earlier of: Here 61st day from 10/10/2024 is 10/12/2024 And date of payment will be 16/12/2024 (earlier of 16/12/2024 or 25/12/2024) Hence, Time of supply will be 10/12/2024 (earlier of 10/12/2024 or 16/12/2024)

**Alternative Answer 1(a)(i)**

Time of Supply for services received from Nitin Kumar & Associates

Supply of service on legal matter by the firm of advocates is taxable under RCM)

Hence Services of Nitin Kumar & Associates for legal matter is covered under RCM

Time of supply for services under reverse charge is earlier of

(a) date of payment or

(date of payment is earlier of

i. payment recorded in the books of recipient of services and

ii. date on which payment is debited from bank account of the recipient.)

(b) date immediately following 60 days of issue of invoice by the supplier. (61st day) in case where the invoice is issued by the supplier

(c) the date of issue of invoice by the recipient, in cases where invoices is to be issued by the recipient

Since, the date of issue of invoice by the recipient i.e. (Amit Solution LLP) is not mentioned and assuming Nitin Kumar and Associates is not a registered person.

The time of supply shall be earliest of date of payment under 13(3) (a) and date of invoice under 13(3)(c).

In this case, since the date of invoice by Amit Solution LLP is not mentioned, it can be assumed that such invoice is not issued at least prior to the date of payment.

In that situation, the date of payment i.e., 16.12.2024 (earliest among debit in the bank account and recorded in books) should be the time of supply.

**Alternative Answer 1(a)(i)**

Time of Supply for services received from Nitin Kumar & Associates

Supply of service on legal matter by the firm of advocates is taxable under RCM)

Hence Services of Nitin Kumar & Associates for legal matter is covered under RCM

Time of supply for services under reverse charge is earlier of

(a) date of payment or (date of payment is earlier of

i. payment recorded in the books of recipient of services and

ii. date on which payment is debited from bank account of the recipient.)

(b) date immediately following 60 days of issue of invoice by the supplier. (61st day) in case where the invoice is issued by the supplier

(c) the date of issue of invoice by the recipient, in cases where invoices is to be issued by the recipient

Since, the date of issue of invoice by the recipient i.e. (Amit Solution LLP) is not mentioned and assuming Nitin Kumar and Associates is not a registered person. Further, if it is assumed that Amit Solutions LLP has issued invoice within the timeline of issuing invoice i.e. 30 days from the receiving of service i.e. 05.10.2024 + 30 days = 04.11.2024.

Earlier of:

Here 61st day from 10/10/2024 is 10/12/2024

And date of payment will be 16/12/2024 (earlier of 16/12/2024 or 25/12/2024)

And the date of issue of invoice by the recipient i.e. 04.11.2024

Hence, Time of supply will be 04.11.2024

### Answer 1(a)(ii)

#### Computation of RCM liability

Particulars	Value	CGST	SGST
Services of Nitin Kumar & Associates for legal matter. (Inward supply to advocate is taxable under RCM)	12,75,000	1,14,750	1,14,750
Sponsorship services from Mr. Srihari (In case of services provided by any person other than body corporate by way of sponsorship to any partnership firm, GST is liable to be paid under reverse charge by such partnership firm located in the taxable territory.) (Amit Solutions LLP is liable to pay GST under RCM as LLP is also considered as partnership firm)	4,25,000	38,250	38,250
Tax payable under RCM	17,00,000	1,53,000	1,53,000

### Answer 1(a)(iii)

#### Computation of minimum net GST payable by Amit Solutions LLP

Particulars	Value	CGST	SGST
Services of a business facilitator to HSPL Bank (HSPL Bank required to pay tax under RCM)		Nil	Nil
Services provided to Z Ltd	18,95,000	1,70,550	1,70,550
Tax on outward Supply (A)		1,70,550	1,70,550
Eligible ITC			
Paid for Health Insurance Blocked u/s 17(5)		Nil	Nil
ITC on GST paid on RCM (as per previous question)	17,00,000	1,53,000	1,53,000
Purchased from NM Ltd	1,24,500	11,205	11,205

Particulars	Value	CGST	SGST
Total Eligible ITC (B)		1,64,205	1,64,205
Outward GST payable (A-B)		6,345	6,345
Tax payable under RCM		1,53,000	1,53,000
Net minimum GST payable		1,59,345	1,59,345

### Answer 1(b)

Section 83 of the CGST Act provides that where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.

Therefore, action taken by GST Officer is not justified since provisional attachment can be made by Commissioner.

Cash Credit Account cannot be provisionally attached as per section 83 of CGST Act, 2017 as Cash Credit is considered as Debt and therefore it cannot be attached.

Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order.

Hence, GST officer cannot make order of provisional attachment for 2 years.

### Answer 1(c)

As per section 13(2) of the IGST Act 2017, in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services.

Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services, i.e. UK

As per section 2(6), export of services means the supply of any service when,-

- the supplier of service is located in India;
- the recipient of service is located outside India;
- the place of supply of service is outside India;
- the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

**Question 2**

- (a) Harit Medicare Hospital is a multi-specialty hospital in Jamnagar, Gujarat. It is a registered person under GST.

Following services provided by Harit Medicare Hospital during the month of October 2024 :

Sr. No.	Particulars	Amount (₹)
1.	Income from Intensive Care Unit (ICU) (Charges ₹ 15000 per day)	5,25,000
2.	Received Room rent for inhouse patients (Charges ₹ 5850 per day)	3,91,950
3.	Provided services of preserving stem cells from inhouse Cord Blood Bank	2,98,000
4.	Income from IVF (In vitro fertilization) Unit	3,00,000
5.	Services of plastic surgery provided to children who born with birth defects	7,42,500
6.	Fees collected from final year students of Nursing and Psychology for imparting practical training	3,50,000

Determine the value of taxable supply of Harit Medicare Hospital for the month of October, 2024 in the context of CGST Act, 2017.

(5 marks)

- (b) Ravindra Spinners Ltd. authorized Mr. N, GST Practitioner (GSTP) by filing FORM GST PCT-05 to file GSTR-9 for FY 2023-24. Mr. N missed the due date of 31.12.2024. As a result, the company was levied late fees of ₹ 25,000 and an audit notice under Section 65 :

- (a) Can Ravindra Spinners Ltd. shift the liability to the GSTP ?  
(b) Is there any legal remedy or relief available to the company ?

(5 marks)

- (c) Suresh providing services by way of transportation of passengers by a radio taxi in Mumbai through an electronic commerce operator – 'SHREE QRR TRIPS'. Suresh is not liable to get registered as per the provisions of section 22(1) of the CGST Act, 2017.

You are required to provide answer of the following questions in the context of CGST Act, 2017 :

- (a) Who is the person liable to pay GST in this case ?  
(b) Would your answer be different if SHREE QRR TRIPS' does not have a physical presence in India and also nobody representing it in India ?

(5 marks)

**Answer 2(a)****Computation of Taxable value of supply**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount</b>
1	Income from Intensive Care Unit (ICU) (Charges Rs.15,000 per day) (Exempt services)	-
2	Room rent for in house patients (Charges Rs. 5,850 per day) (Taxable if room charges exceed Rs. 5000 per day to a person receiving healthcare services)	3,91,950
3	Provided services of preserving stem cells from in-house Cord Blood Bank (Taxable supply of services)  The GST exemption was withdrawn effective July 18, 2022, through Notification No. 04/2022 – Central Tax (Rate), dated July 13,2022. This notification amended Notification No. 12/2017-Central Tax (Rate) and removed the exemption for stem cell banking services, making them taxable under GST.	2,98,000
4	Income from IVF Unit (Exempt supply of services)	-
5	Services of plastic surgery provided to children who born with birth defects or congenital defects.  (Plastic surgery for restore or reconstruct functions of body affected due to congenital defects) – (exempt Services)	-
6	Fees collected from final year students of Nursing and Psychology for imparting practical training. (Taxable as not covered under Health Care Services)	3,50,000
	<b>Total Value of Taxable Supply</b>	<b>10,39,950</b>

**Answer 2(b)**

(a) Can Ravindra Spinners Ltd. shift the liability to the GSTP?

Section 48(3) of CGST Act, 2017:

“A registered person shall be responsible for the correctness of any particulars furnished in the return filed by the GST practitioner on his behalf.”

This means even if a GSTP files or fails to file a return, the registered person (client) is legally responsible for consequences including late fees.

Rule 83(7) & (10) of CGST Rules:

A GST Practitioner must obtain confirmation from the registered person before filing any return.

They must act with due diligence and reasonable care.

A breach of above may make them professionally liable [e.g., disqualification under Rule 83(4)], but not financially liable under the CGST Act unless fraud is proven.

(b) Is there any legal remedy or relief available to the company?

Remedies for Company:

May file a civil suit or initiate arbitration if engagement contract so allows.

Can file complaint under Rule 83(4) for misconduct.

May approach jurisdictional Commissioner for condonation of delay citing just cause.

Conclusion: The taxpayer cannot escape liability, but may seek civil/legal redress against the GST Practitioner for professional negligence.

Possible Civil Liability: If there is an engagement contract or service-level agreement stating timely compliance, the client (Ravindra Spinners Ltd.) may claim damages from the GSTP in a civil court or consumer forum.

### Answer 2(c)

- (a) Applicable provision is Section 9(5) of Central Goods and Services Tax Act, 2017. It provides that Government may notify [on the recommendations of the GST Council] specific categories of services intra-State supplies the tax on which shall be paid by the electronic commerce operator if such services are supplied through it.

A service by way of transportation of passengers by a radio-taxi, through electronic commerce operator is a specified service for said purpose.

Thus, person liable to pay GST in this case is the Electronic Commerce Operator i.e. 'SHREE QRR TRIPS'.

All the provisions of the GST law shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

- (b) If 'SHREE QRR TRIPS' does not have a physical presence in India and also nobody representing it in India then, it has to appoint a person for the purpose of payment of tax and that person will be liable to pay tax under GST.

### Question 3

- (a) EET Pvt Ltd has been issued a show cause notice (SCN) on 28th March, 2024 under section 73(1) of the CGST Act, 2017 on account of short payment of tax for the month of April, 2022. EET Pvt Ltd contends that the show cause notice is time-barred in law.

You are required to examine the technical veracity of the contention of EET Pvt. Limited as per CGST Act, 2017.

*(5 marks)*

- (b) Briefly explain the manner of dealing with difference in ITC available in auto-generated statement containing the details of ITC and that availed in return prescribed in terms of rule 88D of the CGST Rules, 2017.

*(5 marks)*

- (c) Lalit Enterprise is a registered person under composition scheme of GST in Kolhapur, Maharashtra, manufacturer of goods. Turnover of taxable supplies of Lalit Enterprise in the preceding financial year is ₹ 90 Lakh. In the current financial year, they want to enter the service sector also, being service provider for services other than restaurant services (not supplying alcoholic liquor for human consumption). Their GST consultant advised them to exit composition scheme if they want to provide services mentioned above. Whether the advice given by GST consultant is correct and also give comment as per the provisions of section 10 of The CGST Act 2017.

*(5 marks)*

**Answer 3(a)**

The Show Cause Notice (SCN) under section 73(1) of the CGST Act can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) and adjudication order under section 73(10) has to be issued within 3 years from the due date for furnishing of annual return for the financial year to which the tax short-paid/not paid relates to.

Thus, SCN under section 73(1) of the CGST Act can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid/not paid tax relates to.

The SCN has been issued for the period April, 2022 which falls in the financial year 2022-23. Due date for furnishing annual return for the FY 2022-23 is 31.12.2023 and 3 years' period from due date of filing annual return lapses on 31.12.2026.

Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2026. Since in the given case, the notice has been issued on 28.03.2024, notice is not time-barred. Therefore, the contention of EET Pvt. Ltd. is incorrect.

**Answer 3(b)**

Rule 88D of the CGST Rules, 2017 provides as follows:

Where the amount of ITC availed by a registered person in the return for a tax period(s) furnished by him in Form GSTR-3B exceeds the ITC available to such person in accordance with the auto-generated statement containing the details of ITC in Form GSTR-2B in respect of the said tax period(s), by specified amount and percentage, the said registered person shall be given an intimation in prescribed form electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time. Said intimation shall highlight the said difference and will direct him to-

- (a) pay an amount equal to the excess ITC availed in the said Form GSTR-3B, along with interest payable under section 50 of the CGST Act, 2017, through prescribed form, or
- (b) explain the reasons for the aforesaid difference in ITC on the common portal,

within a period of 7 days.

Such registered person shall, upon receipt of said intimation, either,

- (a) pay an amount equal to the excess ITC, as specified in intimation, fully or partially, along with interest payable, through prescribed form and furnish the details thereof, electronically on the common portal, or
- (b) furnish a reply, electronically on the common portal, incorporating reasons in respect of the amount of excess ITC that has still remained to be paid,

within 7 days' period.

Where any amount specified in the intimation remains to be paid within 7 days' period and where no explanation/reason is furnished by the registered person in default or where the explanation/reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73/section 74/section 74A of the CGST Act, 2017.

**Answer 3(c)**

Advice given by the GST consultant is incorrect.

As per the provision of section 10(1) (Composition Scheme) of CGST Act, where a manufacturer or trader is also engaged in supply of services other than restaurant services (not supplying alcoholic liquor for human consumption) can supply such services for value not exceeding:

10% of the turnover in a state in the preceding financial year

OR

Rs. 5 Lakhs

whichever is higher

10% of 90 Lakhs i.e., Rs.9 Lakhs

OR

Rs. 5 Lakhs

whichever is higher

Therefore, Lalit Enterprise can make supply of services up to 9 Lakhs (under composition scheme).

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

#### Question 4

(a) "There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement repair services."

- (i) Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty ?
- (ii) Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer ?

(5 marks)

(b) The Appellate Authority passed an order against BHG Pvt. Ltd. demanding IGST of ₹ 1,100 crores + interest ₹ 50 crores + Penalty ₹ 100 crores. BHG Pvt. Ltd. wishes to file an appeal against the order of the Appellate Authority

The company admits the tax liability of Appellate Authority ₹ 100 crores but wishes to litigate the balance demand amount and thus, files an appeal to the Appellate Tribunal.

You are required to explain the related legal provision and determine the amount of the pre-deposit, which is required to be paid by BHG Private Ltd. for filing the appeal as per CGST Act, 2017.

(5 marks)

(c) Deepak Enterprise a proprietary concern reached the turnover of ₹ 40 Lakh on 20th July, 2024 and applied for registration under GST on 23rd July, 2024. The proper officer wants for physical verification of place of business of Deepak Enterprise and insisted on visit the same in the presence of proprietor Mr. Deepak.

- (i) Whether the action taken by proper officer is correct ?
- (ii) Explain the procedure to be followed by proper officer if he decides to do physical verification of place of business of Deepak Enterprise after the grant of registration as per the provisions of Rule 25 of CGST Rules 2017.

(5 marks)

**Answer 4(a)**

On these issue Clarification provided by CBIC By Circular No. 195/07/2023-GST Dated 17<sup>th</sup> July, 2023.

- i. The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.

As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period. However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.

- ii. In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.

**Answer 4(b)**

Section 112(8) of the CGST Act lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits:

- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- (b) 10% of the remaining amount of tax in dispute, in addition to the amount deposited before the Appellate Authority, arising from the said order, subject to a maximum of ₹ 20 crore (₹ 40 crore in case of IGST as per section 20 of the IGST Act), in relation to which appeal has been filed.

Accordingly, in the given case, the amount of pre-deposit to be made by BHG Private Ltd. for filing the appeal to the Appellate Tribunal is computed as under-

- (i) Full amount of tax, interest and penalty as admitted by the company, i.e. ₹ 100 crore and
- (ii) 10% of the tax in dispute, i.e. ₹100 crore [10% of (₹ 1,100 crore -100 crore)] subject to a maximum of ₹ 40 crore

Therefore, total pre-deposit to be made by the company before filing an appeal in the Appellate Tribunal is ₹ 100 crore (total liability admitted by the company) plus ₹ 40 crore, i.e. ₹ 140 crore.

**Answer 4(c)**

- (i) The action taken by proper officer is incorrect

Presence of the applicant is not required for physical verification. [Rule 9 has been amended to remove the requirement of physical presence of the person]

Therefore, presence of Mr. Deepak is not required for physical verification

- (ii) The proper officer may get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in prescribed form on the common portal within a period of 15 working days following the date of such verification.

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

**Question 4A**

(i) Navina Textbook Society a registered society under GST and it has been formed under Gujarat State Government for preparation, printing and distribution of all Government approved school textbooks. It has given contract to Devi Printers for printing of textbooks where content belongs to the Society and physical inputs belong to the printer. Navina Textbook Society seek Advance ruling for the below matter :

- (i) Whether the above service is subject to Nil Rated GST ?
- (ii) Whether GST registration of Society should be retained or surrendered ?

Explain the validity of the above issues under GST law.

(5 marks)

(ii) With reference to GST law discuss the following issues :

- (i) Whether the activity of providing personal guarantee by the Director of a company to the bank/financial institutions for sanctioning of credit facilities to the said company without any consideration will be treated as a supply of service or not and whether the same will attract GST or not ?
- (ii) Whether the activity of providing corporate guarantee by a person on behalf of another related person, or by the holding company for sanction of credit facilities to its subsidiary company, to the bank/financial institutions, even when made without any consideration will be treated as a taxable supply of service or not, and if taxable, what would be the valuation of such supply of services ?

(5 marks)

(iii) Rise Builders Ltd. launched a housing project in July 2024. All prices were inclusive of taxes. In October 2024, the GST rate on affordable housing was reduced from 8% to 1%, but the builder continued to collect the same installment amounts from homebuyers. One buyer complained to the antiprofitteering authority.

You are required to provide answer of the following questions in the context of CGST Act, 2017 :

- (i) Assess the liability of Rise Builders Ltd.
- (ii) What are the remedies for the buyers ?

(5 marks)

**Answer 4A(i)**

(i) As per the provisions of the CGST Act, advance ruling can be sought in relation to the supply of Goods or services or both being undertaken or proposed to be undertaken by the applicant.

Here, Navina Textbook Society receives services from Devi Printers hence it is recipient of Service, not supplier of service. Therefore, it cannot seek advance ruling for services received from Devi Printers regarding applicability of tax rate.

(ii) The questions on which the Advance Ruling can be sought shall be in respect of, -

- (a) classification of any goods or services or both
- (b) applicability of a notification issued under the provisions of CGST Act
- (c) determination of Time and Value of Supply of Goods or services or both

- (d) admissibility of ITC (Input Tax Credit) paid or deemed to have been paid
- (e) determination of Liability to pay tax on any Goods or services or both
- (f) whether applicant is required to be registered
- (g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of Goods or services or both within the meaning of that term.

Advance ruling asked for whether GST registration of Society should be retained or surrendered is not covered under above provision. Therefore, Navina Textbook Society cannot seek Advance Ruling for same.

#### Answer 4A(ii)

Issue clarified by Circular No. 204/16/2023 GST dated 27.10.2023

(i) Since director and company are related persons [in terms of Explanation (a) to section 15], the activity of providing personal guarantee by the Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a supply of service, even when made without consideration [in terms of section 7(1)(c) read with para 2 of Schedule I]. Value will be open market value (OMV) of such supply [in terms of rule 28].

However, as per the mandate provided by the RBI Guidelines in this regard, no consideration by way of commission, brokerage fees or any other form, can be paid to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits, except in exceptional cases.

Consequently, there is no question of such supply/ transaction having any OMV.

Accordingly, it is clarified that OMV of the said transaction/ supply may be treated as zero and therefore, no tax is payable on such supply of service by the director to the company. However, in exceptional cases, where remuneration is payable to the director, the taxable value of such supply of service shall be the remuneration/ consideration provided to such guarantor by the company, directly or indirectly.

(ii) Where the corporate guarantee is provided to the bank/financial institutions by:

a) a company for providing credit facilities to the other company, where both the companies are related,

b) a holding company, for securing credit facilities for its subsidiary company [related in terms of explanation to section 15],

the activity is to be treated as a supply of service between related parties even when made without any consideration [in terms of section 7(1)(c) read with para 2 of Schedule I].

In such cases, the taxable value will be determined as per the newly inserted sub-rule (2) to rule 28 as per which value in above cases will be higher of:

- (i) 1% of the amount of such guarantee offered per annum, or
- (ii) actual consideration.

Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of services.

**Answer 4A(iii)**

Anti-Profitteering Measures:

i) Assess the liability of Rise Builders Ltd:

Section 171 of CGST Act mandates that reduction in tax rates must be passed by way of commensurate reduction in prices. Whether the pricing is inclusive or exclusive is immaterial.

Legal Position:

- Section 171(1): Benefit must be passed.
- Rule 126-133: Procedure for determination.
- Notification No. 23/2022-CT made CCI the new authority (w.e.f. 01.12.2022).

Judicial Support: In Signature Builders Pvt. Ltd. (2019), National Anti-Profitteering Authority held that inclusive pricing does not override anti-profitteering duties.

ii) What are the remedies for the buyers?

Remedies:

- Buyer can receive refund with 18% interest.
- In case buyer is untraceable, the amount goes to the Consumer Welfare Fund.
- Penalties and even cancellation of registration under Rule 133 may apply.

Conclusion: Rise Builders cannot escape liability by using the inclusive pricing model. Adjustments in invoices and refund of excess amount are necessary.

**PART-II****Question 5**

(a) M/s ATS Fun Ltd wants to raise ₹ 100 Lakh as capital for investments in a proposed project for setting up of an amusement park. The company expects earnings before interest and taxes (EBIT) ₹ 40 Lakh per annum. The management is considering the following alternatives for raising the capital :

- (a) Issue 10,00,000 equity shares of ₹ 10 each.
- (b) Issue 5,00,000 equity shares of ₹ 10 each and 50,000 12% preference shares of ₹ 100 each.
- (c) Issue 5,00,000 equity shares of ₹ 10 each and 10% Debentures of ₹ 50,00,000.

The company approached CS Natarajan, legal advisor of the company to advise on the best alternative to be used for raising capital keeping in mind the object of maximizing the profits of the company, assuming corporate tax rate of 30%.

(5 marks)

(b) Explain with supporting reasons whether the following instances pertain of which of the tax planning, tax avoidance, tax evasion or tax management :

- (a) Sunny directly paid for a property purchased in the name of Harpreet, his cousin sister.
- (b) Jatin filed his ITR beyond due date of filing and to avoid further late filing fees.

- (c) B Limited merged its one of the units, running into losses, to C Limited, a profit-making company to transfer the claim of business losses against a cash consideration.
- (d) Metro Fashion, running into the Non SEZ area is in the process of shifting to SEZ area by importing the machines required.
- (e) Ram, highest slab tax paying individual, transferred his one residential property earning rental income of ₹ 50,000 per month to his wife Urmila and started filing her ITR.

(5 marks)

- (c) IFD Bank established an offshore banking unit (OBUs) in Special Economic Zones in GIFT City, Gujarat in FY 2019-20. Its details of income and expenses were as follows :

(Rs. in Crores)

Particulars	FY 31.03.2025 (6th year)	FY 31.03.2024 (5th year)
Incomes :		
Income from IFSC operations	23	10
Other Income (Non-IFSC)	5	3
Expenses (IFSC operations) :		
Operating Expenses	7	14
Depreciation	1	2
Net Profit/(Loss) for the year	20	(3)

From the above information, compute the following :

- (a) The amount of business loss of 5th year which can be carried forward to 6th year for set off.
- (b) The income eligible for deduction in the 6th year (AY 2025-26) under section 80LA of the Income Tax Act.

(5 marks)

**Answer 5(a)**

**Calculation of Earnings Per Share:**

(Rs. In Lakh)

Alternatives	Option (a) Issue 10,00,000 equity share of Rs. 10 each	Option (b) Issue 5,00,000 equity shares of Rs. 10 each & 50000 12% pref. shares of Rs. 100 each	Option (c) Issue 5,00,000 equity shares of Rs. 10 each & 10% debentures of Rs. 50,00,000
EBIT (Earnings before interest & tax)	40	40	40
Less: 10% Interest on debentures	-	-	(5)
EBT (Earning before tax)	40	40	35
Less: Tax @ 30%	(12)	(12)	(10.5)

PAT (Profit after tax)	28	28	24.5
Pref. 12% Dividend on Preference Shares	–	(6)	–
Profit available to equity shareholders	28	22	24.5
Number of equity shares	10,00,000	5,00,000	5,00,000
(EPS) Earnings per share	Rs. 2.80	Rs. 4.40	Rs. 4.90

**Advice:** In case of alternative (c) i.e. capital structure consisting of debt-equity (trading on equity) the earnings per share is highest, hence the alternative (c) should be followed in order to maximize the return to shareholders.

### Answer 5(b)

- Tax Evasion likely:** Sunny directly paid for a property purchased in the name of Harpreet, his cousin sister. This is an attempt to conceal ownership and evade tax liabilities, possibly under the Benami Transactions Act.
- Tax Management:** Jatin filed his ITR beyond due date of filing and to avoid further late filing fees. Filing a belated return to minimize penalties, late filing fees and comply with tax laws is tax management.
- Tax Avoidance:** B Limited merged its one of the unit, running into losses, to C Limited, a profit making company to transfer the claim of business losses against a cash consideration. Structuring a merger solely to transfer business losses for tax benefits, without genuine commercial purpose, is tax avoidance. It is a sham transaction with only motive of avoiding taxes though it is in a legal way and hence is a case of tax avoidance. It should be noted that saving of taxes in such a way by the assessee is not the intent of the law.
- Tax Planning:** Metro Fashion, running into the Non SEZ area is in the process of shifting to SEZ area by importing the machines required. Shifting to an SEZ area to avail tax exemptions and benefits under Section 10AA is a legitimate tax planning strategy.
- Tax Avoidance –** Transferring a property to a spouse without adequate consideration to reduce the overall tax liability is an attempt of Tax avoidance and falling under clubbing provisions (Section 64 of the Income Tax Act). Although, there is a specific anti-tax avoidance measure (SAAR) for the same that is of deemed ownership, by virtue of which, assessee will continue to be the owner of the house being transferred to spouse without consideration and; eventually the rental income will be taxable in his hands itself, making his intent of tax avoidance unsuccessful.

### Answer 5(c)

- Amount of business loss of 5<sup>th</sup> year which can be carried forward:

(Rs. in Crores)

Particulars	FY 31.03.2024 (5th year)
Incomes:	
Income from IFSC operations	10
Expenses (IFSC operations):	
Operating Expenses	14
Depreciation	2

Particulars	FY 31.03.2024 (5th year)
Net Loss from IFSC operations	(6)
Less: Intra head set off from Other Income (Non-IFSC)	3
Net Loss from IFSC operations carried forward to 6th year	(3)

Note: Net Loss ₹ (3) crores includes loss from IFSC operations. This loss of ₹ 3 crores (business loss) can be carried forward to the next year (6th year) as per normal provisions of the Income Tax Act.

b) Income eligible for deduction in the 6<sup>th</sup> year under section 80LA of the Income Tax Act.

Particulars	FY 31.03.2025 (6th year)
Net Profit for the year from IFSC operation (23-7-1)	15
Less: Brought forward business loss from IFSC operation of 5th year	(3)
Adjusted Income	12
Less: Deduction Under Section 80LA in 6th Year	12
Note: 100% of the eligible income can be claimed as a deduction under Section 80LA as follows: <ul style="list-style-type: none"> <li>● Eligible Income: ₹ (23-8-3) = 12 crores (IFSC income).</li> <li>● 100% Deduction under Section 80LA: ₹12 crores.</li> </ul>	
Taxable Income from IFSC operation	Nil

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

### Question 6

(a) Vinit has been engaged in the plying, hiring and leasing of goods carriage business for the last 20 years with the name of Vinit Enterprises and Sanjay is engaged in the business of textiles. Due to the continuous loss in the business, Sanjay wants to shut down the business. Vinit and Sanjay want to form a partnership firm with the name of SS Enterprises and want to start the business of leasing and hiring goods carriage from on 1st May 2024.

On 1st May 2024 each contributes ₹ 30,00,000 to the business and planning to purchase 6 nos. heavy goods vehicles (whose gross weight is 14 MT) and 4 nos. other than heavy goods vehicles. On the basis of experience of Vinit, the estimated Receipts will be ₹ 1,23,00,000.

Estimated expenses as under :

Nature of expenses	Amount (₹)
Drivers Salary	35,00,000
Repairs and Maintenance	3,57,000
Interest on bank loan	7,40,000

Nature of expenses	Amount (₹)
Diesel	12,40,000
Other allowed expenses	2,60,000
Depreciation (Allowed as per Income Tax Act, 1961)	50,40,000
Interest to partners on capital @ 12% (As per section 40(b))	6,60,000
Remuneration paid to partners as per section 40(b)	4,40,000

Advise, whether firm opt for section 44AE of the Income Tax Act, 1961 or not, by comparing the taxable income of the firm for the assessment year 2025-26 under both the options.

(5 marks)

- (b) "In case of Demerger no concession or incentive provided to resulting company." Discuss briefly the validity of the above statement.

(5 marks)

- (c) BNN Telecom Ltd. engaged in the business of telecommunication service, now BNN Telecom Ltd. wants to obtain a telecommunication license for 5G service. BNN Telecom Ltd approaches the acquired license and finds that the license cost will be ₹ 15 crores for a period of 10 years and there are two options to make the payment.

- (i) The entire license fee is to be made at the time of obtaining the license i.e., 18.07.2022.  
(ii) ₹ 6.90 crores paid at the time of obtaining and the remaining ₹ 8.10 crores paid in equal two instalments in the next 2 years.

Before the commencement of business BNN Telecom Ltd, acquired all the information so BNN Telecom Ltd. find out all the pros and cons of the business.

Expert says that after at least two years if you are not in the position to run the business then you can sell the license either for :

- (i) ₹ 11 crores or  
(ii) ₹ 16.25 crores.

BNN Telecom Ltd. approached you to give the report in which include all the taxation aspects for the financial year 2022-23 to financial year 2024-25.

You are required to prepare a report in respect of section 35ABB of the Income Tax Act, 1961.

(5 marks)

### Answer 6(a)

Since SS Enterprises does not own more than 10 vehicles at any time during the previous year 2024-25, the firm is eligible to opt for a presumptive taxation scheme under section 44AE. Rs. 1,000 per ton of gross vehicle weight or unladen weight per month or part of the month for each heavy goods vehicle and Rs. 7,500 per month or part of a month for each goods carriage other than heavy goods vehicle, owned by him would be deemed as his profits and gains from such goods carriage in case the assessee opted for presumptive taxation scheme.

**Option 1: Computation of Income for the Assessment Year 2025-26 as per section 44AE**

For Heavy Goods Vehicle			
No of Vehicle	Ownership months	Vehicle weight	Presumptive Income
6	11	14 MT	$6 \times 14 \times 1,000 \times 11 = 9,24,000$
For other than Heavy Goods Vehicle			
No of Vehicle	Ownership months	Presumptive Income	
4	11	$4 \times 7,500 \times 11 = 3,30,000$	
Total Presumption Income		$9,24,000 + 3,30,000 = \text{Rs. } 12,54,000$	
Less: Interest on capital		(6,60,000)	
Less: Remuneration to partners		(4,40,000)	
Business Income/Total Income		1,54,000	

**Option 2: Computation of Income for the Assessment Year 2025-26 as per Income Tax (normal provision)**

Particulars	Amount (Rs.)
Gross Receipts	1,23,00,000
Less: Admissible Expenses	
Drivers' salary	(35,00,000)
Repairs and Maintenance	(3,57,000)
Interest on bank loan	(7,40,000)
Diesel	(12,40,000)
Other allowed expenses	(2,60,000)
Depreciation (as per income tax act)	(50,40,000)
Interest to partners on capital @12% (As per section 40(b))	(6,60,000)
Remuneration paid to partners as per section 40(b)	(4,40,000)
Net Profit	63,000

M/s SS Enterprises has a lower income in option no. 2 hence SS Enterprises should choose for 2nd option. However, it should be noted that if they are declaring Profits and Gains from the business of leasing or hiring of goods carriages which is less than deemed income under section 44AE of the Income Tax Act, then they should maintain the books of accounts and get them audited under section 44AB of the Income Tax Act.

**Answer 6(b)**

The statement is incorrect. However, the resulting company shall be eligible for tax concessions only if the following two conditions are satisfied:

- (i) The demerger satisfies all the conditions laid down in section 2(19AA); and
- (ii) The resulting company is an Indian company.

The following concessions are available to the resulting company pursuant to a scheme of demerger:

- i. Expenditure for obtaining a licence to Operate Telecommunication Services [Section 35ABB (7)]: Where in a scheme of demerger, the demerged company sells or otherwise transfers its licence to the resulting company (being an Indian company), the provisions of section 35ABB which were applicable to the demerged company shall become applicable in the same manner to the resulting company, consequently:
  - The expenditure on the acquisition of the licence, not yet written off, shall be allowed to the resulting company in the same number of balance instalments.
  - Where such licence is sold by the resulting company, the treatment of the deficiency/surplus will be the same as would have been in the case of demerged company.
- ii. Treatment of preliminary expenses [Section 35D(5A)]: Where the undertaking of an Indian company which is entitled to a deduction of preliminary expenses is transferred before the expiry of 10 years/5 years, as the case may be, to another company in a scheme of demerger, the preliminary expenses of a such undertaking which are not yet written off shall be allowed as a deduction to the resulting company in the same manner as would have been allowed to the demerged company. The demerged company will not be entitled to the deduction thereafter.
- iii. Treatment of expenditure on prospecting, etc. of certain minerals [Section 35E (7A)]: Where the undertaking of an Indian company which is entitled to a deduction on account of prospecting of minerals, is transferred before the expiry of the period of 10 years to another Indian company in a scheme of demerger, such expenditure of prospecting, etc. which is not yet written off shall be allowed as a deduction to the resulting company in the same manner as would have been allowed to the demerged company. The demerged company will not be entitled to the deduction thereafter.
- iv. Treatment of bad debts [Section 36(1) (vii)]: Where due to demerger, the debts of the demerged company have been taken over by the resulting company and subsequently by such debt or part of debt becomes bad as per ICDS, such bad debt will be allowed as a deduction to the resulting company.
- v. Amortization of expenditure in case of demerger [Section 35DD]: According to sub-section 1 where an assessee, being an Indian company, incurs any expenditure, on or after 1-4-1999, wholly and exclusively for the purposes of demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the demerger takes place. No deduction shall be allowed in respect of the expenditure mentioned in sub-section (1) under any other provision of the Income tax Act.
- vi. Carry forward and set off of business losses and unabsorbed depreciation of the demerged company [Section 72A (4) & (5)]: The accumulated loss and unabsorbed depreciation, in a

demerger, should be allowed to be carried forward by the resulting company if these are directly relatable to the undertaking proposed to be transferred. Where it is not possible to relate these to the undertaking, such loss and depreciation shall be apportioned between the demerged company and the resulting company in the proportion of the assets coming to the share of each as a result of the demerger.

- vii. Deduction available under section 80-IAB or 80-IB or 80-IC or 80-IE: Where an undertaking which is entitled to deduction under section 80-IAB/80-IB/80-IC/80-IE is transferred in the scheme of demerger before the expiry of the period of deduction under section 80-IAB/80-IB/80-IC/80-IE, then-
- No deduction under section 80-IAB/80-IB/80-IC/80-IE shall be available to the demerged company for the previous year in which amalgamation takes place; and
  - the provisions of section 80-IAB/80-IB/80-IC/80-IE shall apply to the resulting company in such manner in which they would have applied to the demerged company of values to individual assets or liabilities.

### Answer 6(c)

Calculation of the Amount of Deduction:

1. If the entire license fee is paid during the financial year 2022-23 on 18.07.2022 at the time of obtaining a license and in that case the license shall be in force till 18.07.2032 i.e. FY 2032-33

Therefore, deduction under section 35ABB shall be allowed for 11 relevant previous year (i.e. FY 2022-23 till FY 2032-33 till licence shall be in force) in equal amount 1.50 crore each year beginning from 2022-23 to 2031-32

The fee paid during the year/unexpired period of license = Rs. 15 crores/11 years

Amount of deduction for the previous year 2022-23 and subsequent previous years = Rs. 1.36 crore

2. If the entire license fee is not paid during the financial year 2022-23.

Amount of deduction allowed in the previous year 2022-23

The fee paid during the year/unexpired period of license = Rs. 6.90 crores/11 years

Amount of deduction for the financial year 2022-23 = Rs. 62.72 lakhs

Amount of deduction allowed in the previous year 2023-24

1/11th the amount paid in the previous year 2022-23 = Rs. 62.72 lakhs

Rs. 4.05 crores / 10 years = Rs. 40.50 lakhs

Amount of deduction for the financial year 2023-24 = Rs. 103.22 lakhs (62.72 lakhs + 40.50 lakhs)

Amount of deduction allowed in the previous year 2024-25

Amount of deduction allowed with respect to previous payment = Rs. 103.22 lakhs

Amount of deduction paid during current year Rs. 4.05 crores/9 years = Rs. 45 lakhs

Total Amount of deduction for the financial year 2024-25 = Rs. 148.22 lakhs

For the previous year 2024-25 to 2032-33 the amount of deduction will be Rs. 148.22 lakhs

**Computation of amount of expenses of license remaining  
unallowed on the Date of Sale**

<b>Particulars</b>	<b>If the entire license fee is paid during the financial year 2022-23</b>	<b>If the entire license fee is not paid during the financial year 2022-23</b>
Previous year 2022-23 License cost	Rs. 15 crores	Rs. 15 crores
Less: Deduction allowed in the PY 2022-23	Rs.1.36 crore	Rs. .6272 crore
Unallowed license fees as on 01/04/2023	Rs.13.64 crores	Rs. 14.3728 crore
Less: Deduction allowed in the PY 2023-24	Rs.1.36 crore	Rs. 1.0322 crore
Unallowed license fees as on 01/04/2024	Rs.12.28 crores	Rs. 13.3406 crore

**Case 1: Where the license sold for Rs. 11 crores.**

<b>Particulars</b>	<b>If the entire license fee is paid during the financial year 2022-23</b>	<b>If the entire license fee is not paid during the financial year 2022-23.</b>
Sale price	Rs.11 crores	Rs.11 crores
Less: Unallowed license fees as on 01/04/2024	Rs.12.28 crores	Rs. 13.3406 crore
The deficit shall be allowed as a deduction in the PY 2024-25	Rs.1.28 crores	Rs. 2.3406 crore

**Case 2: Where the license sold for Rs. 16.25 crores.**

<b>Particulars</b>	<b>If the entire license fee is paid during the financial year 2022-23</b>	<b>If the entire license fee is not paid during the financial year 2022-23</b>
Cost of the license	Rs.15 crores	Rs.15 crores
Less: Unallowed license fees as on 01/04/2024	Rs.12.28 crores	Rs. 13.3406 crore
Business Income	Rs. 2.72 crores	Rs. 1.6594 crore
Sale Price	Rs. 16.25 Crores	Rs. 16.25 Crores
Less: Cost of the license	Rs. 15 crores	Rs. 15 crores
Short-term Capital Gain	Rs. 1.25 crore	Rs. 1.25 crore

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

- (i) RRY LLP has an income of ₹ 70,00,000 under the head 'profits and gains of business or 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 ₹ 55,00,000.

Compute the tax payable by the RRY LLP for the Assessment Year 2025-26, assuming that it has no other income during the previous year 2024-25.

(5 marks)

- (ii) RRW Limited registered during the financial year in special economic zones (SEZ), providing services. During the financial year 2024-25, following information was provided by the company :

Particulars	Amount (₹ in crore)
Export Turnover	180
Total turnover	300
Profit	48

What is the amount of deduction that RRW Limited can claim for the assessment year 2025-26 ?

(5 marks)

- (iii) Niketan Ltd., a domestic company, purchases its own unlisted shares on 13th August, 2024. The consideration for buyback amounted to ₹ 16 lakhs, which was paid on the same day. Niketan Ltd. had received ₹ 12 lakhs on issue of these shares one year back.

Compute the additional income-tax payable by Niketan Ltd. Further, determine the interest, if any, payable if such tax is paid to the credit of the Central Government on 12th November, 2024.

(5 marks)

**Answer 6A(i)****Computation of Tax payable by LLP for AY 2025-26**

Particulars	Amount (Rs.)
Total Income	70,00,000
Less: Deduction under section 80 IB	(55,00,000)
Taxable Income	15,00,000
Tax @ 30%	4,50,000
Health & Education Cess @4%	18,000
Total Tax	4,68,000

**Computation of Alternate Minimum Tax (AMT)**

Particulars	Amount (Rs.)
Total Income	70,00,000
AMT on adjusted Total Income @ 18.5%	12,95,000
Health & Education Cess @4%	51,800
Total Tax (AMT)	13,46,800

Since, the regular income tax payable is less than AMT, the adjusted total income would be deemed to be the income of LLP and it would be liable to tax @ 18.5% plus cess and Tax payable will be higher of AMT or Normal tax i.e., Rs. 13,46,800. Further, the LLP would be eligible for credit in 15 subsequent years to the extent of difference between the AMT and Normal Tax i.e. Rs. 8,78,800 (Rs. 13,46,800 – Rs. 4,68,000), in the year in which the tax payable under regular provisions exceeds the AMT.

**Answer 6A(ii)**

As per the provision of Section 10AA of the Income Tax Act, 1961, in computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005), from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, but before the first day of April, 2021, the following deduction shall be allowed:

- 100% of profits and gains derived from the export, of such articles or things or from services for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, and
- 50% of such profits and gains for further five assessment years and thereafter

Since, it is mentioned in the question that RR Ltd. is registered during the financial year in special economic zone (SEZ), i.e. registered during the current financial year i.e. 2024-25 and therefore deduction u/s 10AA is not available.

**Alternate Answer 6A(ii)**

RRW Limited is eligible to claim a 100% deduction of export of service as per section 10AA provided unit starts manufacture or produce articles or things or provide any service upto PY 2019-20.

As per section 10AA (7), the profit derived from the export of articles or things or services shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of articles or things or services bears to the total turnover of the business carried on by the undertaking.

The amount of deduction under section 10AA:

$$= \frac{\text{Profits of Unit in SEZ} \times \text{Export turnover of Unit}}{\text{Total turnover of Unit SEZ}}$$

$$= 48 \text{ crore} \times 180 \text{ crore} / 300 \text{ crore}$$

The amount of deduction will be Rs. 28.80 crores.

RRW Limited can claim a deduction for Rs. 28.80 crores.

Note:

- It is assumed that the Previous Year 2024-25 is within first 5 years of being set up of the SEZ Unit and therefore, deduction under section 10AA is allowed to the extent of 100% of the profits of SEZ as attributable to the exports.
- If it is assumed that the unit is set up prior to 5 years and 2024-25 is between year 6 to year 10, then the allowed deduction shall be 50% of `28.80 crores i.e. `14.40 crores.
- If it is assumed that the unit is set up prior to 10 years and 2024-25 is between year 10 to year 15, then so much of the amount not exceeding fifty per cent of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilized for the purposes of the business of the assessee in the manner laid down in that sub-section.

**Answer 6A(iii):**

**Computation of Tax Liability**

Particulars	Amount (₹)
Consideration for Buy-Back	16,00,000
Less: Amount received on Issue of shares	(12,00,000)
Distributed income	4,00,000
Tax @ 20%	80,000
Surcharge @ 12% of Rs. 80,000	9,600
Total tax and surcharge	89,600
Health & Education Cess @ 4% of Rs. 89600	3,584
Tax Liability	93,184

The additional income-tax was payable on or before 27<sup>th</sup> August, 2024 (i.e. within 14 days from the date of buy back of shares). However, the same was paid only on 12<sup>th</sup> November, 2024. Thus, interest under section 115QB is attracted @ 1% for every month or part of the month on the amount of tax not paid or short paid for the period beginning from the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

In this case, the period for which interest @ 1% per month or part of a month is leviable is calculated as under for 3 months (28<sup>th</sup> August, 2025 to 13<sup>th</sup> November):

Interest = ₹ (93184 x 1/100 x 3) = Rs. 2795.52 or 2796 (r/off)

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# LABOUR LAWS & PRACTICE

## GROUP 2 ELECTIVE PAPER 7.3

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### Question 1

#### Case Study :

Pranav was appointed in the service of Innovative Publications Ltd. (A Company in the business of newspaper publications in name of Innovations Daily), as the Chief Sub-Editor in January, 2020. Thereafter on 01.01.2022 he was promoted as Chief of News Bureau. The Company transferred Pranav to its Kozhikode Unit on 27.05.2022. However, without accepting the transfer order, on 30.05.2022, he had applied for leave from 01.06.2022 to 30.06.2022. Thereafter, on 01.07.2022, he again applied for leave for a further period of 50 days. Though Pranav had been directed to join duty at Kozhikode, he did not do so. Therefore, the Company issued a letter dated 10.11.2022 cautioning Pranav against taking leave for such a long duration. Since Pranav did not abide by the said communication, he was issued with a memo dated 29.11.2022 alleging grave misconduct. Pranav joined duty at Kozhikode thereafter. However, he was reluctant to discharge of his duties diligently.

Subsequently, Pranav was transferred to Kollam as a Desk Editor of the Quilon Bureau on 13.04.2023. On 20.06.2023, a memo was issued to Pranav alleging unauthorised leave. Since he did not show any improvement, a show cause notice dated 22.07.2023 was issued to Pranav seeking his explanation. He was also informed by the said communication that the company would be constrained to terminate his services if his explanation was not submitted within three days. Pranav did not submit any explanation and therefore, he was dismissed from service on 05.08.2023. Pranav raised an industrial dispute under Section 10 of the Industrial Disputes Act, 1947 to the Labour Court. Pranav claimed that he was designated as Chief of News Bureau, the duties discharged by him were those of a Working Journalist. He was the President of the Working Journalists Union during 2022–2023. During the period he was President, he had demanded enhancement of the wages inviting the wrath of the employer. His dismissal is on baseless charges and is motivated by the personal animosity nurtured by the employer. Though it was contended that his work was supervisory in nature, no evidence was adduced by the management in support of the said claim.

Pranav's wife Bhumika was working as a Clerk-Typist in the Office of the Managing Director (MD) of Fine Fabrics Ltd. and Bhumika was reporting to Mahendra, Senior Manager of the MD's Secretariat. The FFL is engaged in manufacturing of synthetic yarn. A meeting of some foreign clients of the FFL was kept in a Five Star Hotel. Mahendra insisted Bhumika to go with him to the Hotel for taking dictation from the MD and type out the matter. Under the pressure of Mahendra, Bhumika went to take the dictation from the MD. While Bhumika was waiting in adjoining room for the dictation from the MD, Mahendra tried to sit too close to Bhumika and despite her objection he did not give up his objectionable behaviour. Bhumika later took dictation from the MD. Mahendra told her to type and get its print out. Since the laptop and printer were located in the basement of the Hotel, Mahendra volunteered to show her the basement for getting the matter typed and taking advantage of the isolated place and again tried to sit very close to her despite her objections. The draft typed matter was corrected by MD who asked Bhumika to retype the same. Mahendra again accompanied with Bhumika to the basement and repeated his overtures. Bhumika warned Mahendra that she

would leave the place if he continued to behave like that, however, Mahendra did not stop and continued his objectionable acts. Next day, Bhumika made a written complaint to the MD.

Pranav's child, named Akshay is just 10 years old but performs dance very well and participated in the School dance competitions. He also participated in the famous TV show of 'Dance India' which is telecasted on the TV having nationwide presence.

In this background, answer the following questions :

- (a) Whether Pranav is to be considered as a Working Journalist as per the provisions of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 ?

(5 marks)

- (b) Whether Pranav who was working as the Chief of News Bureau of Innovative Publications Ltd., could be considered to be a workman under the provisions of the Industrial Disputes Act, 1947 ?

(5 marks)

- (c) Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) the sexual harassment includes a demand or request for sexual favours or making sexually coloured remarks; or showing pornography, but in the given case Mahendra has simply accompanied with Bhumika to the basement of the Hotel to get the matter typed and print and had done nothing which may amounts to sexual harassment. Further the place was not the Office place of Bhumika but it was Hotel.

Based on the given facts, whether the conduct of Mahendra shall be termed as sexual harassment when there was no physical contact and despite the fact, the incident happened in the Hotel which was not the workplace of Bhumika ? Give your answer with the decided case law.

(5 marks)

- (d) Whether performing in the TV Show of 'Dance India' by Akshay is a violation of the provisions of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 since this Act prohibits the employment of children in any occupation and process ?

(5 marks)

- (e) How did the Supreme Court justify the introduction of the "doctrine of apportionment of blame" in the context of unjustified strikes and lockouts during the proceedings of India Marine Service Pvt. Ltd. Vs. Their Workmen ?

(5 marks)

### Answer 1(a)

In terms of Section 2(f) of the Working Journalists and other Newspapers Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (Working Journalists Act) "working journalist" means a person whose principal avocation is that of a journalist and who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishment, and includes an editor, a leader-writer, news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news photographer and proof-reader, but does not include any such person who—

- (i) is employed mainly in a managerial or administrative capacity, or
- (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.

The facts of the case are similar to the case of *Mangalam Publications (India) vs. Shri. Cherian Zachariah* 22 July 1995. According to the appellant, the respondent was not a working journalist under Section 2(f) of The Working Journalist Act. However, according to the Labour Court, the respondent was a working journalist and no evidence whether oral or documentary by the management to prove that the dismissal of the respondent is sustainable and no domestic inquiry was preceded before giving the dismissal. So, the court agreed by the Labour court and thus other petitions and dismissal were set aside by the court. And the dismissal of the respondent by the appellant was held arbitrary.

The Court expressed that as per the above provision, a person whose principal avocation is that of a journalist and who is an Editor, Leader writer, News Editor, Sub Editor, Feature Editor, Copy Tester, Reporter, Correspondent etc. would come within the scope of the definition. At the time of his dismissal from service, Pranav was working as a Desk Editor of Innovations Daily at Kollam. As per the definition contained in Section 2(f) of the Working Journalists Act, being a Desk Editor, he comes within the scope of the definition. Though Pranav had been transferred to Kozhikode as Bureau Chief, he is seen to have been transferred to Quilon Bureau as a Desk Editor. The only inference therefore is that, the said posts were both equal and interchangeable. If the nature of the duties discharged by Pranav were supervisory, it was for the Management to have adduced evidence in proof of the said fact. No such evidence has been adduced in this case. Had the contention of the Publication Company' Management been true, they would certainly have had material evidence in proof of the said contention but no evidence regarding the nature of duties discharged by Pranav was shown by the Management. In the absence of any such evidence, the only conclusion possible is that the Pranav was a Working Journalist coming within the expression defined by Section 2(f) of the Working Journalists Act.

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

#### **Provisions of Industrial Disputes Act, 1947 to apply to working journalists**

Working Journalists are brought within the purview of the Industrial Disputes Act, 1947 by virtue of Section 3 of the Working Journalists and other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 (Working Journalists Act).

Section 3(1) of the Working Journalists Act states that the provisions of the Industrial Disputes Act, 1947, as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act.

In the matter of *Bennet Coleman & Co. Ltd v. State of Bihar*, [SLP(CRL.) NO.10134/2010], the Supreme Court judgement, as per Section 3 of the Working Journalists Act, the provisions of the Industrial Disputes Act, 1947 have been made applicable to the working journalists, as if they are workmen under the Industrial Disputes Act, 1947. Thus, being a legislation by reference, provisions of Industrial Disputes Act, 1947 are applicable so far as working journalists are concerned.

Therefore, when Pranav is a 'Working Journalist', then the provisions of the Industrial Disputes Act, 1947 would apply to him.

### **Answer 1(c)**

#### **Meaning of 'Sexual Harassment'**

In terms of Section 2(n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

- (i) physical contact and advances; or

- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

### **Meaning of 'Workplace'**

In terms of Section 2(o)(v) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "workplace" includes any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey.

The facts of the case are similar to that of the case of *Apparel Export Promotion Council v. A.K Chopra*, [(1999) 1 SCC 759]. In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that "sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her."

Bhumika went to the Hotel which is regarded as 'arising out of or during the course of employment' as she was instructed by her reporting officer to reach Hotel to take the dictation of the Managing Director.

Therefore, in terms of Section 2(o)(v) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Hotel shall be treated as workplace for the time being for Bhumika. Hence given the circumstances as above, conduct of Mahendra would be termed as sexual harassment despite there being no physical contact.

### **Answer 1(d)**

Section 3 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 provides that no child shall be employed or permitted to work in any occupation or process except where the child:

- a. helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
- b. works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.

However, no such work shall effect the school education of the child.

Thus, as per Section 3(b) of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Akshay can perform in the TV serial 'Dance India' provided his school education is not suffered.

### **Answer 1(e)**

The Hon'ble Supreme Court has considered the situation if the strike is followed by lockout and vice versa, and both are unjustified, in *India Marine Service Pvt. Ltd. v. Their Workman*, AIR 1963 SC 528.

In this case, the Court evolved the doctrine of “apportionment of blame” to solve the problem. According to this doctrine, when the workmen and the management are equally to be blamed, the Court normally awards half of the wages. This doctrine was followed by the Supreme Court in several cases. Thus, the examination of the above cases reveal that when the blame for situation is apportioned roughly half and half between the management and workmen, the workmen are given half of the wages for the period involved.

The Supreme Court justified the introduction of the “doctrine of apportionment of blame” by recognizing that in industrial disputes, both employers and employees may act irresponsibly, leading to prolonged stoppages of work.

In the present case, the workers initiated an unjustified strike without exhausting legitimate dispute-resolution mechanisms, while the employer reacted by imposing a lockout that was equally unjustified and retaliatory in nature. If the Court were to award full wages for the strike period, it would encourage employees to take recourse to unlawful strikes, knowing they would not suffer financial loss. On the other hand, if wages were fully denied, it would empower employers to misuse their superior economic strength by imposing retaliatory lockouts to break the unity of workers. To strike a balance, the Court evolved the doctrine of apportionment of blame, under which responsibility for the industrial deadlock was apportioned between both sides, with workers being granted only partial wages. This solution reflected fairness, discouraged misuse of economic weapons, and promoted industrial discipline. The doctrine was thus a judicial innovation to prevent either party from unjustly profiting from their wrongful conduct.

## **Question 2**

Bikaner Cold Storage Company Ltd. was carrying on the business of running a cold storage facility in Rajasthan, where agricultural producers and traders stored their perishable goods, mainly fruits and vegetables, for preservation. The business essentially required a limited number of permanent employees such as supervisors, clerks, accountants, mechanics, and helpers to maintain day-to-day operations like regulating the temperature, maintaining machinery, and supervising the storage process. However, during peak season when agricultural produce arrived in bulk there was a temporary need to engage extra labour for loading, unloading, stacking, and arranging goods inside the cold storage. These workers were employed for a few days or weeks depending on the volume of goods, and once the seasonal rush ended, their services were no longer required. The company maintained that such seasonal or casual labourers were not on its permanent rolls and were not engaged in the regular course of business but only as a stop-gap arrangement to meet temporary demands.

The Regional Provident Fund Commissioner issued a notice contending that the establishment fell within the scope of Section 1(3)(a) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, as the strength of employees exceeded twenty including these seasonal and casual workers. The Commissioner argued that since these persons worked under the control of the establishment and were paid wages, they should be counted as employees for the purpose of the Act. The company challenged this position and filed the case, asserting that the actual number of permanent and regular employees was below twenty and that inclusion of temporary or casual labourers would unfairly extend the application of the Act to establishments that otherwise did not meet the statutory threshold. The main issue before the Rajasthan High Court was whether temporary or seasonal workers, engaged for shorter durations and not forming a permanent part of the business, could be treated as “employees” under Section 1(3)(a) of the Employees' Provident Fund Act for the purpose of determining the statutory strength of twenty employees.

The Rajasthan High Court held that the persons employed in the normal and regular course of business of the establishment should be treated as “employees” for the purpose of Section 1(3)(a).

However, persons employed only for shorter durations, whose engagement was not a regular feature of the business of the cold storage, could not be included in determining the employee strength. Accordingly, casual or seasonal workers brought in temporarily during peak demand were excluded from the calculation. On this basis, the Court concluded that the Act could not be made applicable to the petitioner establishment, as the required threshold of twenty employees was not satisfied.

- (a) How did the Rajasthan High Court distinguish between regular employees and casual/seasonal workers in determining the applicability of Section 1(3)(a) of the EPF Act ?
- (b) What legal principles of statutory interpretation did the Court apply in determining the scope of “employees” under Section 1(3)(a) of the EPF Act ?
- (c) Explain the provisions of Equal Remuneration Act, 1976 in connection with the offences committed by companies and penalty provisions.
- (d) Enumerate the non-applicability of EPF and Miscellaneous Provisions Act, 1952 to certain establishments.
- (e) ‘The fundamental principles lie in recognising the labour as human beings and not as the commodity and ensuring their spiritual conditions of freedom and dignity of economic security, equal opportunity and the peace could only be attained, if it is based on social justice’. Elaborate the aforesaid declaration adopted by International Labour Organisation (ILO) after the World War II.

(5 marks each)

### Answer 2(a)

On the question whether casual or temporary workmen should be included for the purpose of ascertaining the strength of workmen in terms of Section 1(3) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('EPF Act') it was held by the *Rajasthan High Court in Bikaner Cold Storage Co. Ltd. v. Regional P.F. Commissioner, Rajasthan, 1979 Lab. I.C. 1017*, that persons employed in the normal course of the business of the establishment should be considered as the persons employed for the purposes of Section 1(3)(a) and persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular feature of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to the applicability of Section 1(3)(a) of the EPF Act.

The Rajasthan High Court carefully distinguished between regular employees and casual or seasonal workers by interpreting the phrase “persons employed in the establishment” under Section 1(3)(a) of the EPF Act. The Court held that only those engaged in the normal course of business such as clerks, mechanics, supervisors, and other staff continuously required for day-to-day operation qualified as employees for determining statutory strength. By contrast, workers engaged only during peak seasons for limited functions such as loading and unloading were excluded because their employment was temporary, uncertain, and not integral to the establishment's ongoing activities. The Court reasoned that including such seasonal workers would unfairly bring smaller establishments within the purview of the Act, contrary to the legislative intent that aimed to cover units with a stable workforce of twenty or more. Thus, the distinction lay in the permanence and regularity of employment, not in mere physical presence or payment of wages.

### Answer 2(b)

In deciding the case, the Court relied on the principle of purposive interpretation, seeking to align the meaning of “employees” with the broader object of the Act. The legislative purpose of the

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was to provide social security to workers employed in establishments with a reasonably stable workforce. If the term "employees" was interpreted literally to include every casual or temporary hand, even establishments with fluctuating labour requirements would automatically fall within the Act, which was not the legislative intent. A financial burden is imposed upon the establishment once it is held to be governed by the provisions of the Act. The Court also applied the rule of *noscitur a sociis* meaning that the word "employee" must be understood in the context of regular, continuous service in relation to the establishment's business. Moreover, the Court emphasized the doctrine of substance over form, noting that the true nature of employment, not its superficial appearance, must guide interpretation. By using these principles, the Court ensured that only regular employees essential to the functioning of the establishment were included for computation under Section 1(3)(a) of the EPF Act.

## **Answer 2(c)**

### **Penalty provisions as per Section 10 of the Equal Remuneration Act, 1976**

Section 10(1) of the Equal Remuneration Act, 1976 states that if any employer, being required by or under this act, so to do:-

- (a) omits or fails to maintain any register or other document in relation to workers employed by him, or
- (b) omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or
- (c) omits or refuses to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or
- (d) omits or refuses to give any information, then he shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.

Section 10(2) of the Equal Remuneration Act, 1976 states that if any employer:-

- (a) makes any recruitment in contravention of the provisions of this Act; or
- (b) makes any payment of remuneration at unequal rates to men and women workers for the same work or work of a similar nature; or
- (c) makes any discrimination between men and women workers in contravention of the provisions of this Act; or
- (d) omits or fails to carry out any direction made by the appropriate Government, then he shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.

As per Section 10(3) of the Equal Remuneration Act, 1976, if any person being required so to do, omits or refuses to produce to an Inspector any register or other document or to give any information, he shall be punishable with fine, which may extend to five thousand rupees.

### **Offences by companies as per Section 11 of the Equal Remuneration Act, 1976**

- (1) Where an offence under the Equal Remuneration Act, 1976 has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to

be proceeded against and punished accordingly. However, nothing contained in this subsection shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

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

Explanation.-For the purposes of this section-

- (a) "company" means anybody corporate and includes a firm or other association of individuals; and  
 (b) "director", in relation to a firm, means a partner in the firm.

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

#### **Non-applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to certain establishments**

Section 16(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) provides that the EPF Act shall not apply-

- (a) to any establishment registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State relating to co-operative societies, employing less than 50 persons and working without the aid of power; or  
 (b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or  
 (c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

Further, according to Section 16(2) of the EPF Act, if the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt whether prospectively or retrospectively that class of establishments from the operation of this Act for such period as may be specified in the notification.

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

Philadelphia meeting was held in the peak of second world war, which attended by representatives of 41 member nations. The meeting saw the important adoption of the charter of Philadelphia. The charter is an annexure to the constitution. It contains aims and objectives of the International Labour Organisation (ILO).

#### **Declaration of Philadelphia**

Adopted on 10th May, 1944, the declaration of Philadelphia encompasses the aims and objectives of the ILO, and the principles upon which its policies should be made. The declaration is divided into 5 parts.

The statement narrated in the question refers to the Part 1 and 2 of the declaration, which is provided as under:

**PART 1**

It talks about the fundamental principles upon which the organisation is based, namely:

- a. labour is not a commodity;
- b. freedom of expression and of association are essential to sustained progress;
- c. poverty anywhere constitutes a danger to prosperity everywhere;
- d. the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.

**PART 2**

This part reaffirms that lasting peace could only be established if it is based on social justice. The conference confirms that -

- a. all human beings, irrespective of race, creed or sex, have the right to pursue both their material wellbeing and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity;
- b. the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- c. all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective;
- d. it is a responsibility of the International Labour Organization to examine and consider all international economic and financial policies and measures in the light of this fundamental objective;
- e. in discharging the tasks entrusted to it the International Labour Organization, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate.

**Question 3**

Smt. Sundarbai was the widow of a workman employed at the Ordnance Factory, Khamaria, Jabalpur. Her husband was engaged in the factory's operations, which involved regular and strenuous physical labour. While performing his duties in the course of employment, he suddenly collapsed and later died. The cause of death was linked to a heart attack, which she contended was the result of strain and stress arising from his employment. Sundarbai applied for compensation under the Workmen's Compensation Act, 1923, claiming that her husband's death amounted to an "accident arising out of and in the course of employment." The employer, the Ordnance Factory management, resisted the claim on the ground that the workman's death was due to a natural disease, namely heart failure, and not an accident. They argued that unless there was some untoward mishap or unexpected event traceable to the nature of work, the incident could not be treated as an "accident" under the Act. Therefore, they maintained that the claim for compensation was not maintainable. The matter eventually reached the Madhya Pradesh High Court.

The principal issue before the High Court was whether the death of Sundarbai's husband due to

heart failure while performing his ordinary duties in the factory could be treated as an “accident” within the meaning of the Employees’ Compensation Act, 1923. The Court had to examine whether there must be a direct and immediate causal link between the work and the injury, or whether even the ordinary strain of work, if it accelerated or aggravated a pre-existing condition, would be sufficient to establish such connection. Another issue was how to differentiate between “injury” caused by accident and death resulting from natural disease not connected with employment.

The Madhya Pradesh High Court ruled in favour of Smt. Sundarbai, clarifying the scope of the expressions “accident” and “injury” under the Workmen’s Compensation Act. The Court held that an “accident” is not limited to external mishaps, falls, or injuries caused by violent occurrences. Instead, it can also include cases where the ordinary strain of ordinary work leads to or accelerates a physical breakdown, such as heart failure, provided there is a causal connection between the employment and the injury. The Court drew a distinction between “injury” and “accident” : an injury is the physical harm or medical condition suffered by the workman, whereas an accident is the untoward event in the course of employment that causes or accelerates such injury. If a workman, while performing his regular duties, suffers from a heart attack and it is shown that the strain of employment contributed to or hastened the fatal result, then such death can be said to arise “out of and in the course of employment.” The fact that the employee may have had a pre-existing heart condition was not material if the employment strain accelerated the injury. Applying this principle, the Court held that Sundarbai’s husband died because the stress and strain of his ordinary duties had accelerated his heart failure, and thus the death was an “accident” connected with his employment. Consequently, the widow was entitled to compensation under the Employees’ Compensation Act.

In the background of the given information, answer the following questions :

- (a) How did the Madhya Pradesh High Court in Sundarbai’s case interpret the concept of “accident” under the Employees’ Compensation Act and why was this interpretation significant ?  
(5 marks)
- (b) In what way did the Court distinguish between “injury” and “accident” in Sundarbai’s case, and how did this affect the outcome ?  
(5 marks)
- (c) What is meant by minimum rate of wages under The Minimum Wages Act, 1948 ? How is it fixed/revised ?  
(5 marks)
- (d) What are the features of the Code on Social Security 2020 ?  
(5 marks)
- (e) Sunidhi is Asstt. Manager in Quality Bank Ltd, Noida. She resides in a 2BHK flat which has been provided by the Bank with her college time friend Sandeep. Both of them are not a married couple, but staying in ‘live-in-relationship’. After some time Sunidhi gave the birth to a baby girl. To avail the benefits under the Maternity Benefit Act, 1961, she immediately applied for maternity leave and other benefits. However, the Manager of the Bank refused to grant any benefits under the Act to Sunidhi since in the Bank’s record her marital status was marked as unmarried. Whether the contention of the Bank Manager in not granting her maternity leave and other benefits is justified ?  
(5 marks)

### **Answer 3(a)**

The Madhya Pradesh High Court gave a broad and liberal interpretation to the meaning of “accident” under the Employees’ Compensation Act, 1923. In the case of *Smt. Sunderbai v. The General Manager, Ordnance Factory Khamaria, Jabalpur, 1976 Lac. I.C. 1163 (MP)*, the Madhya Pradesh High Court has clarified that the Accident means an untoward mishap which is not expected or designed by workman. It further stated that Accident may be an event happening internally to a man. Such cases are illustrated by failure of heart and the like, while the workman is doing his normal work.

The Court noted that in ordinary usage, “accident” often means a sudden or violent event, but for purposes of welfare legislation, it must be understood in a wider sense. The Court held that an accident includes situations where the ordinary strain of ordinary work leads to physical breakdown or accelerates a pre-existing disease.

In Sundarbai’s case, the deceased collapsed while performing his routine duties at the Ordnance Factory due to heart failure. The employer argued that this was a natural death unrelated to employment, but the Court disagreed. It ruled that when the employment duties contribute in any degree to the injury or death, it constitutes an accident “arising out of and in the course of employment.”

This interpretation was significant because it extended protection to workers and their families, ensuring they were not left without remedy merely because the triggering event was not unusual or dramatic. It reinforced the social welfare object of the Act and ensured a realistic understanding of workplace risks.

### **Answer 3(b)**

In the case of *Smt. Sunderbai v. The General Manager, Ordnance Factory Khamaria, Jabalpur, 1976 Lac. I.C. 1163 (MP)*, the Madhya Pradesh High Court has clarified the difference between accident and injury. Accident means an untoward mishap which is not expected or designed by workman, ‘Injury’ means physiological injury. Accident and injury are distinct in cases where accident is an event happening externally to a man, e.g., where a workman falls from the ladder and suffers injuries. But accident may be an event happening internally to a man and in such cases accident and injury coincide. Such cases are illustrated by failure of heart and the like, while the workman is doing his normal work. The Court carefully separated the concepts of “injury” and “accident.” According to the judgment, “injury” refers to the harm suffered by the body, such as illness, breakdown, or death, while “accident” refers to the unexpected occurrence in the course of employment that produces or accelerates such harm.

In Sundarbai’s case, the physical injury was the heart attack that caused the death of the workman, but the accident lay in the fact that the stress and strain of his employment duties precipitated the attack. The employer argued that because no external accident or unusual event occurred, the case fell outside the Act. The Court firmly rejected this narrow approach, stating that an accident need not always involve outward mishaps like falls or injuries from machines. Even internal bodily failures can qualify as accidents if triggered by employment strain.

This distinction affected the outcome decisively because it allowed the Court to bring the heart failure within the definition of an “accident” and thereby hold the employer liable for compensation. By doing so, the Court highlighted that the Act must be read in a manner that advances the protection of workers, not restricts it.

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

Section 3(1)(a) of the Minimum Wages Act, 1948 lays down that the ‘appropriate Government’ shall fix the minimum rates of wages, payable to employees employed in an employment specified

in Part I and Part II of the Schedule, and in an employment added to either part by notification under Section 27.

Further, according to Section 3(2) of the Minimum Wages Act, 1948, the 'appropriate Government' may fix minimum rate of wages for:

- a. time work, known as a Minimum Time Rate;
- b. piece work, known as a Minimum Piece Rate;
- c. a "Guaranteed Time Rate" for those employed in piece work for the purpose of securing to such employees a minimum rate of wages on a time work basis; (This is intended to meet a situation where operation of minimum piece rates fixed by the appropriate Government may result in a worker earning less than the minimum wage); and
- d. "Over Time Rate" i.e. minimum rate whether a time rate or a piece rate to apply in substitution for the minimum rate which would otherwise be applicable in respect of overtime work done by employee.

Section 3(3) of the Minimum Wages Act, 1948 provides that different minimum rates of wages may be fixed for –

- (i) different scheduled employments;
- (ii) different classes of work in the same scheduled employments;
- (iii) adults, adolescents, children and apprentices;
- (iv) different localities.

Further, minimum rates of wages may be fixed by any one or more of the following wage periods, namely:

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other large wage periods as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated.

Provided that where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936, minimum wages shall be fixed in accordance therewith.

According to Section 3(1)(b) of the Minimum Wages Act, 1948, the 'appropriate Government' shall review the minimum rates of wages so fixed at such intervals as it may think fit, such intervals not exceeding five years, and revise the minimum rate of wages, if necessary. This means that minimum wages can be revised earlier than five years also.

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

The Code on Social Security, 2019 has been introduced in Lok Sabha on December 11, 2019. The Code was referred to Parliamentary Standing Committee on Labour. The report of the Standing Committee was placed before both the Houses of the Parliament on September 15, 2020. The Bill was reintroduced as The Code on Social Security, 2020 in the Parliament and has been passed by the Lok Sabha on 22nd September, 2020, Rajya Sabha on 23rd September, 2020 and received the assent of the President on 28th September, 2020. The Code on Social Security, 2020 would facilitate the use of technology ensuring transparency and accountability leading to effective enforcement of the provisions.

**The salient features of the Code on Social Security, 2020, inter alia, are –**

- (i) to extend the coverage of Employees' State Insurance to all establishments employing ten or more employees and to the employees working in establishments with less than ten employees on voluntary basis and also to plantations on option basis. It further seeks to empower the Central Government to notify the applicability of the said coverage to establishments which carries on the hazardous or life threatening occupation irrespective of the number of workers employed therein;
- (ii) to extend the Employees' Provident Fund, Employees' Pension Scheme and Employees Deposit Linked Insurance Scheme to all industries or establishments employing twenty or more;
- (iii) to make provision for specifying differential rates of employees' contribution for class of employees for employees' provident fund as the Central Government may notify for a specified period;
- (iv) to provide that the money dues shall be the charge on the assets of the employer and shall be paid on priority basis in accordance with the Insolvency and Bankruptcy Code, 2016;
- (v) to provide that in case of employer's failure to register the employee with Employees' State Insurance Corporation or failure to pay contribution and the Employees' State Insurance Corporation releasing the benefits to the workers, then, such benefits shall be recovered from the employer;
- (vi) to empower the Central Government to frame schemes for providing social security, to the gig workers and platform workers who do not fall under traditional employer-employee relation;
- (vii) to empower the Central Government, by notification, to constitute a Social Security Fund or funds for provision of social security for the unorganised workers, platform workers or gig workers or any such class of workers;
- (viii) to provide for payment of gratuity in case of Fixed Term Employment on pro-rata basis even if the period of fixed term contract is less than five years;
- (ix) to provide for maternity benefit to the woman employee;
- (x) to provide for compensation to the employees in case of the accidents while commuting from residence to place of work and vice versa;
- (xi) to provide for levying and collecting the cess for the purposes of social security and welfare of building workers;
- (xii) to provide for limitation period of five years for institution of proceedings in respect of assessment and determination of money dues from employer;
- (xiii) to expand the sources of the fund for schemes to include funds from corporate social responsibility or any other source as may be specified in the scheme and also contains enabling provision for constituting the special purpose vehicle for the purpose of implementation of schemes for unorganized workers;
- (xiv) to provide for renaming the designation of Inspector as Inspector-cum-Facilitator and to enhance his power to supply information and give advice to employers and workers concerning the most effective means of complying with the provisions of the proposed Code;
- (xv) to provide for filing of a single return electronically or otherwise by the employer;

- (xvi) to provide that the interests charged on delayed payments under the provisions of the proposed Code be specified in the rules;
- (xvii) to provide penalty for the different types of violations commensurate with the gravity of the violations;
- (xviii) to make Aadhaar mandatory for seeding at the time of registration of member or beneficiary or any other person to register or for receiving benefit;
- (xix) to empower the appropriate Government to exempt certain establishments from all or any of the provisions of the proposed Code.

### **Answer 3(e)**

Section 5(1) of the Maternity Benefit Act, 1961 provides that subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

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

The words used in Section 5(1) are 'every woman'. Thus, under the Maternity Benefit Act, 1961, an unmarried woman is also entitled to maternity leave. The Act does not discriminate based on marital status and applies to all women, including unmarried, adoptive, and commissioning mothers. Maternity Benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working.

The Maternity Benefit Act, 1961, ensures that all pregnant women are entitled to maternity benefits, regardless of their marital status. The Act does not specify any conditions related to marriage for claiming maternity benefits.

Hence, the contention of the Bank Manager not granting the maternity leave and other benefits are not justified in the given case.

### **Question 4**

The Poona Employees Union was registered in 1986 as a general union intended to operate across industries within Pune district. Years later, D'Souza, a former president of the Union, applied to the Additional Registrar of Trade Unions under Section 10 of the Trade Unions Act, 1926, seeking cancellation of the Union's registration. He alleged that registration had been obtained by "fraud or mistake" and that the application and rules failed to identify a specific industry, rendering the registration invalid. Acting on this application, the Additional Registrar cancelled the Union's registration. On appeal, however, the Industrial Court, Pune on 11th April 2008 set aside the cancellation, holding that the Registrar's action was legally unsustainable. D'Souza then invoked Article 226 before the Bombay High Court on 25th February 2009, which affirmed the Industrial Court's Order. Persisting, D'Souza appealed to the Supreme Court. During the Supreme Court proceedings, he argued that the Union's omission to specify the industry contravened Sections 4 to 6 and the prescribed forms/regulations; he also relied on decisions such as *Indian Express (Bom) Employees Union v. K.M. Desai* and *Forbes Forbes Campbell* on strict compliance with registration particulars. The Union, represented by senior counsel, countered that (i) Section 10 allows cancellation only on an application by a trade union or suo motu by the Registrar not at the instance of a private individual; (ii) the phrase "any industry" in its application and rules reflected a legitimate general union across all industries in Pune; (iii) the 2001 statutory amendments (effective 9 January 2002)

to Sections 4 to 6 could not be retrofitted to a 1986 registration; and (iv) the Registrar had not conducted the requisite inquiry or satisfied Rule 8(2) of the Bombay Trade Union Regulations, 1926.

The Supreme Court in *D'Souza v Poona Employees Union* (2015) held that cancellation of a trade union's registration under Section 10 of the Trade Unions Act, 1926 can only be sought by the trade union itself or initiated suo motu by the Registrar, and not by a private individual. Since D'Souza was merely a former office-bearer, he had no locus standi to maintain such proceedings. The Court further clarified that the expression "obtained by fraud or mistake" refers to fraud or mistake on the part of the union at the time of obtaining registration, and not an error of the Registrar in granting registration. Even if the Registrar had made a mistake, that could not justify cancellation under Section 10. Moreover, the cancellation order passed in this case was procedurally flawed as no proper enquiry or show-cause notice was given, and the requirements of Rule 8(2) of the Bombay Trade Union Regulations were not followed. On the substantive objection, the Court held that the use of the expression "any industry" in the Union's application meant "all industries" within Pune district, and therefore the Union was validly a general union. The absence of specifying a single industry did not invalidate its registration. The precedents cited by the appellant were distinguished as factually different. The Court also emphasized that the 2001 amendments to Sections 4, 5, and 6 of the Act could not be applied retrospectively to a registration granted in 1986. Consequently, the appeal was dismissed and the validity of the Poona Employees Union's registration was upheld.

(a) How did the Supreme Court in *D'Souza v. Poona Employees Union* interpret the scope of Section 10 of the Trade Unions Act, 1926 with regard to locus standi ?

(5 Marks)

(b) Discuss how the Supreme Court differentiated between a 'mistake by the union' and a 'mistake by the Registrar' under Section 10 of the Trade Unions Act.

(5 marks)

(c) The jurisdiction of High Court under Article 226 is wider than Supreme Court under Article 32 because the High Court can exercise its writ jurisdiction not only for the enforcement of fundamental rights but also for enforcement of any legal right. Elucidate this statement in light of the decided case law.

(5 marks)

(d) "No work, no pay" is the general principle, which means that an employee is not entitled to wages for the period when they haven't worked. However, pensioners are being paid even for not working at all. Is it a bounty or ex-gratia payment for the past service rendered? Analyse this with the decided case law.

(5 marks)

(e) Mehar, who is a Company Secretary was invited as Chief Guest in a Debate Competition organised by the City Law College. The law students were given the following topic for debate :

"The Code on Wages, 2019 is merely the amalgamation of the existing enactments relating to wages and has not widened the scope of minimum wages to all workers".

Ten students participated in the debate, five in favour of the Code and five against the Code. At the end of the debate session, Mehar was invited to say few words about the Code. Write down the speech highlighting the key points of the Code on Wages and how the Code would facilitate the implementation and ease of compliance of labour laws.

(5 marks)

**Answer 4(a)**

In accordance with Section 10 of the Trade Unions Act, 1926, a certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar on the following grounds —

- on the application of the Trade Union to be verified in such manner as may be prescribed;
- if the Registrar is satisfied that the certificate has been obtained by fraud or mistake or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision or has rescinded any rule providing for any matter provision for which is required by section 6.

The Supreme Court adopted a strict interpretation of Section 10 of the Trade Unions Act, 1926, which permits cancellation of a trade union's registration either on the application of the trade union itself or suo motu by the Registrar. The Court clarified that the statute does not recognize the right of a private individual, even if he was a former office-bearer or founder member of the union, to initiate such proceedings. This interpretation was crucial because the appellant, D'Souza, acted in his personal capacity and had no legal standing to pursue cancellation. The Court emphasized that locus standi is central to prevent misuse of statutory remedies by disgruntled individuals seeking to disrupt the functioning of trade unions. By restricting standing to the union or the Registrar, the law preserves the autonomy of unions and ensures stability in industrial relations. This reasoning underscores that Section 10 is not a mechanism for outsiders or former leaders to interfere in the internal affairs of a union. Hence, the Hon'ble Court dismissed the appeal on the ground of lack of locus standi, upholding the independence of trade union registration.

**Answer 4(b)**

The Hon'ble Supreme Court in this case drew a clear distinction between mistakes attributable to the trade union and those committed by the Registrar at the time of registration. According to the judgment, Section 10 of the Trade Unions Act, 1926 permits cancellation where the union has procured registration by fraud or mistake, such as misrepresentation of facts or failure to disclose necessary particulars. The Court reasoned that treating a Registrar's administrative lapses as grounds for cancellation would defeat the purpose of stability in trade union registration and open the floodgates for unnecessary challenges. Instead, such mistakes are to be corrected through appellate authority or judicial review, not through cancellation proceedings initiated under Section 10 of the Trade Unions Act, 1926. This distinction is important as it reinforces the principle that cancellation should only arise from misconduct of the applicant union, not bureaucratic errors. In the present case, since no fraud or mistake was attributable to the Poona Employees Union, cancellation was unwarranted.

**Answer 4(c)**

Once the fundamental rights of labourers are infringed, they can approach the Supreme Court for relief under Article 32 or High Court for relief under Article 226 and if any other legal right is also infringed they can approach the High Court for relief under Article 226.

In *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, a social cause organisation approached the Supreme Court through a letter under Article 32 to request the Hon'ble Supreme Court to investigate the existence of inhuman conditions in certain mines where numerous persons were working as forced/bonded labourers. The Supreme Court directed and appointed two inquiry commissions to find out the true facts and circumstances as alleged by the petitioner. The Court rebuked the State government for raising a preliminary objection to stall in an inquiry by the Court into the matter in the following words: "We should have thought that if any citizen brings before the Court a complaint that a large number of peasants or workers are bonded serfs or are being subjected to exploitation by a few mine lessees or contractors or employers or are being denied the

benefits of social welfare laws, the State Government, which is, under our constitutional scheme, charged with the mission of bringing about a new socioeconomic order where there will be social and economic justice for every one and equality of status and opportunity for all, would welcome an inquiry by the court, so that if it is found that there are in fact bonded labourers or even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act, 1976 but they are made to provide forced labour or are consigned to a life of utter deprivation and degradation such a situation can be set right by the State Government."

The Court held that though no fundamental right of the petitioner may be said to be infringed, yet the petitioner who complains of such violation may succeed by virtue of PIL. The court further pointed out that the jurisdiction of High Court under Article 226 is wider than Supreme Court under Article 32 because the High Court can exercise its writ jurisdiction not only for the enforcement of fundamental right but also for enforcement of any legal right.

#### **Answer 4(d)**

In *D.S. Nakara Vs. Union of India*, AIR 1983 SC 130, the Constitution Bench of the Supreme Court has held that pension is not only compensation for loyal service rendered in the past, but also by the broader significance it is a social welfare measure rendering socio-economic justice by providing economic security in the fall of life when physical and mental prowess is ebbing corresponding to the aging process and, therefore, one is required to fall back upon savings.

The Court emphasized on three features while describing the nature of pension given to a government servant on retirement, thereof:

1. Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and it creates a vested right;
2. Pension is not an ex-gratia payment but it is a payment for the past service rendered; and
3. It is a social welfare measure rendering socio-economic justice to those who in the pinnacle of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.

The proposition that the pension and gratuity are not regarded as bounty by the state but these are regarded as statutory rights has been reiterated by the Supreme Court in several cases. (*D.V. Kapoor v. Union of India*, AIR 1990 SC 1923).

#### **Answer 4(e)**

The salient features of the Code on Wages, 2019 to be covered by Mehar in the speech are given below:

The Code on Wages, 2019 amalgamate, simplify and rationalise the relevant provisions of the following four central labour enactments relating to wages, namely: –

- (a) The Payment of Wages Act, 1936;
- (b) The Minimum Wages Act, 1948;
- (c) The Payment of Bonus Act, 1965; and
- (d) The Equal Remuneration Act, 1976.

The amalgamation of the said laws will facilitate the implementation and also remove the multiplicity of definitions and authorities without compromising on the basic concepts of welfare and benefits to workers.

The Code on Wages, 2019 would bring the use of technology in its enforcement. All these measures would bring transparency and accountability which would lead to more effective enforcement.

Widening the scope of minimum wages to all workers would be a big step for equity. The facilitation for ease of compliance of labour laws will promote in setting up of more enterprises thus catalyzing the creation of employment opportunities.

The salient features of the Code on Wages, 2019, inter alia, are as follows: –

- a. It provides for all essential elements relating to wages, equal remuneration, its payment and bonus;
- b. The provisions relating to wages shall be applicable to all employments covering both organised as well as un-organised sectors;
- c. The power to fix minimum wages continues to be vested in the Central Government as well the State Government in their respective sphere;
- d. It enables the appropriate Government to determine the factors by which the minimum wages shall be fixed for different category of employees;
- e. The provisions relating to timely payment of wages and authorised deductions from wages, shall be made applicable to all employees irrespective of wage ceiling;
- f. Wages to employees may also be paid by cheque or through digital or electronic mode or by crediting it in the bank account of the employee;
- g. It provides for floor wage for different geographical areas so as to ensure that no State Government fixes the minimum wage below the floor wage notified for that area by the Central Government;
- h. It empowers the appropriate Government to appoint Inspectors-cum-Facilitators in the place of Inspectors;
- i. It empowers the appropriate Government to determine the ceiling of wage limit for the purpose of eligibility of bonus and calculation of bonus;
- j. In the place of number of authorities at multiple levels, it empowers the appropriate Government to appoint one or more authorities to hear and decide the claims under the proposed legislation;
- k. It enables the appropriate Government to establish an appellate authority to hear appeals for speedy, cheaper and efficient redressal of grievances and settlement of claims;
- l. It provides for graded penalty for different types of contraventions of the provisions of the proposed legislation;
- m. It provides that the Inspector-cum-Facilitator shall give an opportunity to the employer before initiation of prosecution proceedings in cases of contravention;
- n. It provides for the appointment of officers not below the rank of Under Secretary to the Government of India or an officer of equivalent level in the State Government to dispose of cases punishable only with fine up to fifty thousand rupees, so as to reduce the burden on subordinate judiciary;
- o. It provides for compounding of those offences which are not punishable with imprisonment;
- p. It provides that where a claim has been filed for non-payment of remuneration or bonus or less payment of wages or bonus or on account of making deduction not authorised by the proposed legislation, the burden shall be on the employer to prove that the said dues have been paid to the employee;
- q. It enables the appropriate Government to constitute Advisory Boards at Central and State level;
- r. The period of limitation for filing of claims by a worker has been enhanced to three years.

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# BANKING & INSURANCE – LAWS & PRACTICE

## GROUP 2 ELECTIVE PAPER 7.4

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

##### Risk Management in Banks

The Banking sector has a very important role in the development of an economy of any country. As one of the key drivers of economic growth of a country, banking sector plays a pivotal role in making use of idle funds for nation building. The foundation of a strong economy depends on how strong the Banking sector is and vice versa. Banking is always considered to be a very risky business. In the context of Banking, 'Risk' can be defined as the potential loss from a banking transaction in the form of a loan, or investment in securities or any other transaction that a bank undertakes for itself or for its customers. Banks are exposed to both, financial (e.g., monetary loss) as well as non-financial (e.g., reputation loss) risks. Basic function of any bank is to accept funds from public for the purpose of lending and investment. In case something goes wrong, banks can collapse and

'failure of one bank is sufficient to send shock waves right through the economy'. It is imperative that bank managements must be very careful in identifying the types as well as the degrees of risk exposure and mitigate them positively. Therefore, banks must recognize risk management as an ongoing and unavoidable activity with the active participation of the Board of Directors. In economic/financial/business activities risk is directly proportional to returns, higher the risk a bank takes, it can expect to gain more profits. However, greater risk also increases the danger that the bank may incur big losses and can be out of the business and perhaps out of existence. In fact, today, a bank must run its operations with twin objectives in mind-generate profit and stay in business. However, banks must ensure that their risk-taking decisions are measured, informed and prudent.

##### Pre-requisites for a Good Risk Management System in Banks :

The following are some of the salient requirements in respect of risk management in banks :

- A comprehensive Risk Management Policy approved by the Board of Directors should be in place. A Training/Learning set up to inculcate and sensitize the risk management culture in the organization on an ongoing basis.
- Information Technology department should be fully geared up for generating Management Information System ('MIS'). MIS plays a vital role in mitigation of risk. Strong internal control systems should be in place. Audit department of a Bank plays a significant role in this.

##### Stages of Risk Management

(1) *Risk Identification* : This is the first and the most important stage of risk management.

The process starts with identifying the risks. Risk identification originates from where the problem starts. Risk identification can be objective based, scenario based, taxonomy based

and common risk checking based. It will help the bank or any organization to take the corrective measures.

- (2) *Risk Analysis (Risk Measurement or Quantification)* : It includes analyzing the risk and measuring its vulnerability and impact on the organization. Frequency and severity of the risk can be analyzed as well in this stage. Risk management can be both quantitative as well as qualitative. Numerically determining the probabilities of various adverse events and expected extent of losses if any unexpected event occurs, is termed as Quantitative Analysis whereas defining the various threats, devising counter-measures for mitigation and determining the extent of vulnerabilities is known as Qualitative Risk Analysis.
- (3) *Risk Mitigation* : Only after properly analyzing the risk, a bank can decide as to how it can be controlled. If the risk can be controlled by in house efforts, it is well and good; it can also seek professional help from outside. Risk control is the entire process of procedures, systems, policies, an organization needs to manage prudently all risks which may arise.
- (4) *Risk Transfer* : If the risk is not manageable, one cannot retain that risk; then we must transfer that risk to a third party. This is the stage where insurance comes into play. Insurance will be willing to take on those risks which the organization cannot handle. But it should also be understood that insurance alone is not a solution or a panacea for all risks.
- (5) *Risk Monitoring* : Risk review is the last stage in which all the foregoing steps are evaluated. Review must be regular and on a continuous basis, as conditions and circumstances of the business as well as organizations are dynamic. It should be monitored to see that the desired results of risk management are achieved. If not, then identifying as to where the problem occurred and subsequently reviewing all stages and making changes in the management of risks according to the scenario.

### **Types of Risks :**

Risks can be basically classified into two types, viz., Financial and Non-Financial Risks. Financial risks would involve all those aspects which deal mainly with financial aspects of the bank.

*Credit Risk* : It is also called as a default risk (borrower not meeting his obligations to pay instalments and or interest). It is prevalent in case of loans. A credit risk is the risk of default on a debt that may arise from inability of a borrower to make required payments as per commitments.

*Market Risk* : It is also called price risk. Market risk is the possibility of an investor experiencing losses due to external factors that affect the overall performance of financial markets. Sources of market risk include recessions, political turmoil, changes in interest rates, natural disasters, and terrorist attacks etc.

*Interest Rate Risk* : Interest Rate Risk arises when the Net Interest Margin of an institution is affected due to changes in the interest rates. IRR can be viewed in two ways—its impact is on the earnings of the bank or its impact on the economic value of the bank's assets, liabilities, and Off-Balance Sheet (OBS) positions.

*Currency Risk* : Currency risk is the risk where the fair value or future cash flows of a given financial instrument fluctuate as a result from changes in the currency exchange rates. Currency exchange rates can be subject to big and unexpected changes, and understanding and managing of the risk related to the currency exchange rates' volatility can be very complicated.

*Operational Risk* : This risk arises due to failed internal processes, people, system, or from external events. It includes number of risks such as—fraud, communication, documentation, competence, legal, compliance etc. However, it will not include strategic risk or reputational risk. Operational risk is "the risk of a change in value caused by the fact that actual losses, incurred for inadequate or failed internal processes, people and systems, or from external events (including legal risk), differ from the expected losses".

*Strategic Risk* : Strategic risks are those that arise from the fundamental/adverse decisions that directors take concerning an organization's objectives/improper implementation of decisions. Essentially, strategic risks are the risks of failing to achieve these business objectives.

*Reputational Risk* : It arises from negative public opinion about a bank/financial institution. It may lead to litigation, financial loss or decline in customer base.

*Liquidity Risk* : A Bank's inability to meet its payment obligations as and when they are demanded is known as Liquidity risk. Deposits of banks as liabilities and loans/advances as assets of the bank are the prominent items in a bank's balance sheet. Types of deposits held and the interest rates offered on them on the one hand and types of loans and advances sanctioned and interest rates charged on them on the other hand may not match. In view of this liquidity risk is encountered by the banks. It arises when bank funds long term assets by short term liabilities.

*Political Risk* : Political risk is the risk faced by investors, corporations, and governments due to political decisions of Governments, events, or conditions. This will significantly affect the profitability of a business or the expected value of an economic move. Political risk can be understood and managed with reasoned anticipation and investment.

**Based on the above facts, answer the following questions :**

- (a) What is the role of 'Risk Management Committee' of the Board in a Bank ?
- (b) How does Internal Audit help in managing risk in a Bank ?
- (c) How does Reputation Risk affect Bank's business ?
- (d) What is Capital to Risk Assets Ratio ? Does it affect Bank's stability ?
- (e) Distinguish between Tier 1 and Tier 2 Capital.
- (f) Do you think a stable Government is a positive factor in reducing Business Risks ?
- (g) How can ALM Committee help in managing Risks in a Bank ?
- (h) What is Risk Based Internal Audit ?
- (i) Distinguish between Risk Transfer and Risk Mitigation
- (j) How does RBI help Banks in managing Risks ?

(10×2=20 marks)

**Answer 1(a)**

The Risk Management Committee of the Board in the Bank is fundamentally responsible for approval of applicable risk policies and review of certain associated frameworks, analysis and reporting established by the management. The Risk Committee oversees reputational risks and risk management is within its scope of responsibility. The role of the Risk Management Committee is defined as making recommendations to the Board on the risk management system designed to enable an early detection of the risks and their effective supervision and management. It monitors capital adequacy, stress testing outcomes, and the Internal Capital Adequacy Assessment Process (ICAAP). The RMC ensures compliance with regulatory and prudential norms and reviews risk-related regulatory observations. It also oversees the functioning and independence of the Chief Risk Officer and promotes a strong risk-aware culture across the bank.

**Answer 1(b)**

An Internal Audit function provides vital assurance to a bank's board of directors and senior management (and bank supervisors) as to the quality of the bank's internal control system. In

doing so, the function helps reduce the risk of loss and reputational damage to the bank. Internal auditors make sure the bank has identified the correct risks involved with aspects such as policies, procedures, operational controls and more. They prioritize these risks based on their likelihood and impacts to determine where they need to spend more time conducting testing.

Through risk-based audits, it focuses on high-risk areas and emerging vulnerabilities. It reports weaknesses and control gaps to senior management and the Audit Committee, and tracks corrective actions. Thus, Internal Audit strengthens risk discipline and enhances the bank's overall risk resilience.

**Answer 1(c)**

Reputation Risk is the risk arising from the potential that negative stakeholder opinion or negative publicity regarding business practices, whether true or not, will adversely impact current or projected financial conditions and resilience, cause a decline in the customer base, or result in costly litigation. Reputational risk is a threat or danger to the good name or standing of a business or entity. Reputational risk can occur directly, as the result of the actions of the company and indirectly, due to the actions of an employee or employees. Over time, it can erode the bank's brand value, reduce business opportunities, and adversely impact profitability and long-term sustainability.

**Answer 1(d)**

The Capital to Risk-Weighted Asset Ratio (CRAR), also known as the capital adequacy ratio (CAR), is a crucial measure of a bank's financial health. It indicates how well a bank can absorb potential losses based on the risk associated with its assets. This ratio is essential for maintaining the stability and solvency of financial institutions. The capital adequacy ratio is computed by dividing the total capital of a bank by its risk-weighted assets.

A higher CRAR signifies a well-capitalized bank that can withstand economic stress, loan defaults, or market volatility. It improves depositor and investor confidence and enables the bank to expand its lending activities prudently. Conversely, a low CRAR indicates higher vulnerability to losses and may restrict the bank's growth due to regulatory constraints. Insufficient capital can lead to supervisory action, loss of market confidence, and even bank failure. Thus, CRAR plays a crucial role in maintaining a bank's solvency, resilience, and overall financial stability.

**Answer 1(e)**

Tier 1 capital is the primary funding source of the bank and consists of shareholders' equity and retained earnings, capital reserves (surplus from sale of assets), eligible innovative perpetual debt instruments up to 15% of Tier 1 capital and perpetual non-cumulative preference shares. Tier 1 capital is the most reliable measure of a bank's financial strength and is crucial for maintaining confidence. Whereas, Tier 2 capital includes revaluation reserves, hybrid capital instruments, subordinated term debt, general loan-loss reserves, and undisclosed reserves.

Tier 2 capital is considered less stable and less permanent than Tier 1 capital and therefore is subject to regulatory limits.

**Answer 1(f)**

A stable government significantly reduces business risk by fostering predictability, attracting investment, and promoting economic growth. It minimizes the likelihood of policy reversals, political instability, and corruption, creating a more secure environment for businesses to operate and invest in. This increased investment can lead to economic growth and job creation, further benefiting businesses. Stable governments are more likely to maintain consistent tax policies, trade

regulations, and legal frameworks, thereby reducing uncertainty and compliance risk. Additionally, political stability supports macroeconomic discipline, infrastructure development, and effective law enforcement, which lower operational and financial risks for businesses. Overall, a stable government creates a conducive environment for sustainable business growth and risk mitigation.

### Answer 1(g)

The ALM (Asset Liability Management) committee plays a crucial role in managing business risks, particularly those related to a financial institution's balance sheet. It focuses on mitigating risks associated with mismatched assets and liabilities, such as interest rate risk and liquidity risk. The committee develops strategies to ensure that the institution maintains a healthy balance between assets and liabilities (depending on their repayment period), optimizing profitability while staying within acceptable risk parameters.

### Answer 1(h)

Risk Based Internal Audit (RBIA) is an audit methodology that links an organization's overall risk management framework and allows internal audit function to provide assurance to the board that risk management processes effectively, in line with risk appetite defined by the Bank. It classifies bank's risk rating as low, medium, high, very high etc.

RBIA helps the Board and senior management obtain assurance that significant risks are being managed within acceptable limits. Thus, it improves governance, enhances control effectiveness, and supports proactive risk management in a bank.

Suppose a bank identifies Corporate Lending as a high-risk area due to large loan sizes, rising NPAs, and frequent restructuring. Under RBIA, the Internal Audit team will prioritize this area for audit instead of following a routine schedule.

### Answer 1(i)

Risk transfer and risk mitigation are two different strategies for managing potential risks, but they address risk in distinct ways. Risk mitigation focuses on reducing the likelihood or impact of a risk, for example, a bank transfers credit risk by selling loans or purchasing credit default swaps. While the risk is transferred, the bank may still retain some residual or reputational risk. While risk transfer shifts the financial burden of a potential loss to a third party. In essence, mitigation aims to control the risk internally, whereas transfer seeks to externalize it. In banking, this includes **tight credit appraisal, diversification, collateral requirements, internal limits, and strong operational controls**.

### Answer 1(j)

The RBI plays a crucial role in overseeing and regulating risk management practices in the banking sector. It issues guidelines and regulations to ensure that banks maintain adequate capital, implement sound risk management systems, and disclose risk information transparently. The RBI also conducts regular inspections and audits to assess banks' risk management practices and ensure compliance with regulations. Special care is taken by RBI in its monetary policies to ensure risk management by banks. Through **on-site inspections and off-site surveillance**, it monitors banks' risk profiles and enforces corrective actions. RBI also supports liquidity management by acting as the **lender of last resort** and by providing liquidity through repo and standing facilities. Overall, RBI reduces systemic risk and enhances the stability and soundness of banks.

### Question 2

- (a) Examine the origin and development of Small Industries Development Bank of India (SIDBI). Do you think SIDBI made radical changes in the growth and development of industries in India ?

(2+3=5 marks)

- (b) "Reserve Bank of India (RBI) plays an important role for Issue and Management of Currency and Distribution of Coins in India". What is Currency Management ? Has the importance of RBI for managing currency has diminished with the advent of UPI and Digital Currencies ?

(3+3=6 marks)

- (c) Maya Iyer is a Software Professional who availed a Term Loan of ₹ 50 lacs at an interest of 9% p.a. from Cosmos Bank, Cochin for buying a XYZ Brand Vehicle. The loan was taken on 15th February, 2020 repayable in 10 Years' EMI and is against Hypothecation of the vehicle. She serviced the EMIs up to 15th June, 2022, promptly. However, she was laid off by the company in July, 2022 and lost her job. The EMIs could not be serviced thereafter. The loan became overdue.

Answer the following questions, with reference to the above situation, considering the Income Recognition & Asset Classification (IRAC) norms issued by RBI :

- (i) When is the loan classified as Standard Asset ?
- (ii) When will the loan be classified under SMA category ?
- (iii) When will it fall under NPA category of Sub-standard Asset ?
- (iv) Does it come under any other NPA category thereafter ?

(4×1=4 marks)

### Answer 2(a)

The Small Industries Development Bank of India (SIDBI) came in to existence in 1990 through an Act of Parliament (SIDBI Act, 1989) as a wholly owned subsidiary of IDBI. It was envisaged to be the principal financial institution for promoting, financing the development of industries in the small-scale sector and carries out coordinating the functions of institutions engaged in similar activities. SIDBI commenced its operations in April 1990 by taking over the outstanding portfolio and activities of IDBI pertaining to the small-scale sector. By an amendment to the SIDBI Act in 2000, IDBI the majority stake holder, diluted its holdings in SIDBI in favour of a few Public Sector Banks and other Central Government undertakings.

SIDBI's operational domain consists of the entire domain of SSI sector, including the tiny, village and cottage industries as defined under MSME Act, 2008. With appropriate tailor-made schemes to meet setting up of new projects, expansion, diversification, modernization, and rehabilitation of existing units therein. SIDBI caters the need of MSME sector. SIDBI also offers refinance, bills rediscounting, lines of credit and resource support mechanisms to route assistance to this sector through a network of banks and State level financial institutions. SIDBI also offers direct finance for meeting specific requirements of MSME sector. The Government also extends line of credit to SIDBI to enable it to extend loans at more affordable rates to its traditional clientele. Over the years SIDBI has carved for itself a 'niche' in financing of Micro, Small and Medium enterprises, and associated sectors.

#### *Impact on Growth and Development of Industries*

Yes, SIDBI has made significant and transformative changes in the growth and development of small industries in India. By improving access to timely and affordable credit, SIDBI has reduced the financing gap faced by MSMEs. Its focus on refinancing, risk-sharing mechanisms, and institutional capacity building has strengthened the MSME ecosystem. SIDBI's developmental interventions have enhanced competitiveness, innovation, and employment generation. While challenges remain, SIDBI has emerged as a catalyst institution, contributing substantially to industrial growth, inclusive development, and economic resilience in India.

**Answer 2(b)**

The currency of our country consists of One-rupee notes and coins (including lower denominations thereof) as well as Bank notes issued by RBI. Issuance of bank notes (currency) is one of the original central banking functions for which the RBI was established. In terms of section 22, of the RBI Act, 1934, RBI has the sole right to issue bank notes in India. Such bank notes are issued by a department of RBI known as Issue Department, which is a separate and wholly distinct department from the Banking Department which is responsible for banking business of the RBI. However, the design, form and material of bank notes are to be approved by the Central Government based on the recommendations of Central Board of the RBI. Every bank note shall be a legal tender at any place in India. On recommendation of the Central Board, the Central Government may declare any series of bank notes of any denomination to be not a legal tender

Within RBI, the Department of Currency Management ('DCM') has the responsibility of administering the functions of currency management. Currency management basically relates to the issue of notes and coins and retrieval of unfit notes from circulation. To improve the currency distribution system by leveraging technology, the RBI adopted a hub-and-spoke model for the distribution of banknotes across the country. Fresh note remittances are sent to larger currency chests, which meet the currency needs of a designated area (such as a district). These chests are identified as hub chests and, in turn, supply notes to smaller currency chests in their vicinity which act like spokes in the distribution model. Fresh notes are distributed to every issue office of the RBI as per an allocation plan.

The Digital Rupee, also known as e₹, is India's official Central Bank Digital Currency (CBDC), introduced by the Reserve Bank of India (RBI). It represents a digital version of physical currency, maintaining the same face value and legal status as the paper notes and coins in circulation today.

RBI's strategy is promotion of diverse digital payment instruments. It oversees the issuance and operation of debit and credit cards, mobile wallets, and UPI, among others. These instruments offer convenience, accessibility and transparency, reducing reliance on cash and expanding financial inclusion.

While UPI and digital currencies, like the digital rupee have significantly impacted the financial landscape, they have not necessarily reduced the RBI's role. Instead, the RBI is actively involved in regulating and overseeing both, demonstrating its continued importance in the evolving financial ecosystem. UPI has expanded financial inclusion and boosted the digital economy, while the Digital Rupee, as a Central Bank Digital Currency, provides a secure and efficient digital form of the national currency, both within the RBI's regulatory framework.

With the introduction of UPI, many routine transactions—such as paying shopkeepers, utility bills, or transport fares—are now done digitally. For example, a vegetable vendor accepting UPI payments reduces daily cash withdrawals from banks, lowering the demand for physical currency. As a result, RBI now needs to print and circulate fewer banknotes than earlier. However, RBI remains relevant by regulating digital payment systems and launching the e-Rupee, showing that its role has shifted from only managing physical cash to overseeing both physical and digital forms of currency.

**Answer 2(c)**

- (i) The loan was a standard asset up to 15.06.2022

As per RBI norms, a loan remains a **Standard Asset** as long as **no instalment of principal or interest remains overdue for more than 90 days**.

Since Maya paid EMIs up to **15 June 2022**, the loan remains a **Standard Asset till the due date of the next EMI** and continues to be standard **until the overdue period crosses 90 days**.

(ii) RBI defines **Special Mention Account (SMA)** for early recognition of stress:

- **SMA-0:** Overdue up to 30 days
- **SMA-1:** Overdue 31–60 days
- **SMA-2:** Overdue 61–90 days

Assuming EMI due on **15 July 2022** is unpaid:

- **SMA-0:** 16 July 2022 to 14 August 2022
- **SMA-1:** 15 August 2022 to 13 September 2022
- **SMA-2:** 14 September 2022 to 13 October 2022

(iii) As per RBI IRAC norms:

A term loan becomes **NPA when interest or principal remains overdue for more than 90 days.**

EMI due on **15 July 2022**

- 90 days completed on **13 October 2022**
- Therefore, loan becomes **NPA (Sub-standard Asset) on 14 October 2022**

Initially, **all NPAs are classified as Sub-standard Assets.**

(iv) Depending on the **duration for which it remains NPA:**

- **Sub-standard Asset:**  
From **14 October 2022** up to **12 months**
- **Doubtful Asset:**  
If the loan **remains NPA for more than 12 months** → From **14 October 2023 onwards**
- **Loss Asset:**  
If identified by the bank / auditors / RBI as uncollectible, irrespective of time.

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

### Question 3

(a) (i) RBI as the Central Bank of India, issues Licenses for Commercial Banks to open branches. Can Foreign Banks open branches in India? If so, are there special conditions stipulated by RBI for licenses by a Foreign Bank?

(2 marks)

(ii) ABC Ltd, an Indian company, applied to the Central Bank (RBI), for license to start banking operations in India. But RBI rejected the application. Can ABC Ltd appeal against this decision at a judicial forum? Answer the question with reference to a decided case law.

(2 marks)

(b) Ashuthosh Mukherjee is a Civil contractor enjoying credit facilities at ABC Bank, Kolkata. He undertakes construction work on behalf of Central/State Governments, besides private projects. Bank sanctioned him the following limits as on 1st January, 2025.

Working Capital limits :

- (1) Overdrafts (OD) of ₹ 100 Crores (Drawing Power-DP).

Primary Securities :

- (I) Hypothecation of raw materials & work in progress, duly certified by civil engineers;
- (II) Debtors (other than government departments).

Monthly Stock Statement is to be submitted by 7th of next month for calculating the Drawing Power. Mr. Ashuthosh follows FIFO method for stock consumption and old stocks of materials of more than 3 months are to be excluded from DP Calculation. Debtors Aged more than 90 days are also to be excluded for Drawing Power (DP) Calculation. Margin is 25%.

- (2) Bill Discounting facility (BD) ₹ 50 crores (Against the bills drawn, on Government Departments)
- (3) Term Loan (TL) ₹ 25 Crores for the Machineries, including Cranes/JCBs and other equipment purchased (Machineries are Hypothecated to the Bank)

In addition to the primary securities, Mr. Ashuthosh also furnished his landed properties worth ₹ 50 Crore as collateral securities to the Bank for the entire facility and his personal guarantee. As on 30th June, 2025, the balance outstanding on the above loan accounts at the Bank are as follows :

Overdraft—₹ 92 crores; Bills Discount—₹ 42 crores; Term Loan—₹ 23.75 crores.

Stock Statement as on 30th June shows the following particulars : Value of Raw materials ₹ 100 crores, consisting of the following :

- Raw materials purchased on 20th January, 2025 was ₹ 4 crores and on 10th March, 2025 was ₹ 6 crores. Remaining Stocks were bought on different dates in May and June, 2025. Semi-finished work duly certified ₹ 20 crores. Creditors for materials outstanding is ₹ 10 crores.
- Work completed and certified by approved engineers ₹ 30 Crores (Work for Government Department worth ₹ 20 crores and Private Projects ₹ 10 crores) Bills raised on 30th June.

As the Stock Auditor appointed by the Bank, calculate the Drawing Power for Overdraft and Bills Discount Limits for July, 2025, available to Ashuthosh and ascertain whether the balance outstanding is within the eligible Drawing Power.

(2+2=4 marks)

- (c) (i) How do Cyber Criminals use social network for committing online frauds ?

(1 mark)

(ii) Distinguish between :

- (1) Hacker and Cracker
- (2) Cyber-squatting and Cyber stalking.
- (3) Phishing and Smishing.

(2×3=6 marks)

### Answer 3(a)(i)

Foreign banks wishing to open a branch in India require a licence under the Banking Regulation Act, 1949. In some countries there is a requirement of multiple licences for dealing in local currency and

foreign currencies with different categories of clientele. Like domestic banks foreign banks enjoy similar facilities to the payments and settlement systems and they are admitted as full members of clearing houses and payments system.

Procedurally, foreign banks are required to apply to RBI for opening their branches in India. Foreign banks' application for opening their maiden branch is considered under the provisions of Section 22 of the Banking Regulation Act, 1949. Before granting any licence under this section, RBI may require to be satisfied that the Government or the law of the country in which it is incorporated does not discriminate in any way against banks from India. Other conditions as enumerated in section 2(5) of the Banking Regulation Act, 1949 are also required to be fulfilled. Unlike the restrictive practices of certain foreign countries, India is liberal in respect of the licensing and operation of the foreign bank branches.

Unlike the restrictive practices of certain foreign countries, India is liberal in respect of the licensing and operation of the foreign bank branches as illustrated by the following:

- India issues a single class of banking licence to foreign banks and does not place any limitations on their operations. All banks can carry on both retail and wholesale banking.
- Deposit insurance cover is uniformly available to all foreign banks operating in India at a non-discriminatory rate of premium.
- The norms for capital adequacy, income recognition and asset classification are by and large the same.
- Other prudential norms such as exposure limits are the same as those applicable to Indian banks.

### Answer 3(a)(ii)

The granting of licence by the Reserve Bank of India may be subject to such conditions as the RBI may think fit in each case. The granting of licence or refusal of licence by RBI, if based on relevant material and germane consideration, cannot be challenged in a court of law. In the matter of *Shivabhai Zaverbhai Patel vs. RBI AIR 1986 Guj. 19; (1985) 1 GLR 257*, Hon'ble High Court of Gujarat upheld the RBI's decision of rejection of application for a banking licence which was based on diligent study and material facts.

This principle was clearly established in *Shivabhai Zaverbhai Patel vs. Reserve Bank of India (AIR 1986 Gujarat 19; (1985) 1 GLR 257)*. In this case, the Gujarat High Court upheld the RBI's refusal to grant a banking licence, observing that the RBI had conducted a **diligent study of material facts** and acted within its statutory powers. The Court held that such a decision, taken in the interest of the banking system and depositors, **cannot be challenged merely on merits** in a court of law.

Therefore, while ABC Ltd may file a writ petition, **judicial review is confined only to examining procedural fairness, mala fide intent, or arbitrariness**. If the RBI's refusal is reasoned, evidence-based, and within statutory authority, **no appeal would succeed against the RBI's decision**.

### Answer 3(b)

Calculation of Drawing Power for Over Draft Limit:

Raw Materials eligible for DP (Only less than 3 Months Old) = ₹ 100 - (₹4 + ₹6)	= ₹ 90 Crores.
Less: Creditors for Purchases	= ₹ 10 Crores.
So eligible stock of Raw Material = ₹ 90 - ₹ 10	= ₹ 80 Crores.
Work in Progress = ₹ 20 Crores.	

Private Projects Completed = ₹ 10 Crores.

Hence, Total Stock + Eligible Debtors for Overdraft = ₹ 80 + ₹ 20 + ₹ 10 = ₹ 110.00 Crores.

Less: Margin 25% = ₹ 27.50 Crores.

Therefore, Eligible DP for OD = ₹ 110 - ₹ 27.50 = ₹ 82.50 Crores.

Balance outstanding as on 30th June = ₹ 92 Crores.

So, Overdraft is overdrawn by ₹ 92 - ₹ 82.50 = ₹ 9.50 Crores.

BD outstanding is ₹ 42 Crores (Against the Limit of ₹ 50 Crores).

Another ₹ 8 Crores can be availed from the Bills Discount facility.

New Bills raised on Govt ₹ 20 Crores.

(Bills Worth (₹ 8 / 75%) = ₹ 10.67 Crores can be Discounted)

### Answer 3(c)(i)

Cybercriminals use social networks to gather information, identify potential targets, and then craft social engineering attacks. They may impersonate trusted individuals or organizations, use personal information to create convincing scams, or spread malware through malicious links. Social networks provide a wealth of personal data that cybercriminals can use to personalize attacks and make them more believable. Cybercriminals can create fake profiles or mimic real users to trick individuals into divulging information or performing actions against their security.

This risk is associated with persons identities. Identity theft can happen to anyone who exposes too much personal information online on various social networking sites. To protect one self, get to know the security and privacy settings, and configure them to protect from identity theft. One in five online adults (21 percent) have reported of becoming a victim of either social or mobile cybercrime and 39 percent of social network users have been victims of profile hacking, scam or fake link.

### Answer 3(c)(ii)(1)

Hacker Vs. Cracker: Cracking is a dreadful feeling to know that a stranger has broken into user computer systems without user's knowledge and consent and has tampered with precious confidential data and information. A Cracker differs from the Hacker because hacker is hired by companies to audit network security or test software but cracker do the same work for their own profit or to harm others.

### Answer 3(c)(ii)(2)

Cyber Squatting Vs. Cyber Stalking: Cyber Squatting is the act of occupying an abandoned or unoccupied space. Cybersquatting is the act of registering a famous domain name and then selling it to needy for a high cost. It means where two persons claim for the same Domain Name either by claiming that they had registered the name first or by right of using it before the other or using something like that previously.

Cyber Stalking is Online harassment and online abuse all comes under stalking. The term "stalking" generally involves harassing or threatening behaviour that an individual engages in repeatedly, such as following a person, appearing at a person's home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person's property. Cyber stalking shares important characteristics with offline stalking. Many stalkers (online or off line) are motivated by a desire to control their victims. A major damaging effect of online abuse is a victim avoiding his/her friends, family, and social activities.

**Answer 3(c)(ii)(3)**

Phishing Vs. Smishing: Phishing is an attempt to 'fish' for banking details. Phishing could be an e-mail that appears to be from a known institution like banks / a popular website. But banks will never ask for confidential data like login and transaction password, One Time Password (OTP) etc.

Smishing is a type of cyberattack where scammers use text messages to trick individuals into revealing personal information. It is a form of phishing that leverages the trust people placed in SMS messages to steal sensitive data like bank account details, passwords, and social security numbers.

**Or (Alternate Question to Q. No. 3)****Question 3A**

(a) Distinguish between Rural Banks and Co-operative Banks.

(7 marks)

(b) What are the documents required to open an account with Bank of Limited Liability Partnership ?

(3 marks)

(c) SWOC (Strength, Weakness, Opportunities, Challenges) analysis as perceived by the management while processing of Project Loans, banks have their own project parameters for long term funding. In the following cases, mention the parameters to be considered by bank :

- (i) What percentage of total cost of project as Promoter's Contribution ?
- (ii) What will be Debt Equity Ratio ?
- (iii) What will be Fixed Asset Coverage Ratio ?
- (iv) What will be Debt Service Coverage Ratio ?
- (v) What is Internal Rate of Return ?

(1×5=5 marks)

**Answer 3A(a)**

The following are the difference between Rural Bank and Co-operative Banks:

Particulars	Rural Bank	Cooperative Banks
<b>Ownership</b>	Rural Banks are usually established by the government, private entities, or a combination. They operate as formal banking institutions with a specific mandate to serve the rural population.	Co-operative Banks, on the other hand, are member-owned institutions. They operate on the principles of co-operation, mutual assistance and democracy with each member having equal voting rights regardless of the amount of capital they contribute.
<b>Focus and Scope</b>	Rural Banks primarily provide banking services to the rural population, including savings, credit, and insurance products tailored to agricultural and small-scale rural business needs.	Co-operative Banks serve their members, who may come from various sectors, not limited to rural areas. They offer various financial products similar to commercial banks, including savings accounts, loans, and credit facilities.

Particulars	Rural Bank	Cooperative Banks
<b>Objective and Mission</b>	Rural Banks aim to improve the economic condition of the rural populace by providing them with access to financial services.	Co-operative Banks aim to promote mutual help and cooperation among their members. Their objective is to provide affordable and accessible financial services to their members, thereby contributing to the economic development of the communities they serve.
<b>Regulatory Framework</b>	Rural Banks are subject to the banking regulations and oversight of the central bank or a national banking regulator.	Co-operative Banks may be regulated under a different framework, often overseen by a cooperative society act or a similar legislative structure, in addition to banking regulations.
<b>Geographic</b>	Rural Banks are specifically established to serve rural areas, aiming to reach clients traditionally underserved by the banking sector.	Co-operative Banks, while they can and do operate in rural areas, are not limited to them. They can also serve urban populations and are defined more by their membership structure than by a specific geographic focus.
<b>Profit Distribution</b>	Rural Banks distribute their profits according to the interests of their shareholders, and dividends are paid out to investors based on the shares they own.	Co-operative Banks, being member-owned, follow a different model for profit distribution. After necessary allocations to reserves, surplus profits are distributed among members, often based on the members' transaction volume with the bank rather than on the capital they have provided.
<b>Accessibility and Inclusion</b>	Rural Banks are specifically established to extend financial services to rural areas, making banking more accessible to individuals and businesses in these regions.	Co-operative Banks excel in promoting financial inclusion among their members, regardless of their location. By prioritizing the needs of their members over maximizing profits.
<b>Community Impact</b>	Rural Banks significantly impact rural economies by providing essential financial services that stimulate agricultural development, entrepreneurship, and small business growth.	Co-operative Banks impact the financial and social fabric of their communities. As cooperative principles emphasize education, training, and information, these banks often engage in community development activities beyond financial services.
<b>Flexibility and Innovation</b>	Rural Banks, while focused on serving the needs of rural communities, may have more rigid product offerings and services due to regulatory constraints and the need to maintain financial stability and integrity.	Co-operative Banks often exhibit more flexibility in developing innovative financial products and services. Their close relationship with members allows them to adapt quickly to the changing needs of their community, providing customized solutions that address specific challenges or opportunities.

Particulars	Rural Bank	Cooperative Banks
<b>Financial Education and Capacity Building</b>	Rural Banks contribute to financial literacy by providing education on banking services, savings, credit management, and investment to rural populations, fostering an environment encouraging economic participation and financial security.	Co-operative Banks inherently promote financial education and capacity building among their members. They often conduct workshops, seminars, and training sessions on financial management, cooperative principles, and entrepreneurship to empower their members and strengthen the cooperative movement.

**Answer 3A(b)**

The following are the documents required for open account of Limited Liability Partnership (LLPs):

- i. Certificate of Registration issued by Registrar of LLP. (Registration of LLP is mandatory)
- ii. Certified copy of LLP Agreement (In the absence of LLP agreement, provisions of Schedule I of the Act become applicable)
- iii. Designated Partner identification numbers of all the partners, (minimum no. of designated partners is 2, out of which one must be resident of India, in case where all the partners are Body Corporate, the nominees of such bodies act as Designated Partners).
- iv. Resolution signed by all the partners indicating the authorized signatories
- v. KYC documents of all the authorized signatories.

**Answer 3A(c)**

Normally the following are the parameters to be considered by bank:

- i. Promoter's Contribution will be not less than 11% of the Project Cost.
- ii. Debt Equity Ratio will fall between 2:1 up to 3:1.
- iii. Fixed Asset Coverage Ratio not less than 1.25.
- iv. Debt Service Coverage Ratio not less than 1.50.
- v. Internal Rate of Return 4% and above from the estimated weighted average cost of funds.

**PART-II****Question 4****IRDAI Regulations on Investments**

Insurance business is globally regulated for reasons of equity and efficiency. Insurance companies receive huge amounts of cash in the form of premiums. These premiums are again invested by Fund Managers as per the guidelines of the Insurance Regulatory and Development Authority of India (IRDAI). The investments are regulated as they are made from the money contributed by the policyholders.

*Objectives of IRDAI Investment Regulations :*

- Ensure prudential norms for investments

- Safeguard policyholders' funds
- Maintain solvency and financial discipline
- Promote diversification and reduce risk concentration

*Major Provisions of IRDAI Investment Regulations :*

(1) Investment Categories : IRDAI classifies investments into :

- Approved Investments—Safer instruments (e.g., govt. securities, AAA-rated bonds)
- Other Investments—Riskier investments (e.g., unlisted equity, lower-rated debt)  
Minimum 75% of controlled funds must be in Approved Investments

(2) Exposure Limits : To avoid concentration risk :

- Max 10% of fund in a single company (Equity).
- Max 15% of fund in a single group (Equity + Debt).
- Sectoral limits also apply (e.g., Real Estate, Infrastructure)

(3) Investment Pattern : To spread the risk in investments there has to be a mixture of investments in government securities and other approved securities.

(4) Derivative Instruments : Permitted only for hedging purposes, not for speculation. IRDAI places strict controls on investments in derivatives.

(5) Foreign Investments : Insurers may invest in foreign assets, subject to a cap (e.g., 5% of controlled fund). Only in approved jurisdictions and instruments, investments were permitted and detailed disclosure and prior approval is mandatory.

(6) Corporate Governance : All insurers must have a Board-approved Investment Policy with a Chief Investment Officer (CIO) to monitor and for regular reporting to IRDAI on Monthly, Quarterly, and annual basis, the details of exposure, compliance, default, ratings. The Corporate governance involves the following in a well-managed Insurance Company :

(A) Constitution of Investment Committee : Every insurer shall constitute an Investment Committee which shall consist minimum of two non-executive directors of the Insurer, the Chief Executive Officer, Chief of Finance, Chief Risk Officer, Chief of Investment division, and the Appointed Actuary. The Board of the Insurer shall ensure that Chief of Finance, Chief of Investment and the Chief Risk Officer, shall fulfil the minimum qualification requirements specified in the regulations/guidelines issued by the Authority. The decisions taken by the Investment Committee shall be recorded and be open to inspection by the officers of the Authority.

(B) Investment Operations :

- (i) The funds of the insurer shall be invested and continued to be invested in equity shares, equity related instruments and debt instruments rated by a credit rating agency, registered under SEBI (Credit Rating Agencies) Regulations, 1999. The Board shall lay down norms for investing in 'Other Investments' as specified in section 27A(2) of the Insurance Act, 1938 by the investment committee, considering the safety and liquidity of the policyholders' funds and protection of their interest.
- (ii) To ensure proper internal control of investment functions and operations the insurer shall clearly segregate the functions and operations of front, mid and back office and no function falling under Front, Mid and Back Office Investment

function(s), shall be outsourced. Also, the primary data server of the computer application used for investment management shall remain within the country.

- (iii) The Board of the Insurer shall appoint a Custodian to carry out the custodial service for its Investments, who shall not be an entity under its promoter 'Group' unless permitted otherwise by the Competent Authority.

(C) Risk Management Systems and Its Review :

- (a) The Board shall implement the Investment Risk Management Systems and Process, mandated by the Authority. The implementation shall be certified by a Chartered Accountant firm, as per the procedure laid down in the "Guidance note on Review and Certification of Investment Risk Management Systems and Process of Insurance Companies", issued by the Institute of Chartered Accountants of India, as amended from time to time.
- (b) The Investment Risk Management Systems and Process shall be reviewed once in two financial years or such shorter frequency as decided by the Board of the Insurer (the gap between two such audits should not be more than two years), by a Chartered Accountant firm and file the certificate issued by such Chartered Accountant, with the Authority along with the first quarter returns.
- (c) The appointment of Chartered Accountant firm to certify implementation and review of Investment Risk Management Systems and Process shall be as per the circular issued under these regulations.

(D) Miscellaneous :

The Board of the Authority may, by any general or special order, modify or change the policy subject only to the provisions of the governing regulations.

Based on the above passage, answer the following questions :

- (a) It is said that insurance companies should make their investments very prudentially. Why ?
- (b) Why are investments in derivative instruments risky ?
- (c) What is the role of a Chief Investment Officer in an Insurance Company ?
- (d) The Investment Committee must guard against insider trading. What are the harmful effects of insider trading ?
- (e) Who shall review the investment risk management system of the insurance company ?
- (f) What is liquidity risk in insurance business ?
- (g) How can internal control of insurance investments be ensured ?
- (h) Which are the rating agencies competent to rate the investments of insurance companies ?
- (i) What are money market instruments suitable for investments by insurance companies?
- (j) Is periodical reporting to IRDA an important requirement to ensure investment discipline of the insurance company ?

(10×2=20 marks)

**Answer 4(a)**

Insurance companies should make their investments very prudentially because insurance business is globally regulated for reasons of equity and efficiency. Insurance companies receive huge amounts

of cash in the form of premiums. These premiums are again invested by Fund Managers of the Insurance Company as per the guidelines of the Insurance Regulatory and Development Authority of India (IRDAI). The investments are regulated as they are made from the money contributed by the policyholders. The policyholders keep their trust with the insurance companies about the assurance provided by the companies about risk coverage and returns. And the regulator IRDAI is the watchdog for the funds invested by the policyholders.

Moreover, insurance funds represent public trust money, and insurers are expected to maintain capital adequacy and solvency margins at all times. Since insurance liabilities are predictable but long-term in nature, investments must emphasize safety, liquidity, and stable returns rather than high risk. Prudential investment also ensures financial stability of the insurance company, prevents systemic risk, and supports confidence in the insurance sector. Hence it is necessary that the funds should be invested prudentially considering the risk and return.

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

Investment in derivative instruments is risky because the market values of derivative products may not move in the same direction or to the same extent as those of the underlying securities. In certain circumstances, derivative products may be rendered valueless or unredeemable and investors may not recover any amount of principal investment back. Derivatives trading involves several risks. Price volatility creates the main risk as market fluctuations lead to losses for investors. Derivatives also involve market risk, counterparty risk, and liquidity risk, especially in over-the-counter (OTC) contracts where default by the counterparty can result in losses. Their complexity makes valuation difficult and increases the risk of mispricing and inadequate risk assessment. Additionally, derivatives can amplify losses during volatile market conditions. Hence, without proper risk management and expertise, investments in derivative instruments can expose investors to significant financial risk.

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

All insurers must have a Board-approved Investment Policy with a Chief Investment Officer (CIO) to monitor the investments and for regular reporting to IRDAI on Monthly, Quarterly, and Annual basis, the details of exposure, compliance, default, ratings. A chief investment officer (CIO) oversees an organization's investment strategies, portfolio management, and financial growth initiatives. They analyze market trends, manage asset allocation, and ensure investments align with the company's long-term financial goals.

The CIO formulates and implements the investment policy in line with regulatory norms prescribed by IRDAI and the company's risk appetite.

The CIO is responsible for asset-liability matching, ensuring that investment maturities and cash flows correspond with expected claim obligations. They oversee portfolio diversification, risk management, and performance monitoring across asset classes such as bonds, equities, and approved alternatives. The CIO also ensures compliance, maintains solvency margins, and reports to senior management and the Board. Overall, the CIO safeguards policyholders' funds and contributes to the financial stability and profitability of the insurance company.

#### **Answer 4(d)**

Insiders receive an unfair edge, which causes unjust market circumstances. Investors lose faith in the integrity and fairness of the financial markets. Stock price manipulation can cause potential harm to investors without access to confidential information. Insider trading violates trust and fiduciary duty, leading to serious legal implications. The victims are often everyday investors and the economy. It distorts price discovery by allowing securities prices to reflect private information rather than true market fundamentals. Insider trading can expose institutions to legal penalties, regulatory

sanctions, and reputational damage, adversely affecting their credibility. In the long run, it weakens market integrity, promotes unethical behavior, and hampers the orderly development of capital markets. Hence, preventing insider trading is essential to protect stakeholders and maintain trust in the financial system

#### **Answer 4(e)**

The Investment Risk Management Systems and Process shall be reviewed once in two financial years or such shorter frequency as decided by the Board of the Insurer (the gap between two such audits should not be more than two years), by a Chartered Accountant firm and file the certificate issued by such Chartered Accountant, with the IRDAI along with the first quarter returns.

#### **Answer 4(f)**

Liquidity risk is the risk that an insurance company will become unable to assure itself of adequate funding due to a decline in new premium income caused by a deterioration, etc. can result in a run-on-the-bank situation where large numbers of customers may leave, forcing the company to sell assets (potentially at a loss) to cover surrender value payments. The insurance industry, in general, is less vulnerable to liquidity risk than other financial sectors such as commercial banks.

#### **Answer 4(g)**

The internal controls system should ensure effective and efficient operations, adequate control of risks, prudent conduct of business, reliability of financial and non-financial information reported (both internally and externally), and compliance with laws, regulations, supervisory requirements and the insurer's Internal controls are the mechanisms, rules, and procedures implemented by a company to ensure the integrity of financial and accounting information, promote accountability, and prevent fraud.

#### **Answer 4(h)**

There are a total of seven credit agencies in India viz, CRISIL, CARE, ICRA, SMREA, Brickwork Rating, India Rating and Research Pvt. Ltd and Infomerics Valuation and Rating Private Limited.

#### **Answer 4(i)**

Money market investments are short-term, liquid debt instruments, offering high liquidity and low risk while maintaining a stable net asset value. short term Treasuries (T-bills), certificates of deposit (CDs), commercial paper, repurchase agreements (repos) and mutual funds that invest in these instruments are examples.

#### **Answer 4(j)**

Insurers in India are required to submit various periodical reports to the IRDAI, the insurance regulator. These reports cover aspects like investments, financial performance, business operations, and compliance with regulations. The frequency of these reports can be monthly, quarterly, or annual, depending on the specific requirement. IRDAI keeps a close watch on the investments of the insurance company to protect the confidence of the investors and policyholders and to ensure that the funds are deployed prudentially.

#### **Question 5**

- (a) There are some principles on which Insurance Act and Rules framed. What do you know about :
- (I) Principle of 'Maxim of Causa Proxima'.

(4 marks)

(II) Principle of Subrogation.

(4 marks)

(b) Every Insurance company charge premium while issuing the Insurance Policy. In such a case it had been seen that they charged loading charges on premium. What do you mean by loading charges and what are the factors that can lead to loading charges ?

(7 marks)

### Answer 5(a)(I)

The principle of Causa Proxima (Proximate Cause) dictates that when determining liability for an insurance claim, only the most immediate and active cause of the loss, not the remote or distant ones, is considered. This fundamental insurance principle helps insurers assess if the loss falls within the policy's coverage by identifying the effective cause that set the chain of events leading to the outcome in motion. If the proximate cause is an insured risk, the insurer is liable for the loss; otherwise, the claim may be denied.

Key Aspects of the Principle:

- ❖ *Focus on Immediate Cause:* The principle emphasizes identifying the direct, effective cause that directly leads to the damage or loss, rather than a more distant or indirect contributing factor.
- ❖ *Active and Efficient Cause:* The proximate cause is often described as the cause that is active and efficient in bringing about the loss, even if it's not the very first or last event in a chain of occurrences.
- ❖ *Determining Insurer's Liability:* This principle is crucial for insurers to evaluate their responsibility and determine if the loss is covered under the policy.
- ❖ *Fairness and Clarity:* It ensures fairness by providing clarity in claim settlements and court decisions, preventing liability for events that are not the direct cause of a loss.

### Answer 5(a)(II)

The principle of subrogation derives from the fundamental doctrine of indemnity in insurance law, which states that insurance should restore the insured to their financial position before the loss, no more, no less. Subrogation supports this by preventing policyholders from profiting through multiple recoveries for the same loss, thereby preserving the indemnity principle. Legally, subrogation rights automatically transfer to insurers upon claim payment in most jurisdictions, though the specific implementation varies across legal systems.

This principle creates an equitable balance within the insurance ecosystem by shifting the financial burden to the party responsible for the loss rather than distributing it across the entire risk pool of policyholders. Most insurance contracts explicitly include subrogation clauses that oblige policyholders to cooperate with recovery efforts and refrain from actions that might prejudice the insurer's recovery rights, such as settling directly with or releasing claims against the at-fault party without the insurer's consent.

Subrogation refers to the legal right of an insurance company to pursue a third party that caused an insurance loss to the insured. After the insurer has compensated the policyholder for the loss, it essentially "steps into the shoes" of the policyholder and assumes their right to legal action against the responsible party. This principle prevents double recovery by the insured while enabling insurers to recoup their pay-outs, ultimately helping to keep insurance premiums more affordable for all policyholders by offsetting claim costs through recovery actions.

**Answer 5(b)**

**Loading Charges:** In Insurance, a loading refers to an additional amount charged on top of the base premium because the insured individual is assessed as being a higher risk. This increased risk can stem from factors like their medical history, unhealthy lifestyle, hazardous occupation, or a poor claims experience, which elevate the likelihood of the insurer having to pay a claim. Loading ensures that the insurer can cover these potentially higher losses by adjusting the premium to a more appropriate level for the increased risk.

The following are factors that can lead to loading charges:

1. *Medical History:* Pre-existing conditions, chronic illnesses, and a history of certain medical procedures can indicate a higher risk of future health issues.
2. *Lifestyle Habits:* Habits such as smoking, excessive alcohol consumption, or obesity are associated with increased health risks and can lead to loading.
3. *Occupation:* Hazardous or accident-prone professions or jobs with prolonged exposure to toxic chemicals increase the risk of health-related issues.
4. *Age:* Older individuals are generally considered at higher risk for illnesses and hospitalization, which may result in higher loading charges.
5. *Location:* Residing in an area prone to illnesses, unrest, or lacking healthy options can also be a factor in determining loading.
6. *Claims Experience:* After a policy has been active, a history of frequent claims can be a trigger for loading during the renewal period.

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

**Question 6**

- (a) Explain the provisions regarding prohibition of rebates in insurance as per Insurance Act, 1938.

(4 marks)

- (b) Dileep Sharma has an insurance policy with Active Insurance Ltd. His car got damaged in an accident caused by another vehicle of Raja, whose vehicle is insured with Robust Insurance Co. Ltd. Dileep incurred an expenditure of ₹ 25,000 for repairs of his car, which he claims and receives from Active Insurance Ltd.

In this situation, answer the following :

- (1) Under what legal principle does Active Insurance Ltd have the right to pursue Robust Insurance Co. Ltd or Raja for the cost of the repairs ?
- (2) What are the key elements that must be present for this principle to apply in this situation ?
- (3) What are the potential benefits of this principle for both the insurer and the insured ?
- (4) Can this principle be waived by contract ? If so, how ?

(4 marks)

- (c) "Insurance is a form of contract or an arrangement where one party agrees in return for a consideration to pay an agreed amount of money to another party to make good the loss, damage or injury to something of value in which the insured has an interest."

Do you think insurance has a role to play in nation's economic development ? Explain.

(4 marks)

- (d) What is the role of an insurance broker ? Distinguish between Direct broker and Composite broker.

(1+2=3 marks)

### **Answer 6(a)**

One of the important tools to support the cause of solvency of an insurer available in the Insurance Act, 1938 is to ensure availability of full/adequate premium with the insurer for coverage of a risk. Section 41 of the Insurance Act, 1938 seeks to achieve this by providing as under:

- (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to take or renew or continue an insurance in respect of any kind of risk relating to lives or property in India, any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing or continuing a policy, accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer:

Provided that acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a bonafide insurance agent employed by the insurer.

- (2) Any person making default in complying with the provisions of this section shall be liable for a penalty which may extend to ten lakh rupees."

Every insurer, in its published prospectus, indicates details (such as coverages and pricing) of various insurance products offered and sold by it as approved by IRDAI. The pricing of a product as filed by an insurer before the Authority is based on actuarial calculations submitted by it and the Authority, while approving the product so filed by an insurer, considers the actuarial pricing selling below which it would not only be lossmaking for the insurer but would also, in the long run, be detrimental to its solvency, which is so essential for protecting the interests of the policy holders. This Section, apart from ensuring that the insurer gets its due pricing for the products sold by it and does not lose its solvency due to underpricing, also serves the purpose of disciplining the market by curbing the unhealthy practice of undercutting of prices for grabbing the business from other players.

### **Answer 6(b)(1)**

Active Insurance Ltd have the right to pursue Robust Insurance Co. Ltd or Raja to recover the cost of the repairs under the doctrine of subrogation. The doctrine confers upon the insurer the right to receive the benefit of such rights and remedies as the assured has against third parties about the loss to the extent that the insurer has indemnified the loss and made it good. Subrogation means substitution of one person for another.

### **Answer 6(b)(2)**

Subrogation is an equitable doctrine that has assumed statutory recognition, 'Subrogation' comes from Roman law which means substitution. In Roman Law, a creditor who lent money to the debtor for the purpose of payment of a mortgage on condition that he was to be substituted in place of the mortgagee, was entitled to claim the benefit of the security discharged with his money. This law of Roman System has now been recognized in all modern system.

**Answer 6(b)(3)**

The doctrine of subrogation is an essential attribute of a contract of indemnity and general insurance, is akin to the contract of indemnity, therefore, applicable. In insurance law subrogation is the name given to the right of the insurer who has paid a loss to be put in the place of the assured so that he can take advantage of any means available to the assured to extinguish or diminish the loss for which the insurer has indemnified the assured.

**Answer 6(b)(4)**

Waiver of Subrogation is a clause in insurance agreement. In this, the insurance company agrees to waive its right to pursue recovery from third-party who is responsible for loss. When waive right of subrogation, business (and insurance company) is prevented from seeking a share of any damages paid. Typically, insurers charge an additional fee for a waiver of subrogation endorsement.

**Answer 6(c)**

Role of Insurance in Economic Development include:

*Provides Safety and Security to Individuals and Businesses:* Insurance provides financial support and reduces uncertainties that individuals and businesses face at every step of their lifecycles. Insurance provides an ideal risk mitigation mechanism against events that can potentially cause financial distress to individuals and businesses.

*Generates Long-term Financial Resources:* The Insurance sector generates funds by way of premiums from millions of policyholders. Due to the long-term nature of these funds, these are invested in building long-term infrastructure assets (such as roads, ports, power plants, dams, etc.) that are significant to nation-building. Employment opportunities are increased by big investments leading to capital formation in the economy.

*Promotes Economic Growth:* The Insurance sector makes a significant impact on the overall economy of the Country by mobilizing domestic savings. Insurance converts the accumulated capital collected as premium into productive investments. Insurance also enables mitigation of losses, financial stability and promotes trade and commerce activities, those results into sustainable economic growth and development. Thus, insurance plays a crucial role in the sustainable growth of an economy of the Country.

*Provides Support to Families during Medical Emergencies:* Good health of family members is very important for a family. From elderly parents to newborn children, medication and hospitalization play important role while ensuring well-being of families. Medical Insurance is a policy that protects individuals financially against different types of health risks. With a Health Insurance policy, an insured gets financial support in case of medical emergency.

*Spreads Risk:* The risk of loss is transferred from the insured to the insurer. The basic principle of insurance is to spread risk among many people. A large population gets insurance policies and pays premium to the insurer. Whenever a loss occurs, it is compensated out of corpus of funds collected from the millions of policyholders.

**Answer 6(d)**

Insurance brokers serve as a bridge between customers and insurance firms, serving as a distribution channel for insurance products. The best insurance policies to meet their demands are sought after by insurance brokers on behalf of their clients. The marketing process for an insurance brokerage entail establishing and maintaining connections with potential customers. The broker needs to establish oneself as a reliable and knowledgeable source for information about insurance. They might promote their services through networking, word-of-mouth, and involvement in neighborhood

events. Additionally, they might advertise their services using a variety of marketing tactics like leaflets, brochures, and business cards.

*Direct Broker Vs. Composite Broker:*

A registered insurance broker with IRDAI is simply referred to as a direct broker. For soliciting and arranging insurance business for his clients with insurance located in India, the direct broker requests compensation or levies a fee. Additionally, he offers risk management services, claim consulting, and other services of a similar nature that are permitted by the IRDAI (Insurance Brokers) Rules, 2018. Example: A broker who sells only life insurance policies such as term plans and ULIPs.

A composite broker is a direct broker first. In addition to normal functions of a direct broker, he acts as a reinsurance broker for arranging the reinsurance on the same risk on which the composite broker acted as a direct broker. To ensure that the interests of the clients and insurers are not harmed, the composite broker will see to it that proper systems and controls are in place.

Example: A broker who sells life insurance policies, motor insurance, health insurance, and fire insurance under one license.

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

**Question 6A**

- (a) As per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, it is mandatory for the Listed Companies to undertake Directors and Officers Insurance for its Independent Directors. You are the Company Secretary of ABC Ltd. The MD&CEO of the company desires to know about the Directors and Officers Liability Policy.

Write a brief note about Directors and Officers Liability Policy.

(3 marks)

- (b) You are an underwriter at a life insurance company. A proposal is received for a ₹ 50 lakh term life insurance policy, from a 35-year-old highly paid software engineer. He works with a leading software company. He is non-smoker, married with two children. He does not have any known bad habits. Medical exams and lab tests were completed as part of the underwriting process and shows the following details :

- BMI : 35 (obese)
- Blood pressure : Slightly elevated (150/90)
- Cholesterol : Within normal limits
- No known chronic illnesses.
- Family history : Father died of a heart attack at age 50; mother is alive and is of good health.
- Engages in trekking twice a year.

Based on the above situation :

- (i) Identify three risk factors in this application that may affect the underwriting decision.
- (ii) What will be a likely underwriting decision (e.g., standard, rated, postpone, decline) ? Justify your recommendation.
- (iii) Suggest any additional information or medical tests you may request before making a final decision.

(1+1+2=4 marks)

- (c) Trust Well Insurance Company, Mumbai entered a reinsurance contract with Maxwell Insurance, Dubai with the following details :

Quota of Insurance Business Share : 60%, Ceding Commission = 30% of Ceded

Premium, Gross Premium = ₹ 2 crores and Gross Claims = ₹ 1.20 Crores.

Calculate :

- (i) Ceded Premium and Claims.
- (ii) Reinsurer Commission.
- (iii) Net Underwriting result for the Insurer.

(1+1+2=4 marks)

- (d) BISMI Electronics is a medium-sized business that sells electronic appliances and gadgets. They hold significant stock in their showroom and warehouse located in an urban commercial area of Delhi. On 10th June 2025, a burglary occurred at night at the godown. Thieves broke in after disabling the alarm system & CCTV and stole inventory worth ₹ 15,00,000.

The company has a Burglary Insurance Policy in place with XYZ Insurance Co., with the following terms :

Sum Insured : ₹ 20,00,000; Policy Type : Declaration Policy (Stock Value Declared Monthly); Monthly Declared Value for June 2025 : ₹ 12,00,000; Policy Excess (Deductible) : 5% of the Claim Amount

Exclusions : Loss due to Employee Involvement, Losses without forcible entry, and under-insurance clause applies.

Upon investigation, the insurer discovered the following :

- (a) There were signs of forcible and violent entry.
- (b) No evidence of employee involvement.
- (c) The actual value of stock at risk on the date of the burglary was ₹ 15,00,000. (d) The loss assessed and approved was ₹ 15,00,000.

In view of the above information answer the following questions :

- (i) Calculate the claim payable by the insurer after applying all relevant policy terms.
- (ii) Whether under-insurance applies in this case or not ?
- (iii) What key documentation would be required to process this claim ?

(1+1+2=4 marks)

### Answer 6A(a)

#### *Directors and Officers Liability Policy*

This is a specialized insurance policy introduced to cover the liabilities of Directors or Officers of a Company. Since they hold positions of trust and responsibility, they may become liable to pay damages, due to acts of omission or commission. It is a type of liability insurance which covers the directors and officers against the claims made by Employees, Suppliers, Competitors, Regulators, Customers, Shareholders, and other stakeholders, for wrongful acts committed by them in the supervision and management of the affairs of the Company.

The Listing Agreement, on one hand, outlines the obligations of a publicly listed company to its

stakeholders and the stock exchange. It also mandates to have a liability policy that can help mitigate the financial risks associated with fulfilling the obligations outlined in the Listing Agreement. It typically covers defence costs, settlements, and judgments in lawsuits brought by shareholders, regulators, employees, and other parties. It is crucial for attracting and retaining qualified individuals to serve as directors and officers, as it shields them from personal financial ruin in the event of legal action.

The policy covers legal defence costs, settlements, and damages resulting from claims by shareholders, employees, regulators, customers, or other stakeholders. It is especially important in the present corporate environment due to increased regulatory scrutiny, shareholder activism, and governance requirements. While the policy does not cover fraud or wilful misconduct, it plays a vital role in risk management and corporate governance, helping companies attract competent professionals and protect leadership from personal liability.

### **Answer 6A(b)(i)**

Risk Factors:

- Obesity (BMI of 31): Associated with increased risk of heart disease and other health conditions.
- Family History: Premature cardiac death (father at age 50) may indicate hereditary risk.
- Elevated Blood Pressure (150/90): Indicates early-stage hypertension, a major mortality risk factor
- Hobby: Recreational trekking indicates additional accidental death risk.

### **Answer 6A(b)(ii)**

Underwriting Decision: Likely Decision: Rated (substandard) Policy.

Justification:

- Although the proposer is young, non-smoker, and has no known chronic illness,
- The combination of obesity, borderline hypertension, and positive family history of heart disease increases long-term mortality risk.
- These risks are measurable and manageable, hence do not warrant rejection, but justify extra premium loading.

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

Additional Information/Tests:

- Cardiac evaluation (e.g., ECG or TMT) to assess potential early heart problems.
- Detailed pastime questionnaire about trekking (height, frequency, certification, safety measures etc.).
- Repeat Blood Pressure readings (multiple occasions)
- Fasting Blood Sugar / HbA1c (to rule out diabetes)
- Detailed lipid profile
- Doctor's report on weight management and lifestyle

### **Answer 6A(c)(i)**

Ceded Premium = 60% × ₹ 2 Crores = ₹ 1.20 Crores.

Ceded Claims = 60% × ₹ 1.2 Crores = ₹ 72 Lakhs.

**Answer 6A(c)(ii)**

Reinsurance Commission = 30% × ₹ 1.20 = ₹ 36 Lakhs.

**Answer 6A(c)(iii)**

Net Underwriting result for the Insurer:

Premium = ₹ 2 – ₹ 1.2 + ₹ 0.36 = ₹ 1.16 Crores.

Net Claims = ₹ 1.20 – ₹ 0.72 = ₹ 0.48 Crores.

Underwriting Result = ₹ 1.16 – ₹ 0.48 = ₹ 0.68 Crores.

**Answer 6A(d)(i)**

Claim Payable Calculation:

- Sum Insured Rs.20 lakh; Stock Declared: ₹ 12,00,000
- Actual Stock at Risk: ₹ 15,00,000
- Loss Assessed: ₹ 15,00,000

Claim Before Deductible = Loss Assessed × (Declared Value/Actual Value at Risk)

= ₹ 15,00,000 × (₹ 12,00,000 / ₹ 15,00,000) = ₹ 12,00,000

Policy Excess (5% of ₹ 12,00,000): ₹ 60,000

**Answer 6A(d)(ii)**

Final Claim Payable = ₹ 12,00,000 – ₹ 60,000 = ₹ 11,40,000

Since the declared value (₹12,00,000) is less than the actual value at risk (₹ 15,00,000), under-insurance applies on the date of loss. The claim will be settled proportionately. Hence, the average clause is applicable.

**Answer 6A(d)(iii)**

The insured must provide the following documents to the insurer:

- a) The policy details, including the policy number and it should be a running policy.
- b) The FIR copy and details of the police station where the same was filed.
- c) The description of the assets stolen, including the list of materials and other items.
- d) The CC TV recording just before the theft and the details regarding the functioning of the alarm.
- e) Properly filled and signed the claim form.
- f) Newspaper cuttings/Fire Brigade report / Panchnama.
- g) Photographs of the damaged site and/or goods.
- h) An estimation of the insurance claim.
- i) Surveyor's report.

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# INSOLVENCY AND BANKRUPTCY– LAW AND PRACTICE

## GROUP 2 ELECTIVE PAPER 7.5

**Time allowed : 3 hours**

**Maximum marks : 100**

**NOTE :** Answer All Questions.

### PART-I

#### Question 1

Read the following case study and answer the questions that follow :

Arya is a Practicing Company Secretary and Insolvency Professional. She renders Corporate Advisory Services and very often delivers guest lectures in Financial Institutions, Banks and Management and Law Colleges on the topics of Corporate Insolvency, Restructuring and Fund Raising.

R. K. Institute of Management and Technology (RK-IMT) is a reputed management college in Jaipur. RK-IMT was established in the year 2000 and this year the college is completing its glorious 25 years. The RK-IMT planned for its Silver Jubilee and organized a whole week of celebrations. During this week the college organized various programs / activities viz: Sports Day, Debate Competition, Cultural Evening, Seminars, Workshop etc.

Arya was invited to address a seminar on the topic of Corporate Insolvency. Arya explained the objectives and purposes of the Insolvency and Bankruptcy Code, 2016 (IBC) and touched the key points relating to Financial Creditor, Operational Creditor, Corporate Debtor, Default, Initiation of Corporate Insolvency, Constitution of Committee of Creditors, and Insolvency Resolution Process Period etc. After delivering a thought-provoking lecture, Arya invited the audiences to raise queries on the topic.

Vedika, a student of the college, was curious to know more about Insolvency Law. She exclaimed to know that the IBC is a totally new concept and prior to this enactment whether there was any such law on insolvency existed in India. Arya clarified the position.

Reyansh, an Associate Professor of the college, was curious to know that whether IBC is an effective recovery tool and the lending institution can effectively exercise its control over the debtor through the Resolution Professional. Arya again clarified the doubts of Reyansh referring the objectives and purpose of IBC.

As a lecturer of the Institute, Rohil shared his own experience, he booked a 2-BHK Flat in Swarnim Galaxy, a building project of Swarnim Builders Limited (Swarnim Builders), and paid upto 90% of the purchase price to the builder, Swarnim Builders, on various stages. Ten per cent (10%) of the purchase price was to be paid at the time of taking the possession which was due in December, 2023. However, the possession of the flat was not given by the Builder to him. Rohil is not the only allottee but all the other allottees who had booked the flat in the Swarnim Galaxy were not given the possession and the Builder was taking excuses by narrating false reasons. Rohil narrated the whole story before the Arya and requested if she could help him. Arya asked Rohil to let her know the details of the project and relevant information to proceed in the case.

Rohil meets Arya at her office and submits her the details of the project available with him. Arya studies about the project and also checks the financial statements of Swarnim Builders, which are filed with Registrar of Companies. On scrutiny of financial statements, Arya found out that Rishabh

Suppliers Limited (RSL), one of the major suppliers of Swarnim Builders had supplied the construction materials to Swarnim Builders amounting to ₹ 15 crore. On scrutiny of RSL's financial statements, Arya has found out that RSL has assigned its book debts at a discount of 3% in favour of the Moon star Financiers Limited (MFL) a NBFC Company.

Based on the above factual background, answer the following questions :

- (a) Vedika, student of RK-IMT, stated that the Insolvency and Bankruptcy Code, 2016 (IBC) has introduced the concept of the insolvency and bankruptcy in India for the first time in India and prior to the enactment of the IBC there was no codified law on this subject and the Courts were granting relief to the insolvent debtors as per the customs, usage and practices prevalent in the respective regions/states. Do you agree with the opinion of Vedika ? Comment.  
(5 marks)
- (b) Reyansh, Associate Professor, believed that the Insolvency and Bankruptcy Code, 2016 (IBC) is a recovery legislation for creditors. Discuss this statement in light of the decided case law.  
(5 marks)
- (c) Rohil had booked a flat from Swarnim Builders but the possession was not given to him on the due date. What shall be the status of Rohil in this case and whether he can initiate the insolvency proceedings against the Swarnim Builders ? Discuss the matter with decided case law.  
(5 marks)
- (d) In the given case, if Corporate Insolvency Resolution Process (CIRP) is initiated against Swarnim Builders, who can be a member of the Committee of Creditors (CoC) ? Whether Moon Star Financiers Limited (MFL), in whose favour the RSL has assigned its book debts, can be treated as Financial Creditor ? Explain the relevant provisions of the IBC.  
(5 marks)
- (e) Whether the Corporate Insolvency Resolution Process (CIRP) initiated against Swarnim Builders, is required to be completed within a fixed time frame ? If so, what is the time limit for completion of CIRP and whether any extension can be granted by the Adjudicating Authority ? Also specify the grounds of exclusion of certain period for the purpose of counting the total period of Insolvency Resolution Process.  
(5 marks)

### Answer 1(a)

In fact, the law of Insolvency in India owes its origin to English law. India being a colony of the United Kingdom, followed the English insolvency system. In India, the earliest provisions relating to insolvency can be traced to sections 23 and 24 of the Government of India Act, 1800. These sections conferred insolvency jurisdiction on Supreme Court at Fort Williams (Calcutta), Madras and Recorder's Court at Bombay as the need for an insolvency law was first felt in Presidency Towns of Calcutta, Bombay and Madras where the British majorly carried on their trade. These Courts were empowered to make rules and grant relief to insolvent debtors.

Later insolvency courts were established in the Presidency-Towns when Statute 9 (Geo. IV c. 73) was passed in 1828. This Act of 1828 marks the beginning of special insolvency legislation in India. The insolvency court had a distinct existence although the court was presided over by a Judge of the Supreme Court. The Act of 1828 was originally intended to remain in force for a period of four years but subsequent legislation extended its duration up to 1848. The Provisions of the Indian

Insolvency Act was passed in 1848 and remained in force until the enactment of the Presidency Towns Insolvency Act, 1909. Later Provincial Insolvency Act was passed in 1920.

The Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920 were two major enactments that dealt with personal insolvency but the two differ in respect of their territorial jurisdiction. While Presidency Towns Insolvency Act, 1909 applied in Presidency towns of Calcutta, Bombay and Madras, the Provincial Insolvency Act, 1920 applied to all provinces of India. These two Acts were applicable to individuals as well as partnership firms.

Before the enactment of the Insolvency and Bankruptcy Code, 2016, the provisions relating to insolvency and bankruptcy were fragmented and there was no single law to deal with insolvency and bankruptcy in India.

Before the enactment of the Insolvency and Bankruptcy Code, 2016 the following Acts dealt with insolvency and Bankruptcy in India:

- The Presidency Towns Insolvency Act, 1909
- Provincial Insolvency Act, 1920
- Indian Partnership Act, 1932
- The Companies Act, 1956
- The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)
- The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)
- The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002)
- The Companies Act, 2013.

In view of the above, the statement by Vedika is not correct.

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

In order to elaborate the objectives behind the enactment of the Insolvency and Bankruptcy Code, 2016 it is essential to refer to the preamble of the Code which states that:

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

*1. The primary focus of the IBC is to ensure the revival and continuation of the corporate debtor:*

In the matter of *Gujarat Urja Vikas Nigam Limited Vs. Mr. Amit Gupta & Ors.* [Civil Appeal No. 9241 of 2019 Judgment dated 8th March, 2021], the Hon'ble Supreme Court of India observed that the primary focus of the IBC is to ensure the revival and continuation of the corporate debtor. The interests of the corporate debtor have been bifurcated and separated from the interests of persons in management.

The timelines which are prescribed in the IBC are intended to ensure the resuscitation of the corporate debtor. The enactment of the IBC is in significant senses a break from the past.

*2. The foremost and primary objective of the IBC is the reorganization and insolvency resolution of the Corporate Debtor (CD) in a time bound manner:*

Hon'ble Supreme Court of India in the matter of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.* [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019] Judgement dated 25th January, 2019 opined that the Code is a beneficial legislation which puts the CD back on its feet and is not a mere recovery legislation for creditors. The interests of the CD have, therefore, been bifurcated and separated from that of its promoters/those who are in management. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained.

The Apex Court observed that as is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions.

What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

In the matter of *Innoventive Industries Ltd. Vs. ICICI Bank & Anr.* [Civil Appeal No. 8337-8338 of 2017] the Supreme Court had opined that one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the objective of speeding up the insolvency process.

### **Answer 1(c)**

#### *Status of Rohil*

In order to determine the status of Rohil, it is necessary to understand the definition of 'Financial Creditor' and 'Financial Debt'.

#### *Definition of Financial Creditor*

In terms of Section 5(7) of the Insolvency and Bankruptcy Code, 2016, "Financial Creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

#### *Definition of Financial Debt*

In terms of Section 5(8)(f) "Financial Debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.

Explanation (i) to Section 5(8) states that any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing.

Thus, Rohil shall be regarded as Financial Creditor in terms of Section 5(7) read with Section 5(8)(f).

#### *Initiation of Corporate Insolvency proves by Financial Creditor*

Section 7(1) of the Insolvency and Bankruptcy Code, 2016, provides that a financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor,

as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

The second proviso to Section 7 of the Code provides that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed:

- Jointly by not less than one hundred of such allottees under the same real estate project; or  
Not less than 10% of the total number of such allottees under the same real estate project, whichever is less.

Therefore, Rohil cannot file individually; he shall meet the statutory threshold with other allottees.

#### Case Law

The Hon'ble Supreme Court in the matter of '*Pioneer Urban Land and Infrastructure Limited Vs. Union of India*' [WP (C) No. 43 of 2019 with other appeals] SC order dt. 09.08.2019] upheld the constitutional validity of the amendment and stated that the home buyers are Financial Creditors. With this amendment, the Government has introduced the threshold for filing insolvency application by the home buyers against the builder companies.

The allottees/home buyers were included in the main provision, i.e., section 5(8)(f) with effect from the inception of the Code. The Explanation was added in 2018 merely to clarify doubts that had arisen. The deeming fiction that is used by the Explanation is to put beyond doubt the fact that allottees are to be regarded as financial creditors within section 5(8)(f) of the Code.

In real estate projects, money is raised from the allottee, against consideration for the time value of money. Thus, allottees are to be regarded as FCs.

In the matter of *Chitra Sharma and Ors. Vs. Union of India and Ors.* [WP(Civil) 744 of 2017 and other appeals, the SC order dt. 09.08.2018] the Supreme Court opined that home buyers are brought within the purview of the financial creditors under the Code.

#### Answer 1(d)

Section 21(2) of the Insolvency and Bankruptcy Code, 2016 provides that the committee of creditors shall comprise of all financial creditors of the corporate debtor.

First proviso of Section 21(2) of the Code provides that the financial creditor or the authorised representative of the financial creditor as referred under sub-section (6) or sub-section (6A) or sub-section (5) of Section 24 of the Code, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors.

Second proviso of Section 21(2) of the Code provides that the first proviso shall not apply to a financial creditor that is regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares or completion of such transactions as may be prescribed prior to the insolvency commencement date.

Section 21(3) states that subject to sub-sections (6) and (6A) of Section 21 of the Code where corporate debtor owes financial debts to two or more financial creditors as part of a consortium or agreement, each such financial creditor shall be part of the committee of creditors and their voting share shall be determined on the basis of the financial debts owed to them.

*When creditor is financial creditor as well as operational creditor of the corporate debtor*

In this situation Sub-Section 4 is to be read with Sub-Section 5 of Section 21 of the Code.

Section 21(4) provides that where any person is a financial creditor as well as an operational creditor—

- (a) such person shall be a financial creditor to the extent of the financial debt owed by the corporate debtor, and shall be included in the committee of creditors, with voting share proportionate to the extent of financial debts owed to such creditor;
- (b) such person shall be considered to be an operational creditor to the extent of the operational debt owed by the corporate debtor to such creditor.

Section 21(5) provides that where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer.

Rishabh Suppliers Ltd. (RSL) supplied materials (operational debt) and later assigned its receivables to MFL. Since the debt originated as operational debt, even though assigned to a financial institution, MFL is treated as an operational creditor under Section 21(5).

The CoC in Swarnim Builders' CIRP will consist only of financial creditors such as banks and homebuyers (recognized as financial creditors under Section 5(8)(f)). Moon Star Financiers Ltd. (MFL), having received assignment of operational debt from RSL, will be treated as an operational creditor only under Section 21(5) of the Code, and thus cannot be a voting member of the CoC.

### **Answer 1(e)**

In terms of Section 5(14) of the Insolvency and Bankruptcy Code, 2016, Insolvency Resolution Process Period means the period of 180 days beginning from the insolvency commencement date and ending on one hundred and eightieth day.

#### *Time-limit for completion of insolvency resolution process*

Further Section 12(2) the Insolvency and Bankruptcy Code, 2016 states that the resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond 180 days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 66% of the voting shares.

Section 12(3) states that on receipt of an application under section 12(2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding ninety days. It is provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. It is provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

#### *Exclusion of certain period in counting the Insolvency Resolution Process Period*

It is always open to the NCLT/NCLAT to exclude certain period for the purpose of counting the total period of 270 days. The grounds include the following:

- (i) If the CIRP is stayed by a court of law or the NCLT/NCLAT/ Supreme Court
- (ii) If no RP is functioning for one or other reason during the CIRP
- (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the RP takes charge for completing the CIRP

- (iv) On hearing a case, if order is reserved by the NCLT/NCLAT/Supreme Court and finally pass order enabling the RP to complete the CIRP
- (v) If the CIRP is set aside by the NCLAT or order of the NCLAT is reversed by the Supreme Court and CIRP is restored
- (vi) Any other circumstances which justify exclusion of certain period.

(Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 185 of 2018] NCLAT judgement dated 08.05.2018)

## Question 2

- (a) Suruchi Fabrics Limited (SFL) availed term loan of ₹ 10 Crore and cash credit facility of ₹ 2 Crore from A-One Bank Ltd. Since the SFL was unable to service the loan, the Board of Directors of the company passed a resolution to initiate Corporate Insolvency Resolution Process (CIRP) and proposed the name of Aneri, an Insolvency Professional to act as Interim Resolution Professional (IRP). Apart from the credit facility from the A-One Bank, SFL have no other financial creditor. However, SFL have outstanding dues towards its operational creditors amounting to ₹ 25 Crore.

Mathew is the Company Secretary of A-One Bank. Mathew's younger brother Thomas is the Chief Financial Officer in the SFL. Although Mathew and Thomas are brothers in relation, they are not in talking terms. Thomas joined the SFL after the loan was disbursed by the Bank.

In the first meeting of the Committee of Creditors (CoC) it was decided to change the existing IRP and to appoint Brijesh as Resolution Professional.

The Information Memorandum was prepared and expression of interest was invited for resolution plan.

Two Resolution Proposals were submitted, details of which are as under :

- (i) A company named as Dinesh Textiles Private Limited, submitted the resolution plan. Dinesh who is the Managing Director of the company holds 90% of the equity and rest 10% is in the name of his wife Neeta. Dinesh Textiles Private Limited has availed loan from another bank and his account has been classified as Non-performing Account by that bank.
- (ii) Harsh, another Resolution Applicant was convicted and remained in imprisonment for two years under the provisions of the Prevention of Money Laundering Act, 2002. He was released in December 2021.

On the above background, referring relevant case laws, provisions of the Insolvency and Bankruptcy Code, 2016 and Regulations made by IBBI, answer the following questions :

- (i) On the basis of the information given in the case whether SFL can initiate the corporate insolvency resolution process (CIRP) ? Refer relevant provisions of the Code.  
(2 marks)
- (ii) Will your answer differ, if the SFL has not defaulted in servicing the credit facility granted by the A-One Bank but still want to initiate the CIRP ?  
(2 marks)
- (iii) What would be your answer, if Thomas, who is the CFO (Key Managerial Personnel) in the SFL resigns before the initiation of the CIRP so as to give effect to the exclusion

of 'related party' in terms of Section 5(24A) (b) of the Code ? Support your answer referring relevant case law.

(4 marks)

- (iv) In the given case, two resolution plans were received by the CoC. One from Dinesh Textiles Private Limited and another one from Harsh. Examine the validity of both the resolution plans.

(4 marks)

- (b) An Asset Reconstruction Company (ARC) is a special type of financial institution that buys the debtors of the bank at a mutually agreed value and attempts to recover the debts or associated securities by itself.

The asset reconstruction companies or ARCs are registered under the RBI and regulated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, 2002).

The ARCs take over a portion of the debts of the bank that qualify to be recognised as Non-Performing Assets. Thus, ARCs are engaged in the business of asset reconstruction or securitisation or both.

All the rights that were held by the lender (the bank) in respect of the debt would be transferred to the ARC. The required funds to purchase such debts can be raised from Qualified Buyers.

Based on the above information, answer the following questions :

- (i) Who is a Qualified Buyer ?

(2 marks)

- (ii) How ARCs can acquire rights or interest in financial assets from Banks or Financial Institutions ?

(3 marks)

- (c) "As an important stakeholder of the ecosystem, the Insolvency professionals are required to maintain fine balance between high degree of proficiency and ethical standards. Ethical standards largely entail commitment to excellence, preservation of reputation, and requires stringent compliance to statute without any consideration of undue favours or moral turpitude. The IP is expected to act in good faith in discharge of his dues, with utmost integrity, objectivity, independence, impartiality and should make earnest efforts to maximize the value of assets of the debtor. An IP needs to ensure that the Corporate Insolvency Resolution Process is run in a fair and objective manner in the best interest of the stakeholders. Thus, it is of utmost importance that the IPs maintain high standards of professional ethics, so as to maximise value for all stakeholders. The professionals are also expected to maintain the highest standards of professional competence and professional ethics while discharging their duties."

Further to the above information, the following are few instances of Insolvency Professional Contraventions and his explanation thereon based on Professional and Ethical Practices of IPs. By citing the appropriate Sections of the IBC, 2016 Act / Regulations of IBBI, explain if the IP's explanation is correct or otherwise.

- (i) Case : Appointment of third valuer at the instance of CoC.

Contravention :

- RP appointed third valuer to determine fair value and liquidation value of the CD at the desire of CoC.

Submission by IP :

- The RP submitted that the third valuation was done for the satisfaction of the stakeholder only.
- The decision of the CoC to get a third valuation done was in exercise of its commercial wisdom to better equip the CoC to take a final call on resolution plans.
- That the conduct of the third valuation at the desire of the CoC does not invalidate the decisions or actions taken by the RP and has not, in any way, affected the acceptance or rejection of resolution plan.

(4 marks)

(ii) Case : Failure to represent on behalf of the CD in an arbitration proceeding.

Contravention :

- Arbitration petition was filed by an Insurance Company against the CD. Matter was heard during CIRP and was awarded in favour of the CD. Consequently, the insurer handed a cheque of ₹ 8.3 Crore in the hands of the Ex-director of the CD, who accepted it as full and final settlement of the claim (thus foregoing an amount of ₹ 2.3 Crore), the correspondence in respect of claim by Insurance Company to the residential address of the Ex-Director instead of CD Address.
- The amount of ₹ 8.3 Crore was duly deposited by the Ex-director in the accounts of the CD. Only after the Investigating Authority raised its concern in this issue the RP filed application before NCLT claiming an additional amount of ₹ 2.3 Crore from insurer and initiated appropriate actions against the ex-director and promoter of the CD u/s 66 and 67 of the Code.

Submission by IP :

- The IP submitted that the ex-director and promoter never informed the RP regarding settlement of the insurance claim and had filed necessary affidavits in this regard in a wrongful and clandestine manner keeping the RP in dark. Dealings with the insurer in this regard were without the prior knowledge, consent or permission of the RP.
- Upon being aware of the claim settlement, RP took necessary actions to file claims against the insurer and promoter and ex-director, claiming the amount of ₹ 2.3 Crore.
- That the amount of ₹ 8.3 Crore was deposited by the Ex-director in the Company's account without RP's knowledge and the entire sum so received by the CD was utilised to maintain going concern.

(4 marks)

### **Answer 2(a)(i)**

No, the SFL cannot initiate the CIRP since it has not complied with the provisions of the Section 10(3)(c) of the Code.

Section 10(3)(c) the Insolvency and Bankruptcy Code, 2016 provides that the corporate applicant (SFL in this case) shall, along with the application, should furnish a special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application.

In the given case, only the Board of Directors has passed the resolution to initiate the CIRP, but it has not passed the special resolution by the shareholders as required by Section 10(3)(c) of the Code.

**Answer 2(a)(ii)**

Section 10(1) of the Insolvency and Bankruptcy Code, 2016 states that where a corporate debtor has committed a default, a corporate applicant thereof may file an application for initiating corporate insolvency resolution process with the Adjudicating Authority.

Therefore, there is a pre-condition that the corporate debtor has committed default in servicing the credit facility to the A-One Bank. If the SFL had not defaulted in servicing the credit facility to the Bank, still it is eligible to initiate CIRP as default in the question is w.r.t. term loan meeting the threshold ₹1 cr and not w.r.t. cash credit facility. If Suruchi Fabrics Limited (SFL) has not defaulted in servicing the credit facility granted by A-One Bank, it cannot initiate CIRP merely on its own volition. However, in the given case, the default is specifically in respect of the term loan of ₹10 crore, which clearly meets the statutory threshold of ₹1 crore under Section 4 of the Code. The fact that the cash credit facility of ₹2 crore has not been defaulted upon is immaterial, since the Code requires default in any debt, not necessarily all debts.

**Answer 2(a)(iii)**

Section 5(24) of the Insolvency and Bankruptcy Code, 2016 "related party", in relation to a corporate debtor, means-

- (b) a key managerial personnel of the corporate debtor or a relative of a key managerial personnel of the corporate debtor;

Therefore, SFL falls in the category of related party by virtue of by virtue of Thomas (CFO i.e. KMP of SFL, the corporate debtor) being brother of Mathew (C.S. i.e. KMP of A-One financial creditor) shall not have any right of representation, participation or voting in a meeting of the committee of creditors in pursuance to the proviso of section 21(2) of the Insolvency and Bankruptcy Code, 2016.

The Supreme Court in the matter of '*Phoenix Arc Private Limited Vs. Spade Financial Services Limited & Ors.*', clarified that while the default rule under the first proviso to Section 21(2) is that only those financial creditors that are related parties in praesenti would be debarred from the Committee, those related party financial creditors that cease to be related parties in order to circumvent the exclusion under the first proviso to Section 21(2), should also be considered as being covered by the exclusion thereunder.

Thus, relatedness of related parties at the present time would be considered for exclusion from the Committee, in addition, any parties that were related in the past and cease to be related parties at present in order to become a member of the Committee must also be considered for exclusion from the Committee.

"There will be no change in the answer even if Thomas resigns or ceases to be CFO of SFL. Under Section 5(24)(b), a KMP of the corporate debtor or their relative is a related party. Thomas, being CFO of SFL and brother of Mathew (CS of A-One Bank), is a related party. As clarified in *Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd.* (Supreme Court, 2021), resignation does not erase related party status if done to circumvent exclusion. Hence, SFL remains a related party, and Mathew shall not have any right of representation, participation, or voting in the CoC under Section 21(2)."

**Answer 2(a)(iv)**

Section 29A of the Insolvency and Bankruptcy Code, 2016 expressly prohibits certain groups of people from taking part in the resolution process.

*In the matter of Dinesh Textiles Pvt. Ltd.*

Section 29A(c) of the Insolvency and Bankruptcy Code, 2016 provides that a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert

with such person at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Therefore, if the Dinesh Textiles Pvt. Ltd. paid off all the dues of the bank along with the interest, then only its application can be entertained.

*In the case of Harsh*

Section 29A (d) of the Insolvency and Bankruptcy Code, 2016 provides that a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person has been convicted for any offence punishable with imprisonment—

- (i) for two years or more under any Act specified under the Twelfth Schedule; or
- (ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment.

In the given case, Harsh came out of imprisonment for an offence under PMLA (an Act specified in the Twelfth Schedule) in December, 2021 which is more than two years back. Thus, as per the proviso to Section 29A(d) of the Code Harsh is eligible to apply.

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

As per Section 2(1)(u) of the SARFAESI Act, 2002 a Qualified Buyer (QB) means Financial Institution, Insurance Company, Bank, State Financial Corporation, State Industrial Development Corporation, Trustee or ARC or any asset management company making investment on behalf of mutual fund, Foreign Institutional investor registered under the Securities and Exchange Board Of India Act, 1992 (15 of 1992) or regulations made thereunder, any category of non-institutional investors as may be specified by Reserve Bank of India or any other body corporate as may be specified by the Securities and Exchange Board of India.

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

Section 5 of the SARFAESI Act, 2002 states that, notwithstanding anything contained in any agreement or any other law for the time being in force, any asset reconstruction company may acquire financial assets of any bank or financial institution—

- (a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
- (b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899

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

As per Regulation 35(1) of the IBBI(CIRP) Regulations

- (a) the two registered valuers appointed under regulation 27 shall submit to the resolution professional an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor; Provided that the resolution professional shall facilitate a meeting wherein registered valuers shall explain the methodology being adopted to arrive at valuation to the members of the committee before computation of estimates.
- (b) if the two estimates of a value in an asset class are significantly different, or on receipt of a proposal to appoint a third registered valuer from the committee of creditors, the resolution professional may appoint a third registered valuer for an asset class for submitting an estimate of the value computed in the manner provided in clause (a).

As third registered valuer was appointed at the instance of CoC, therefore, there is no contravention.

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

- Section 17 of the Insolvency and Bankruptcy Code, 2016 vests the management and control of the CD with the RP and Section 25(2)(b) of the Code obligates the RP to represent and act on behalf of the CD with third parties, exercise rights on behalf of CD in judicial, quasi-judicial or arbitration proceedings.
- There was no reasonable ground as to why Arbitration proceeding was not within the knowledge of the RP as the notices / order / correspondence in the matter would be addressed to the CD at its registered address as against the residential address of its ex-director or promoter.
- RP having taken effective control on the records and documents of the CD cannot assert that proceedings were kept away from him in a wrongful or clandestine way.
- That the RP was ignorant of the award of insurance claim when an amount of INR 8.3 Crores was received in the bank account was unfathomable and reflects that RP failed to take due diligence in finding the reasons for the receipts, which is per se untenable under provisions of the Code
- This issue requires further investigation and IP explanation is not correct.

### **Question 3**

- (a) The financial creditors initiated the corporate insolvency resolution process (CIRP) against Romi Digital Publications Ltd. (RDPL) under Section 7 of the Insolvency and Bankruptcy Code, 2016, since it defaulted in payment of the dues. Whereas the application for initiation of CIRP before the NCLT was under the 'pre-admission stage' the RDPL (the Corporate Debtor) started the process of settlement talks with the financial creditors.

The RDPL requested before the NCLT that since matter is under negotiation with the financial creditors and likely to settle the matter through compromise with the financial creditors, within a period of 3 months, therefore the initiation of the CIRP may be kept in abeyance.

Whether the NCLT can keep the matter of initiation of CIRP application of the financial

creditors in abeyance looking to the fact that the corporate debtors is under the process of negotiations with the financial creditors ? Substantiate your answer with the decided case law.

*(5 marks)*

- (b) In Corporate Insolvency Resolution Process (CIRP) the management of Corporate Debtors vests with the Resolution Professional whereas in case of Pre-packaged Insolvency Resolution Process (PPIRP) it vests with the Corporate Debtors itself. Elucidate this statement. Also discuss the circumstances when the management of the corporate debtors shall vest with the Resolution Professional in PPIRP.

*(5 marks)*

- (c) Bharti Gym Equipment Limited is a profit making, dividend paying company. In January 2024 the company decided to initiate voluntary liquidation proceedings. After completing the required process, the company filed an application before the NCLT which was accepted and with due process of law, it ordered for its liquidation. However, some of the shareholders of the company have not claimed the dividend declared by the company in previous years and were lying in the 'Unclaimed Dividend Account'.

The Liquidator of the company wants to seek your advice on how to deal with such unclaimed dividend ? Give your answer in light of the provisions of the Code.

*(5 marks)*

- (d) Pluto Infrastructures Limited filed an application for initiation of CIRP under Section 10 of the Code. The NCLT admitted the application and moratorium was imposed. Padam, an Insolvency Professional was appointed as Interim Resolution Professional (IRP) who was confirmed to continue as Resolution Professional in the first meeting of the Committee of Creditors (CoC). The Resolution Plan submitted by one of the Resolution Applicant was placed before the CoC and thereafter before the NCLT for its final approval. The NCLT observed that the Resolution Plan do not meet all the requirements as per the provisions of the Code and removed Padam and appointed another Resolution Professional. Aggrieved from the order to the NCLT, Padam preferred an appeal before the NCLAT taking the plea that NCLT have no powers to remove Resolution Professional since it vests only with the CoC. Whether NCLT is empowered to remove a Resolution Professional ? Substantiate your answer with the decided case law.

*(5 marks)*

- (e) Reyas Paper Limited (RPL) was incorporated in 2005. The promoters of the RPL had put their maximum effort and energy for 10 years to set-up this paper plant. However, the RPL was unable to generate profits and could not pay off the dues of the financial creditor. The financial creditor initiated corporate insolvency resolution process against the company. In the absence of approved 'Resolution Plan' and 270 days having completed, the 'Adjudicating Authority passed an order of liquidation of the RPL.

The promoter of the RPL preferred an appeal before the NCLAT requesting therein that the promoter should be given an opportunity to settle the dues through compromise or arrangement under Section 230 of the Companies Act, 2013. Whether the promoter's application to settle the dues through compromise or arrangement can be entertained after the order liquidation ?

*(5 marks)*

**Answer 3(a)**

No, the NCLT cannot keep pending the application for initiation of CIRP filed by the financial creditor under section 7 of the Insolvency and Bankruptcy Code, 2016. The NCLT has only two choices either to accept it or reject it, but it cannot keep it in pending.

The facts of the case are similar to that of the case decided by the Supreme Court in the matter of *E S Krishnamurthy & Ors. Vs. M/s Bharath Hi Tech Builders Pvt. Ltd.*

The issue before the Apex Court was to decide on whether the Adjudicating Authority could dismiss the petition under Section 7 because the corporate debtor had started the process of settling with the financial creditors while handling an application under the Code without considering its merits. Whether the NCLT and NCLAT were right in their approach to reject the appellants' Section 7 petition at the "pre-admission stage" and order them to reach a settlement with the Respondent within three months.

In the said matter, Supreme Court held that the Adjudicating Authority must either admit the CIRP application or it must reject the same. The Code does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available. Also, the Adjudicating Authority is empowered only to verify whether a default has occurred or not. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5) of the Code. The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.

**Answer 3(b)**

*Management of affairs of corporate debtor by interim resolution professional (In case of CIRP)*

Section 17(1)(a) of the Insolvency and Bankruptcy Code, 2016 provides that from the date of appointment of the interim resolution professional the management of the affairs of the corporate debtor shall vest in the interim resolution professional.

Section 23 of the Code provides for Resolution professional to conduct corporate insolvency resolution process. Subject to section 27(1), the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period: Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority.

*Management of affairs of corporate debtor (In case of PPIRP)*

Section 54H of the Insolvency and Bankruptcy Code, 2016 provides that during the pre-packaged insolvency resolution process period, —

- (a) the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be specified;
- (b) the Board of Directors or the partners, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern; and
- (c) the promoters, members, personnel and partners, as the case may be, of the corporate debtor, shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of Chapter III and such other conditions and restrictions as may be prescribed.

*Vesting management of corporate debtor with resolution professional*

Section 54J of the Insolvency and Bankruptcy Code, 2016 provides that –

- (1) Where the committee of creditors, at any time during the pre-packaged insolvency resolution process period, by a vote of not less than sixty-six per cent. of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.
- (2) On an application made under sub-section (1), if the Adjudicating Authority is of the opinion that during the pre-packaged insolvency resolution process—
  - (a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or
  - (b) there has been gross mismanagement of the affairs of the corporate debtor,it shall pass an order vesting the management of the corporate debtor with the resolution professional.
- (3) Notwithstanding anything to the contrary contained in Chapter III, the provisions of—
  - (a) sub-sections (2) and (2A) of section 14;
  - (b) section 17;
  - (c) clauses (e) to (g) of section 18;
  - (d) sections 19 and 20;
  - (e) sub-section (1) of section 25;
  - (f) clauses (a) to (c) and clause (k) of sub-section (2) of section 25; and
  - (g) section 28,shall, *mutatis mutandis* apply, to the proceedings under this Chapter, from the date of the order under sub-section (2), until the pre-packaged insolvency resolution process period comes to an end.

**Answer 3(c)**

Section 59(1) of the Insolvency and Bankruptcy Code, 2016 provides that a corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of Chapter V.

Regulation 39 of IBBI (Voluntary Liquidation Process) Regulations, 2017 deals with the provisions relating to the unclaimed proceeds of liquidation or undistributed assets.

The Board shall operate and maintain an Account to be called the Corporate Voluntary Liquidation Account in the Public Accounts of India.

A liquidator shall deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon till the date of deposit, into the Corporate Voluntary Liquidation Account before he submits an application under sub-section (7) of section 59.

A liquidator, who holds any amount of unclaimed dividends or undistributed proceeds in a liquidation process, shall deposit the same within fifteen days of the date of such commencement, along with any income earned thereon till the date of deposit.

A liquidator, who fails to deposit any amount into the Corporate Voluntary Liquidation Account

under this regulation, shall deposit the same along with interest thereon at the rate of twelve percent per annum from the due date of deposit till the date of deposit.

A liquidator shall submit to the authority with which the corporate person is registered and the Board, the evidence of deposit of the amount into the Corporate Voluntary Liquidation Account under this regulation, and a statement in Form G setting forth the nature of the amount deposited into the Corporate Voluntary Liquidation Account, and the names and last known addresses of the stakeholders entitled to receive the unclaimed dividends or undistributed proceeds.

The liquidator shall be entitled to a receipt from the Board for any amount deposited into the Corporate Voluntary Liquidation Account, Under this Regulation.

Prior to dissolution of the corporate persons, a stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the liquidator in Form - I for withdrawal of the amount.

On receipt of request under sub-regulation (7), the liquidator after verification of the claim, shall request the Board for release of amount to him for onward distribution.

Board on receipt of request may release the amount to the liquidator.

The liquidator, shall, after making the distribution to the stakeholder shall intimate the Adjudication Authority of such distribution.

After dissolution of the corporate person, a stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board in Form – I for an order for withdrawal of the amount.

If any other person other than the shareholder claims to be entitled to any amount deposited to the Corporate Voluntary Liquidation Account, he shall submit evidence to satisfy the liquidator or the Board, as the case may be, that he is so entitled.

The Board may, if satisfied that the stakeholder or any other person is entitled to withdraw of any amount from the Corporation Voluntary Liquidation Account, make an order for the same in favour of that stakeholder or that other person.

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

Section 34(4) of the Insolvency and Bankruptcy Code, 2016 provides that the Adjudicating Authority shall by order replace the resolution professional, if—

- (a) the resolution plan submitted by the resolution professional under section 30 was rejected for failure to meet the requirements mentioned in sub-section (2) of section 30; or
- (b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing; or
- (c) the resolution professional fails to submit written consent under sub-section (1).

#### *Case Law*

The matter of replacing the Resolution Professional (RP) was considered by the National Company Law Appellate Tribunal (NCLAT) in the matter of '*Devendra Padamchand Jain Vs. State Bank of India*'. This case dealt with an appeal by the then RP of VNR Infrastructures, against the order of the National Company Law Tribunal (NCLT), Hyderabad bench, removing him and appointing another liquidator.

The NCLAT held that apart from the committee of creditors, the NCLT is also empowered to remove the RP, but it should be for the reasons and in the manner provided under the relevant section. In

this case, RP had failed to properly examine the resolution plan and had not stated that the plan he submitted met all the requirements of section 30(2) of the Code. The NCLAT held that the NCLT has jurisdiction to remove the RP if it is not satisfied with its functioning, which amounts to non-compliance with section 30(2) of the Code.

### **Answer 3(e)**

The facts of the case are similar to that of the *Y. Shivram Prasad & Ors. Vs. S. Dhanapal & Ors. (Company Appeal (AT) (Insolvency) No. 224 of 2018 dated 27 February, 2019)*

In this case the NCLAT passed the impugned order of liquidation as Committee of Creditors did not find any resolution plan viable and feasible. The promoters submitted that they should have been given an opportunity to settle the dues.

While rejecting the said submission, the NCLAT clarified that settlement can be made only at three stages, i.e.,

- (i) Before admission of application under Sections 7 or 9 or 10.
- (ii) After settlement if reached by Promoters / shareholders with the Applicant but before the constitution of the 'Committee of Creditors' in view of decision of the Hon'ble Supreme Court in "*Swiss Ribbon Pvt. Ltd. & Anr. v. Union of India & Ors. Writ Petition (Civil) No. 99/2018 (2019 SCC OnLine SC 73)*"
- (iii) In terms of Section 12A of the Insolvency and Bankruptcy Code, 2016.

and such stages were over in this instant matter.

It, however, observed that during the liquidation process, it is necessary to take steps for revival and continuance of the Corporate debtor by protecting it from its management and from a death by liquidation.

The NCLAT upheld the NCLT's decision, ruling that the promoter's ineligibility under Section 29A extended to the process of compromise and arrangement under Section 230 during liquidation.

In essence, the case highlights the principle that the control of a corporate debtor should not be returned to the same entity that contributed to its insolvency, even during the liquidation process.

### **Question 4**

- (a) PQR Private Limited (PQR) has requested the Managing Director of MNC Private Limited (MNC), who is good friend of PQ, who is Managing Director of PQR to invest in the shares of PQR. On the request of PQR, the funds were infused by the MNC, as share application money. In return, the PQR had allotted 3000 equity shares for an amount of ₹ 6.97 Lakh in the share capital of the PQR to the MNC.

Subsequently, another sum of ₹ 1.32 Crore was paid as share application money by the MNC for allotment of equity shares as share application money. No shares were however allotted by the PQR but ₹ 40 Lakh was refunded by the PQR from the said share application money. The PQR was not able to refund the balance amount of ₹ 92 Lakh. The PQR not being in a position to refund the balance amount of share application money purportedly on account of liquidity crunch, instead agreed to allot shares for the balance amount subject to the MNC providing additional funds to the PQR. The MNC thereafter provided additional funds of ₹ 79.60 Lakh which were paid in several instalments. Since neither the shares were allotted nor the share application money was refunded, the MNC sent a Demand Notice to the PQR for repayment of the share application money. Since the Corporate Debtors failed to repay the amount, the MNC filed an application under Section 7 of the Code before the Adjudicating Authority.

Whether the share application money which was deposited with the PQR by the MNC fell in the category of Section 5(8) of the Insolvency and Bankruptcy Code, 2016.

(5 marks)

- (b) DSP Private Limited (the Corporate Debtor) underwent a corporate insolvency resolution process (CIRP) in 09.12.2021 initiated by a financial creditor. A Resolution Plan was put forth by MM Limited, a Resolution Applicant which was approved by the Adjudicating Authority.

Prior to the commencement of the CIRP, on 20.10.2017 various First Information Reports (FIR) alleging offenses including cheating and criminal breach of trust were filed against the Corporate Debtor and its former promoters.

These offenses fell under the "scheduled offenses" as per Prevention of Money Laundering Act, 2002 (PMLA). Consequently, an Enforcement Case Information Report (ECIR) was filed by the Enforcement Directorate (ED) on 08.03.2018. The ECIR estimated the "proceeds of crime" to be approximately ₹ 9000 Crore. As a result of the ECIR, the ED filed an "original complaint," leading to attachment proceedings against the assets of the Corporate Debtor. This included four bank accounts and 14 flats constructed by the Corporate Debtor valued at ₹ 35 Crore referred to as the "Attached Properties".

The attachment was initially provisional under Section 5 of the PMLA on 14.02.2019 and later confirmed by an order dated 05.08.2019 passed by the Adjudicating Authority. The attachment persisted even after the initiation of the CIRP and continued after the approval of the Resolution Plan.

MM Limited, the Resolution Applicant had filed Writ Petition in the High Court against the Adjudicating Authority under the PMLA, 2002 and the Deputy Director, Enforcement Directorate to quash the ECIR, the orders attaching the Attached Properties and the "original complaint", based on which the attachment was effected as they relate to the Corporate Debtor and its assets and to release the Attached Properties.

On the above background, referring to the High Court's decision state whether the NCLT has the jurisdiction to direct the Enforcement Directorate to release the attached properties once the Resolution Plan in respect of said Corporate Debtor is approved ?

(5 marks)

- (c) The City Development Authority (CDA / Lessor) entered into a lease deed with ABC Private Limited (the Corporate Debtor / Lessee) in respect of a piece of land for the purpose of constructing residential flats according to the setbacks and building plan approved by the lessor.

The lessee was to pay the lease premium of ₹ 24.29 Crore, out of which 10% i.e. ₹ 2.42 Crore was paid by the lessee to the lessor with a moratorium of 24 months from the date of allotment and after the expiry of moratorium period, the balance 90% premium i.e. ₹ 21.86 Crore of the plot along with interest was to be paid in the manner provided in the lease deed.

In the meantime, an application filed under Section 7 of the Code against the Corporate debtor was admitted on 10.10.2019. The CDA put up its claim of ₹ 32.96 Crore assessed on 10.10.2019 to the RP on 31.12.2019.

The RP invited for Expression of Interest (EOI) and Resolution Plans were submitted by few Resolution Applicants. Resolution Plan submitted by the consortium of home buyers' association, namely, Crossroad Welfare Society was approved by the CoC and thereafter, the RP filed an application before the Adjudicating Authority seeking its approval. The said application is pending.

Meanwhile, CDA submitted a letter dated 04.06.2021 to the RP highlighting its dues towards lease premium calculated from 11.10.2019 to 30.06.2021 amounting to ₹ 16.15 Crore, which is payable within a period of 15 days. However, the said dues were not paid within the stipulated period, therefore, the CDA presumed that the RP has declined the same and filed the application before the Adjudicating Authority on 27.09.2021.

The Adjudicating Authority stated that in terms of explanation of Section 14(1) of the Code, the applicant is entitled to get lease premium amount as well as lease rent arising for the use or continuation of the lease during the moratorium period and in case of non-payment the moratorium benefit will not apply for the suspension or termination of lease. The Adjudicating Authority ordered that the Resolution Professional has failed to pay the lease premium and lease rent due to the CDA, therefore, the Resolution Professional is directed to make the payment of the lease amount within 6 months or else include the said amount as Insolvency Resolution Process Cost under Regulation 31 of the IBBI (Insolvency Resolution Process of Corporate Person).

On the above background, state whether the Adjudicating Authority has rightly applied the explanation under Section 14(1)(d) of the Code for the purpose of directing the Resolution Professional to pay the lease premium amount and the lease rent to the CDA ?

*(5 marks)*

- (d) The Insolvency and Bankruptcy Code, 2016 (IBC/Code) creates an ecosystem for maximizing the value of assets of the corporate debtor (CD) and balancing the interests of all stakeholders in a time-bound manner. A significant value of insolvent entities is often locked in assets underlying avoidance transactions which are undertaken by the CD prior to the initiation of the Corporate Insolvency Resolution Process (CIRP). The resolution professional (RP) or the liquidator is obliged to file applications, in respect of avoidance transactions (preferential, undervalued, extortionate and fraudulent transactions) found by him during CIRP and liquidation processes before the Hon'ble Adjudicating Authority (AA), seeking appropriate relief permissible under the Code.

While the RP/Liquidator may have filed an application with the AA based on his determination, it may not always be possible for the AA to consider and dispose of the application during the tenure of the CIRP or the liquidation process. Section 26 of the Code clarifies that the filing of an avoidance application by the RP shall not affect the proceedings of CIRP. Avoidance applications and CIRP are a separate set of proceedings and avoidance applications can be continued post-completion of CIRP. The IBC provides that the resolution / liquidation process should not be held up if avoidance transaction applications are pending. During CIRP, if the decision on avoidance transactions is pending before resolution is finalised, the amount would claw back to CD for the benefit of creditors. The CIRP Regulations mandate that a resolution plan should contain the details of the party / person who will pursue these avoidance transactions after the approval of the resolution plan, who will get the proceeds and the manner in which the proceeds, if any, from such proceedings will be distributed. Consequently, after the resolution plan is approved, the RP has no role in pursuing these transactions and creditors/successful resolution applicant (SRA) will have to make their own arrangements to pursue them before the AA.

The amount clawed back would reflect in higher bids. In cases where decision on avoidance transactions is not available, the avoidance transactions being assets of the CD, could be permitted by the CoC to be bid by prospective resolution applicants (PRAs) in the resolution plan. In case the CoC decides to assign the avoidance transactions to a resolution applicant (RA), the specifics of avoidance transactions should be made explicit in the Information Memorandum (IM) and Request for Resolution Plan (RFRP), allowing prospective RAs to

account for the value of avoidance transactions while submitting their plan. The CoC in the resolution plan should not give the proceeds of avoidance transactions to the RA without detailing such transactions in the IM or RFRP and without transparent bidding for such transactions. Another option could be to invite bids for avoidance transactions separately after obtaining the approval of AA and the amount recovered could be appropriated by the creditors post-approval from the AA.

Since avoidance transactions involve significant sums and potentially result in large recoveries, creditors should keep these avoidance transactions to themselves and benefit from the upside.

XYZ Company Limited, who is now under CIRP, The Committee of Creditors on the advice of Resolution Professional as appointed Forensic Auditor to track the transactions and to identify whether any transactions had been done in violations of the Code. The Transactional Auditor has identified few of the transactions under Sections 43, 45, 66 and 50 of the IBC, 2016. Before, the Transactional Auditor submit his report, the Resolution Professional as a Company Secretary sort your suggestions on how the following "Transactions" be divided under four separate categories viz., (a) Preferential Transactions (b) Undervalued Transactions (c) Fraudulent Transactions and (d) Extortionate Transactions, based on the above information.

List of transactions (assume that these transactions are carried within the timelines specified under the Code) :

- (i) Payment to unsecured family loans during the look back period, while the debt of secured creditors is outstanding.
- (ii) Payment of old operational creditors (other than regular business payments against supply of goods or services), while the debt of secured creditors or unsecured financial creditors are outstanding.
- (iii) Payment to an Unsecured Financial Creditor, may be as per pre-fixed loan instalments, while the debt of secured creditors is still outstanding.
- (iv) Sale of fancy and expensive cars owned by the Corporate Debtor to related parties or unrelated parties at a value which is much less than the market value of the car.
- (v) Six months before initiation of Corporate Insolvency Resolution Process, the Managing Director has availed a private finance of ₹ 5 Crore from his relative at the interest rate of 60% p.a. and repayable within 5 years.
- (vi) Payment to those creditors who have security of post-dated cheques signed by the directors.
- (vii) Payment of old tax dues where there exists a risk of prosecution without any order from a court or authority.
- (viii) Transfer of good franchisees to another person at a value which is much lower than the actual value.
- (ix) Transfer of shares of subsidiary companies where the business is lucrative at a price which is less than the actual value.
- (x) Corporate Debtor had bought new Machinery worth ₹ 2 Crore, just one year before initiation of Corporate Insolvency Resolution Process (CIRP), the Chairman of the Company, in order to protect the machinery being part of CIRP, transferred the same to a Company in which majority stake is held by his brother's son for a value of ₹ 50 Lakh payable in 2 instalments.

Write the transaction and then identify the category of each of the transaction.

(1×10=10 Marks)

**Answer 4(a)**

The facts of the case are similar to that of the case of *Murlidhar Vincom Pvt Ltd Vs. Skoda (India) Pvt Ltd, (Company Appeal (AT) (Insolvency) No. 1334 of 2024* judgement dated November 26, 2024).

In this case the question before the NCLAT was whether share application money can be treated as financial debt under IBC, where such money had not been refunded within the period prescribed under Section 42 of the Companies Act, 2013 read with Companies (Acceptance of Deposit) Rules, 2014.

Hon'ble NCLAT inter alia observed that when we look at Rule 2(c)(vii) of the Companies (Acceptance of Deposit) Rules, 2014 and the explanatory clause appended thereto, it becomes clear that it refers to any amount received and held pursuant to an offer made in accordance with the provisions of the Companies Act, 2013 towards subscription to any securities, including share application money. It flows therefrom that for the aforementioned CADR Rules to be attracted in respect of share application money, there has to be a clear nexus to show that the share application money amount was advanced in conformity with the relevant provisions of the Companies Act, 2013. When we look at Section 42 of the Companies Act, 2013 it is clear that several statutory compliances are required to be met prior to issue of shares on private placement basis. Section 42(2) of the Companies Act stipulates the requirement of issue of private placement offer letter in such cases. From the records available on file, we do not find that the Corporate Debtor had issued any such private placement offer letter to the Appellant. There is no evidence of any valid concluded agreement between the two parties with respect to allotment of shares. Hence, the amount which was advanced by the Appellant cannot be treated to be amount in response to the private placement offer. Rule 2 of CADR Rules envisages that only if any amount is received pursuant to any private placement offer made in accordance with the provisions of the Companies Act, 2013 and no shares are allotted qua that amount, only then the sum becomes a deposit. When no proof of any private placement offer made in accordance with the provisions of the Companies Act, 2013 has been placed on record by the Appellant, the CADR Rules cannot be held to be applicable. Since the amount advanced cannot be related to Section 42 of the Companies Act, the applicability of Section 42(6) cannot be pressed as is being sought by the Appellant in the present case.

NCLAT did not find any infirmity in the order of the Adjudicating Authority rejecting the Section 7 application of the Appellant. It shall however remain open to the Appellant to seek refund/recovery of the share application money in appropriate proceedings before an appropriate forum in accordance with law. There is no merit in the Appeal. The Appeal is dismissed.

Share application money which was deposited with the PQR by the MNC is not considered 'financial debt' under Section 5(8) of the Insolvency and Bankruptcy Code.

**Answer 4(b)**

The facts of the case are similar to the case of *Mr. Shiv Charan & Ors Vs. Adjudicating Authority under the Prevention of Money Laundering Act, 2002 & Ors, Writ Petition (L) No.9943 of 2023* along With Writ Petition (L) No.29111 of 2023 judgement dated March 01, 2024.

In this case the Hon'ble Bombay High Court inter alia observed that Section 32A (2) of the IBC, 2016 protects the property of the corporate debtor from any attachment and restraint in proceedings connected to the offense committed prior to the commencement of the CIRP. Once a resolution plan is approved under Section 31 and a change in control and management is effected under the resolution plan (the same ingredients as set out in Section 32A (1) are stipulated here too), the property of the corporate debtor would get immunity from further prosecution of proceedings. Clause (i) in the Explanation to Section 32A (2) removes all doubt about what the assets are given immunity from. The provision explicitly stipulates that an "action against the property" of the corporate debtor, from which immunity would be available, "shall include the attachment,

seizure, retention or confiscation of such property under such law" as applicable. The reference being to any action against the property under any law would evidently bring within its compass, attachments made under the PMLA, 2002.

Further the Hon'ble High Court in its summary of conclusions inter alia held that the NCLT in its capacity as the Adjudicating Authority under the IBC, 2016 has only interpreted the provisions of Section 32A and applied them to the facts at hand, to declare that the attachment of the Attached Properties by the ED must come to an end. It is possible that in a given case, the application of Section 32A of the IBC, 2016 may have an effect on existing and intended attachments and prosecution by enforcement agencies operating under laws such as the PMLA, 2002. However, since both Section 32A and Section 60(5) are non-obstante provisions, they would prevail, with no room for concern, real or imagined, about any conflict between legislations.

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

The facts of the case are similar to the case of *Sunil Kumar Agrawal (Appellant) Vs. New Okhla Industrial Development Authority (Respondent)* 12th January, 2023, National Company Law Appellate Tribunal, Principal Bench, New Delhi Company Appeal (AT) (Ins.) No. 622 of 2022.

The Hon'ble National Company Law Appellate Tribunal inter-alia observed that Section 14 of the Code deals with the moratorium and Section 14(1)(d) of the Code says that there would be a prohibition from the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor. However, explanation appended to Section 14(1) (d) says that with the prohibition of recovery of any property by an owner or lessor, a license, permit, registration, quota, concession, clearance or a similar grant or right either given by the Central Govt., State Govt. local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency but there would be a condition for its continuation if there is no default in payment of the dues of such license, permit, registration, quota, concession, clearance or a similar grant or right during the moratorium period. The similar grant or right has to be read in respect of the licence, permit, registration, quota, concession, clearance but it cannot be read as the premium amount or lease rent which has been so ordered by the Adjudicating Authority to be paid by the Appellant to the Respondent.

Regulation 31(b) of CIRP Regulations provides for Insolvency resolution process costs. "Insolvency resolution process costs" under Section 5(13)(e) shall mean amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d).

Therefore, the Adjudicating Authority has rightly applied the explanation under section 14(1)(d) of the Code in the given question for the purpose of directing the Resolution Professional to pay the lease premium amount and the lease rent to the CDA.

#### **Answer 4(d)**

Categorization of PUFÉ Transactions:

<b>Sl. No.</b>	<b>Transaction given in the question</b>	<b>Category</b>
(i)	Payment to unsecured family loans during the look back period, while the debt of secured creditors is outstanding.	Preferential Transaction
(ii)	Payment of old operational creditors (other than regular business payments against supply of goods or services), while the debt of secured creditors or unsecured financial creditors are outstanding.	Preferential Transaction

Sl. No.	Transaction given in the question	Category
(iii)	Payment to an Unsecured Financial Creditor, may be as per pre-fixed loan instalments, while the debt of secured creditors is still outstanding.	Preferential Transaction
(iv)	Sale of fancy and expensive cars owned by the Corporate Debtor to related parties or unrelated parties at a value which is much less than the market value of the car.	Undervalued Transaction
(v)	Six months before initiation of Corporate Insolvency Resolution Process, the Managing Director has availed a private finance of ₹ 5 Crore from his relative at the interest rate of 60% p.a. and repayable within 5 years.	Extortionate Credit Transaction
(vi)	Payment to those creditors who have security of post-dated cheques signed by the directors.	Preferential Transaction
(vii)	Payment of old tax dues where there exists a risk of prosecution without any order from a court or authority.	Preferential Transaction
(viii)	Transfer of good franchisees to another person at a value which is much lower than the actual value.	Undervalued Transaction
(ix)	Transfer of shares of subsidiary companies where the business is lucrative at a price which is less than the actual value.	Undervalued Transaction
(x)	Corporate Debtor had bought new Machinery worth ₹ 2 Crore, just one year before initiation of Corporate Insolvency Resolution Process, the Chairman of the Company, in order to protect the machinery being part of CIRP, transferred the same to a Company in which majority stake is held by his brother's son for a value of ₹ 50 Lakh payable in 2 instalments.	Fraudulent - Undervalued Transaction

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