GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

Syllabus 2022

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GROUP 2

भारतीय कम्पनी सचिव संस्थान
THE INSTITUTE OF
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

CONTENTS

Group 2

The Guideline Answers contain information based on the Laws/Rules applicable at the time of preparation and should be treated as indicative rather than exhaustive. The Students may note that the applicability of amendments to laws for CS Examinations is as under:

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**

Total number of questions : 6

NOTE : *Answer ALL Questions.*

PART–I

Question 1

Case Study :

(a) Neel Ltd., is a business organized as three divisions and head office. The divisions are based on market groupings, which are Retail, Wholesale and Government. The divisions do not trade with each other.

The main method of control of the divisions has been the requirement to earn a Return On Investment (ROI) of 18% p.a. The definition of return and capital employed is provided by head office and the criterion ROI rate of 18%.

The recent experience of Neel Ltd., is that the group as a whole has been able to earn the 18% but there have been wide variations between the results obtained by different division. This infringes another group policy that forbids cross-subsidization, i.e., each and every division must earn the criterion ROI.

Neel Ltd. is now considering divestment strategies and this could include the closure of one or more of its divisions.

The head office is aware that the Boston Product Market Portfolio Matrix (BPMPM) is widely used within the divisions in the formulation and review of marketing strategies. As it is so widely known within the group and is generally regarded by the divisions as being useful, the head office is considering employing this approach to assist in the divestment decision.

You are required to :

(i) Evaluate the use of the concept of ROI by Neel Ltd. and its policy that forbids cross-subsidization.

(ii) Describe the extent to which BPMPM could bc applied by Neel Ltd. in its divestment decision. Evaluate the appropriateness of the use of the BPMPM for this purpose.

(iii) Recommend and justify, two other models viz., porter's five forces model & the product life cycle model that could be used in making a divestment decision. Demonstrate how Neel Ltd. could utilize these models to make this decision.

(2+4+4=10 marks)

(b) *InfiniTech Systems Ltd., headquartered in Hyderabad, is a mid-sized Indian technology company specializing in enterprise software. The management is considering a ₹ 100 crore investment into developing an AI-powered compliance and HR analytics platform for large corporates and government institutions. The platform promises to automate payroll, employee records, and compliance filings, while also offering predictive insights into workforce productivity.*

The Board is aware that Artificial Intelligence (AI) is reshaping the business landscape globally. AI adoption is not just about technology—it requires alignment with business strategy, ethical considerations, data management and competitive positioning. InfiniTech's leadership team has therefore decided to evaluate the project using the nine areas of AI business strategy and competitive positioning principles.

- ***Business Strategy Alignment** : The company must ensure that its AI initiative supports its long-term vision of becoming a leader in compliance automation.*
- ***Strategic AI Priorities** : Key priorities include automating repetitive HR tasks, developing smarter compliance tools and enhancing decision-making for clients.*
- ***Short-term Adoption** : Quick wins could include automating payroll reconciliation and compliance reporting for small clients to demonstrate value.*
- ***Data Strategy** : AI requires large volumes of accurate employee and compliance data. InfiniTech must decide whether to collect data internally or partner with third-party providers.*
- ***Ethical & Legal Issues** : Privacy concerns, bias in algorithms, and legal compliance with Indian data protection laws must be addressed.*
- ***Technology Issues** : The firm must evaluate whether it has the infrastructure for machine learning and deep learning models.*
- ***Skills & Capacity** : Skilled AI engineers are scarce in India, and InfiniTech may need to hire or partner with cxternal providers.*
- ***Implementation** : Clear accountability and phased rollout are essential.*
- ***Change Management** : Employees and clients may resist AI adoption due to job security concerns, requiring effective communication and training.*

The Board must decide whether this investment positions InfiniTech competitively in the Indian market or exposes it to risks of rivalry, substitutes and buyer power.

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

(i) *Why must InfiniTech align its AI initiative with overall business strategy before investing ₹ 100 crore ?*

(ii) *Identify two strategic AI priorities that InfiniTech should focus on to strengthen competitive positioning.*

(iii) Explain the importance of a data strategy in ensuring successful AI adoption in compliance and HR analytics.

(iv) What ethical and legal issues must InfiniTech address while deploying AI solutions in India ?

(v) Based on competitive positioning principles, evaluate whether InfiniTech's AI project is attractive or unattractive for long-term profitability.

(2×5=10 marks)

Answer 1(a)(i)

Evaluation of the use of the concept of ROI by Neel Ltd.

ROI is an accounting measure that estimates the level of profits as a proportion of the capital employed over the year. Neel Ltd. uses ROI to check how well its divisions perform, which is a common practice. ROI shows profits compared to the capital used, but results can differ. A division that buys new assets may show lower ROI, while one with older, written-off assets may look better. Risk levels also vary between divisions.

ROI and cross subsidization:

Cross-subsidization makes ROI more complicated. If the head office controls investments, one division's profits may be used to fund another. This can seem unfair, but it also helps the company overall. Divisions with different business cycles can support each other, ensuring shareholders get steady returns. Use of ROI at each division will help in identification of financial health of each division.

Answer 1(a)(ii)

Application of Boston Product Market Portfolio Matrix (BPMPM) by Neel Ltd. in its divestment decision:

BPMPM aims to link the overall growth of the market for a product, the growth in the market share of a product, with the product's cash-generative activities. BPMPM classifies a company's products in terms of potential cash generation and cash expenditure requirements into cash cows, dogs, stars and question marks.

- **Stars:** High market share in a growing market. They need heavy investment now but can deliver big returns later. Over time, they often turn into cash cows.
- **Cash cows:** High market share but low growth. They need little investment and generate strong cash flow, which can fund stars.
- **Question marks:** Low market share in a growing market. The firm must decide whether to invest heavily to grow them or let them fade.
- **Dogs:** Low share in a stagnant market. They usually drain resources and should be phased out.

Appropriateness of use of BPMPM

BPMPM is conventionally assumed to apply to products and it is perhaps unusual to see it applied to businesses and divisions. The problem is that we do not know enough about the firm's product range to suggest how the matrix could be applied.

Rather than assuming that a whole division is a dog and divesting it, it is possible that a thorough review of the product range of each division could be examined to see whether certain products can be pruned from the range. BPMPM should not be used in isolation. Further it needs to be modified from time to time.

Answer 1(a)(iii)

Models for making a divestment decision:

Many models are available, which could be used by the company in making a divestment decision. Two such models could be:

- Porter's five forces model
- The product life cycle model

(a) Porter's Five Forces Model:

This model can be used to place each division in the competitive context. The five forces model suggests that the competitive environment is determined by five factors viz.,

1. Threat of new entrants,
2. Threat of substitute products,
3. Bargaining power of customers,
4. Bargaining power of suppliers and
5. State of competitive rivalry within the industry.

The value of this model is that it examines each division's strengths in a competitive context. If the trend is for entry barriers to get lower, or if a major new entrant is on the horizon, this must influence the divestment decision, if the business is a marginal player in the market or if the resources required to fight off such a challenge are too expensive.

Similarly, if the customers are powerful or suppliers are powerful, then the margins would get eroded steadily and firm's business would become less attractive. Further, if the threat of substitute products becomes serious, then divestment might become a sensible choice.

(b) The Product Life Cycle:

This model bears similarities to the BCG matrix and suggests that a firm's products have a natural life cycle that can be analysed into the phases of introduction/ Embryonic, growth, maturity and decline/aging. In the introduction/embryonic phase, the product is introduced in the market. There is no or little competition. In the growth phase, market is strengthening as the sales increases. At maturity stage the market is completely stable with well-established base of customers and market shares are also stable. Customers are making repeated orders, but, with a lot of competitors, the company has to make efforts in differentiating their product from competitors. In the decline/aging phase, market volume shrinks as the demand declines.

Thus Neel Ltd. can use this model to examine the condition of the products in each of the divisions.

Answer 1(b)

(i) **Business Strategy Alignment:** Before investing ₹100 crore, the company must ensure that its AI initiative is supporting InfiniTech's long-term vision. Applying AI to outdated or irrelevant goals waste resources. To get the optimum use of AI, it must be aligned with overall business strategy and long-term goals.

(ii) **Two Strategic AI Priorities** that InfiniTech should focus on to strengthen competitive positioning are Automating repetitive HR tasks and developing smarter compliance tools.

(iii) **Data Strategy**: Successful AI adoption in compliance and HR analytics through data strategy will help to automate payroll, employee records and compliance filings and also offers predictive insights into workforce productivity. InfiniTech must ensure that accurate employee and compliance data is collected, either internally or partnering with third-party.

(iv) **Ethical & Legal Issues**: Privacy concerns, bias in algorithms, and legal compliance with Indian data protection laws must be addressed while deploying AI system in India. Consent from employees and clients is critical for large corporates.

(v) **Industry Attractiveness**: From a long-term profitability perspective, the project presents both challenges and opportunities. Rivalry within the industry and strong buyer power could pressure margins, yet differentiation through compliance automation offers a sustainable competitive advantage. If implemented with ethical standards and strategic foresight, the project can secure recurring demand by addressing regulatory complexity. Moreover, as AI continues to reshape industries, firms that leverage it effectively are positioned to capture enduring value.

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

Question 2

(a) XYZ Ltd., a listed company, has the following net profits (as per Section 198) :

- *FY 2021-22 : ₹ 6 crore*
- *FY 2022-23 : ₹ 9 crore*
- *FY 2023-24 : ₹ 15 crore*

During FY 2024-25, the company undertook CSR activities as follows :

1. *₹ 25 lakh spent on construction of a school building (owned and controlled by the company)*
2. *₹ 12 lakh spent on training employees' children*
3. *₹ 18 lakh contributed to a registered NGO for rural healthcare*
4. *₹ 10 lakh spent on an ongoing project (sanitation project) not completed during the year*
5. *₹ 6 lakh transferred to PM CARES Fund*
6. *₹ 4 lakh administrative overheads*
7. *₹ 5 lakh surplus generated from CSR activities during the year*

Additional Information :

- *The ongoing project was approved by the Board.*
- *The company failed to transfer unspent amount (if any) within the prescribed time.*
- *Assume CSR rules are fully applicable.*

Required :

(i) *Compute minimum CSR obligation*

(ii) *Compute eligible CSR expenditure*

(iii) *Determine unspent CSR amount*

(iv) *State treatment of :*

- *capital asset created*
- *ongoing project*
- *surplus arising*

Explain penal consequences for non-compliance.

(5 marks)

(b) *Mehta Appliances Ltd., a Bengaluru-based home electronics company, plans to expand operations through an e-commerce platform.*

As a strategy consultant, explain the three broad questions the company should address under the e-commerce strategy framework.

(5 marks)

(c) *ABC Textiles Ltd., a Coimbatore-based cotton yarn manufacturer, has been facing market fluctuations due to rising competition and changes in export demand. The management*

is reviewing its strategic options and is considering whether to maintain its current operations, expand into new product lines, or exit unprofitable divisions.

Advise the management on the four grand strategic alternatives available to the company according to Glueck and Jauch's framework (1984). Briefly explain each alternative with reference to the given scenario.

(5 marks)

(d) *PQR Ltd. is benchmarking its operational and financial performance against the best-in-class competitor XYZ Ltd. The following data is available :*

Particulars	***PQR Ltd.***	***XYZ Ltd.***
Sales (₹ crore)	*50*	*50*
Operating Cost (₹ crore)	*40*	*32*
Operating Profit (₹ crore)	*10*	*18*
Inventory Turnover (times)	*4*	*8*
Customer Complaint Rate (%)	*5%*	*1%*
Employee Utilisation (%)	*60%*	*85%*

Additional Information :

- *Industry requires minimum operating margin of 30%*
- *Cost of improvement programme = ₹ 3 crore*
- *Expected cost reduction potential = 15% of current cost*

Required :

(i) *Identify efficiency and profitability gaps*

(ii) *Evaluate whether PQR Ltd. meets industry standards*

(iii) *Compute expected benefit from improvement programme*

(iv) *Recommend strategic actions based on benchmarking*

(1+1+1+2=5 marks)

OR (Alternative question to Q. No. 2)

Question 2A

(i) *What is Strategic Gap ? Explain the meaning, causes and significance of strategic gap in strategic management theory.*

(5 marks)

(ii) *How does PESTLE framework assist the management of a company in analysing the external micro environment of a business ?*

(5 marks)

(iii) *Explain Ansoff Growth Matrix. How does it help organisations in choosing growth strategies ? Are there any limitations to this growth strategy ?*

(5 marks)

(iv) *Explain the three pillars of Blockchain Technology and discuss how they contribute to its importance in achieving competitive positioning in modern markets.*

(5 marks)

Answer 2(a)

(i) Minimum CSR obligation

Average Net Profit

Average Profit = (₹ 6 crore + ₹ 9 crore + ₹15 crore)/3 = ₹ 10 crore

Minimum CSR Obligation (2%)

2% × ₹10 crore = ₹20 lakhs

(ii) Eligible CSR Expenditure

a) Analysis of CSR Expenditure & eligibility

Particulars	**Amount (₹ lakh)**	**Treatment**
Construction of a School building	25	Not eligible (capital asset cannot be owned and controlled by the company)
Training Employee's children	12	Not eligible (since exclusive for employee benefits)
Contribution to a registered NGO for rural health care	18	Eligible
Ongoing sanitation project	10	Eligible (subject to transfer rules)
PM CARES Fund	6	Eligible
Administrative overheads	4	Eligible (Permissible5% of total CSR expenditure)
Surplus from CSR activities	(5)	Deduct (not income, must be reinvested)

b) Administrative Overhead Limit

Max. allowed = 5% of total CSR expenditure

Total CSR spend (before adjustment)	=	₹18 + ₹10 + ₹6 + ₹4 = ₹ 38 lakh
Overhead Limit = 5% of ₹38 lakh	=	₹1.9 lakh
Allowed administrative overhead	=	₹ 1.9 lakh (excess i.e. ₹ 4 Lakh – ₹1.9 Lakh = ₹ 2.1 Lakh disallowed)

c) Eligible CSR Expenditure

₹18+₹10+₹6+₹1.9=₹35.9 lakh

Considering that the Company would also be required to spend Surplus of ₹ 5 Lakh and accordingly, the CSR expenditure would be ₹ 35.9 Lakh + ₹ 5 Lakh = ₹ 40.9 Lakh.

(Alternatively, this ₹ 35.9 Lakh may include the Surplus amount of ₹ 5 Lakh. Therefore, in such a case, eligible CSR expenditure would be ₹ 35.9 Lakh)

(iii) Unspent CSR Amount

Minimum CSR obligation for the year	= ₹ 20 Lakh
Add: Surplus (shall be utilized for CSR purposes only)	= ₹ 5 Lakh
Total CSR Obligation	= ₹ 25 Lakh
Amount Actual Spent	= ₹ 40.9 Lakh
Excess	**= ₹ 15.9 Lakh**

(In case alternative answer is chosen above in Sl. No. ii, then Amount Actual Spent would be ₹ 35.9 Lakh and accordingly, excess amount spent would be ₹ 10.9 Lakh)

(iv) Special Treatments

(a) Capital Asset created (School Building)

- Not treated as CSR since owned by company.
- To qualify, it must be held by Section 8 Company / Registered Public Trust / Registered society/Beneficiaries.

(b) Ongoing Project

- ₹ 10 lakh must be transferred to **Unspent CSR** Account within 30 days from the end of the financial year.
- Must be spent within **3 years**.

(c) Surplus from CSR

- Cannot be treated as business profit. It shall be utilized for CSR purposes only.

- Must be reinvested in CSR, or transferred to Unspent CSR Account/specified fund.

(v) Penal Consequences for Non-Compliance

As per Companies (CSR Policy) Rules, 2014, if a company **fails to spend the amount or transfer unspent amount**:

- Company penalty: Lesser of ₹ 1 crore, or twice of unspent amount
- Officer in default: Lesser of ₹ 2 lakh, or 1/10th of unspent amount

Answer 2(b)

According to the e-commerce strategy framework, Mehta Appliances Ltd. must address three interlinked questions to design an effective digital strategy:

i. **Where do we (as a company) want to compete?**

The company must analyze the **macro-environment** (political, economic, social, technological trends), **industry structure** using Porter's Five Forces, and **market segmentation** to decide which online markets or customer segments to target. Analyzing the macro-environment helps us to gain an understanding of trends within the political, economic, social or technological spheres.

ii. **What type of value do we(as a company) want to create?**

The company should address two relevant topics to respond to this query. These are value creation in e-business and strategy options for value creation. The first topic will examine the economic value that a corporation generates in order to determine its potential to gain a competitive edge. The second one aims to choose the appropriate strategy which will create value for customers - either through **cost leadership** (competitive pricing, efficiency) or **differentiation** (unique features, superior service). This involves understanding what drives customer benefits and costs.

iii. **How should we (as a company) set up and organize to deliver the desired value?**

The company must decide on its **horizontal boundaries** (scale and growth scope), **vertical boundaries** (which activities to outsource or keep in-house), and **internal organization** (structure, distribution, and digital interaction with customers and partners).

An integrated approach to these three questions ensures that e-commerce strategy aligns with both market opportunities and internal capabilities.

Answer 2(c)

According to Glueck & Jauch (1984), an organization can choose from four grand strategic alternatives while planning at the corporate level:

1. **Stability Strategy**

- The stability strategy involves the maintenance of the current business definition by safeguarding the existing interests and strengths. It continues to peruse its well established tested goals and optimizes the resources committed to attain such goals.

Example: ABC Textiles Ltd. continues its current yarn production, improving productivity and cost efficiency instead of entering new markets.

2. Internal Growth Strategy

- An internal growth strategy involves re-defining of business definition by substantially scaling the level of operations through internal development and not taking help of other corporations or businesses. Market penetration, market development and product development are emphasised to develop new products, enter new markets and embracing new technology.

  Example: ABC Textiles Ltd. launches a new range of blended fabrics or invests in new spinning technology to grow organically.

3. External Growth Strategy

- The company grows by acquiring, merging, or forming joint ventures with other businesses.

  Example: ABC Textiles Ltd. acquires a smaller dyeing unit or partners with a garment manufacturer for forward integration.

4. Retrenchment Strategy

- The firm reduces its scope or scale of operations to improve profitability, either through cost reduction, divestment, or liquidation.

  Example: ABC Textiles closes an underperforming unit or sells a non-core product line to stabilize finances.

Glueck & Jauch's framework helps management align strategy with business performance and market realities by choosing between stability, growth, or retrenchment options.

Answer 2(d)

(i) Efficiency & Profitability Gaps

Gap in Operating Cost = ₹40 - ₹32 = ₹8 crore (Higher cost)

Gap in Operating Profit = ₹18 – ₹10 = ₹8 crore (Lower profit)

Gap in Inventory Turnover = 4 times vs. 8 times (Slow inventory movement)

Customer Complaint rate= 5% vs. 1% (Less satisfaction among customers/quality issue)

Employee Utilization = 60% vs. 85% (Underutilization)

(ii) Operating Margin Analysis

Operating Margin = Operating Profit/ Sales x 100

Operating Margin of PQR Ltd. = (₹10/ ₹50) × 100 = 20%

Industry requirement = 30%

PQR Ltd. doesn't meet industry standards in terms of operating margin.

(iii) Expected benefit from Improvement Program

Current operating cost = ₹ 40 crore

Cost reduction potential = 15% of ₹ 40 crore =₹ 6 crore

Cost of Improvement programme = ₹ 3 crore

Expected benefit from Improvement Program = ₹ 6 - ₹ 3 = ₹ 3 crore

(iv) Recommended Strategic Actions based on Benchmarking

Cost Efficiency: Adopt lean systems to reduce the gap in operating cost of ₹ 8 crore

Inventory Management: Implement Just in Time (JIT) or Economic Order Quantity (EOQ) model to improve turnover

Quality Improvement: Reduce complaints via Total Quality Management (TQM)/Six Sigma

HR Utilization: Improve workforce productivity

Process Re-engineering: Align operations with best practices

Answer 2A(i)

Meaning of Strategic Gap

A strategic gap refers to the difference between the desired future performance of an organisation and its expected current performance level, if no new strategies are implemented.

It highlights the gap between where a firm is currently situated where it should be situated for sustainable, long-term growth. The strategic gap arises when existing strategies are insufficient to achieve organisational goals. The gap can be identified through tools like forecasting, budgeting, and environmental analysis. It signals the need for strategic change or intervention.

Causes of Strategic Gap

The strategic gap may be occurred due to :

- change in external environment (competition, technology, regulation)
- inefficient internal resources or capabilities
- over- ambitious goals or poor planning.

Significance of Strategic Gaps

The significance of strategic gap inter-alia includes the following:

- It helps management in early identification of performance shortfall.

- It encourages formulation of new strategies (expansion, diversification, cost reduction, etc.)
- It aids in better resource allocation and planning.
- It improves long-term sustainability and competitiveness.

Thus, strategic gap acts as a critical diagnostic tool in strategic management, enabling organisations to take proactive steps to align their current performance with future objectives.

Answer 2A(ii)

The PESTLE framework assists in analyzing the macro-environment by systematically evaluating six external factors that impact an organization's operations and strategy as under:

1. **Political Factors**: This includes government policies, regulations, political stability, and taxation. Understanding these factors helps organizations to anticipate regulatory changes and government interventions that could affect their business environment.
2. **Economic Factors**: This involves assessing economic conditions such as interest rates, inflation, exchange rates, economic system, polies and growth. These factors influence business costs, consumer purchasing power, and overall market conditions.
3. **Social Factors**: This examines demographic trends, lifestyle changes, cultural norms, and consumer attitudes. Insights into social factors help businesses align their products and services with evolving consumer preferences and societal trends.
4. **Technological Factors**: This includes technological advancements, innovation rates, and technological infrastructure. These factors impact production processes, product development, and competitive positioning.
5. **Legal Factors**: This involves understanding business laws, employment regulations, health and safety standards, and compliance requirements. Legal factors are crucial for ensuring regulatory compliance and avoiding legal risks.
6. **Environmental Factors**: This covers ecological issues, sustainability practices, and environmental regulations. Awareness of environmental factors helps businesses adapt to climate change and meet sustainability goals.

By analyzing these factors, the PESTLE framework provides a comprehensive understanding of the macro-environment, helping organizations anticipate changes, adapt strategies, and make informed decisions.

Answer 2A(iii)

The Ansoff Growth Matrix, developed by Igor Ansoff, is a strategic planning tool used to identify and evaluate growth opportunities based on products and markets. The four Strategies include:

1. **Market Penetration (Existing Product – Existing Market)**

   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; and who have need of product but aren't buying it yet. The emphasis is on escalating market share by making some rigorous marketing promotions, or by creating more customer value.

2. **Market Development (Existing Product – New Market)**

   This strategy helps the business to take the current products and find new markets for them. The strength of this option from the Ansoff Growth matrix is that it puts the pressure on the marketing and sales functions of the business and leaves the operations/supply side to concentrate on what it does best.

3. **Product Development (New Product – Existing Market)**

   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.

4. **Diversification (New Product – New Market)**

   Diversification is the risky growth strategy if it requires the development of new resources and capabilities. This option is the most controversial since diversification involves taking new products to new customers. The big advantage of diversification is that if it is successful, it reduces the overall risk of the business to factors outside of the control of the business like the wider economic environment, climate change etc.

Reasons for choosing Growth Strategies by the organizations

- It helps in systematic evaluation of growth options.
- It assists in risk assessment.
- It provides a clear strategic direction for expansion.

Limitations of Growth Strategy

- It oversimplifies complex business situations.
- It does not consider external environmental factors.
- It ignores internal capabilities and resources.

The Ansoff Matrix provides a structured approach to growth strategy selection, but should be used along with other strategic tools for effective decision-making.

Answer 2A(iv)

The three pillars of blockchain technology are Decentralization, Transparency, and Immutability.

- **Decentralization**: Unlike traditional centralized systems such as banks, blockchain distributes data across multiple nodes. This reduces reliance on intermediaries, lowers costs, and empowers users to directly control transactions, strengthening trust and efficiency.

- **Transparency**: While user identities remain hidden through cryptography, all transactions are visible via public addresses. This ensures accountability and reduces corruption, making blockchain attractive for industries like banking, retail, and government record-keeping.
- **Immutability** : Once data is recorded, it cannot be altered due to cryptographic hashing. This guarantees authenticity and reliability, which is vital for applications such as smart contracts, supply chain auditing, and land title registration.

Together, these pillars enhance security, efficiency, and accountability, enabling blockchain to provide a competitive edge by eliminating middlemen, reducing fraud, and improving service delivery. This positions blockchain as a transformative force across finance, manufacturing, and governance.

PART II

Question 3

(a) Lotus Chemicals Pvt. Ltd., a newly incorporated company, plans raw material purchases of ₹ 400 crores in FY 2025-26. Out of this, 80% will be routed through Letters of Credit (LC), of which 40% will be imports. The lead time, transit time and usance period are as follows :

- *Domestic : Lead time – 1 month; Transit – 1 month; Usance – 1 month*
- *Import : Lead time – 60 days; Transit – 30 days; Usance – 90 days*

(i) Calculate the total LC limit required for the year.

(ii) Breakdown the LC requirement into domestic and import components, considering the effective credit cycle.

(2+3=5 Marks)

(b) Sunrise Textiles Ltd., a listed company, has shares that are not frequently traded. For a preferential issue, the merchant banker has provided the following valuation parameters:

- *Book Value per share : ₹ 120*
- *Comparable trading multiples valuation : ₹ 150*
- *Other customary valuation (DCF method) : ₹ 135*

(i) *Calculate the issue price of the shares as per SEBI Regulation 165.*

(ii) *Explain one adjustment that may be required under Regulation 166 if the company undertakes a stock split after the preferential issue.*

(2+3=5 marks)

(c) A Real Estate Investment Trust (REIT) has the following financial details for FY 2024-25:

- *Total value of real estate assets : ₹ 1,000 crore*

- *Rental income : ₹ 120 crore*
- *Operating expenses : ₹ 30 crore*
- *Interest on borrowings : ₹ 20 crore*
- *Depreciation : ₹ 10 crore*
- *Capital gains from sale of property : ₹ 40 crore*
- *Units outstanding : 10 crore units*

Additional Information :

- *REIT is required to distribute 90% of net distributable cash flows (NDCF)*
- *Out of capital gains, only 50% is considered for distribution*
- *Market price per unit : ₹ 120*

Required :

(i) Compute Net Distributable Cash Flow (NDCF)

(ii) Calculate minimum distribution to unit holders

(iii) Determine Distribution Per Unit (DPU)

(iv) Compute yield to investors.

(5 marks)

Answer 3(a)

(i) Total Letters of Credit (LC) Limit required for the year:

- Estimated raw material purchase = ₹400 crore
- LC purchases/Total LC Limit = 80% of ₹400 crore = ₹320 crore

(ii) Domestic vs. Import LC Requirement

1. Domestic LC
   - Share of domestic = ₹320 crore – ₹128 crore = ₹192 crore
   - Effective cycle = Lead (1 month) + Transit (1 month) + Usance (1 month) = 3 months
   - LC exposure for domestic = ₹192 crore × (3 ÷ 12) = ₹ 48 crore
2. Import LC
   - Share of imports = 40% of ₹320 crore = ₹128 crore
   - Effective cycle = Lead (60 days) + Transit (30 days) + Usance (90 days) = 180 days = 6 months
   - LC exposure for imports = ₹128 crore × (6 x 12) = ₹64 crore

Total LC Limit (with effective credit cycle) = ₹48 crore + ₹ 64 crore = ₹112 crore

Answer 3(b)

(i) Issue Price of the shares as per Regulation 165 of SEBI (ICDR) Regulations, 2018

Regulation 165 of SEBI (ICDR) Regulations, 2018 provides that where the shares are not frequently traded, the price determined by the issuer shall take into account valuation parameters including book value, comparable trading multiples, and such other parameters as are customary for valuation of shares of such companies.

Here, Book Value = ₹120

Trading Multiples valuation = ₹150

DCF Method = ₹135

In this case, the preferential issue price would be **₹150 (highest valuation considered)**.

(ii) Adjustment under Regulation 166 of SEBI (ICDR) Regulations, 2018

Regulation 166 of SEBI (ICDR) Regulations, 2018 provides that the price determined for a preferential issue in accordance with Regulations 164, 164A, 164B or 165, shall be subject to appropriate adjustments, if the issuer, amongst others, divides its outstanding equity shares including by way of stock split. Further the effect on the price of the equity shares of the issuer due to material price movement and confirmation of reported event or information may be excluded as per the framework specified under sub-regulation (11) of regulation 30 of the SEBI (LODR) Regulations, 2015 for determination of the price for a preferential issue in accordance with Regulations 164, 164A, 164B or 165.

If Sunrise Textiles Ltd. undertakes a stock split after the preferential issue, the price determined must be adjusted proportionately to reflect the new number of shares. For example, if one share of ₹150 is split into two shares, the adjusted price would be ₹75 per share.

Answer 3(c)

(i) Net Distributable Cash Flow (NDCF)

Operating Income	
Rental income	= ₹ 120 crore
Less:	
• Operating expenses	= ₹ 30 crore
• Interest on borrowings	= ₹ 20 crore
	=₹120–₹30–₹20 =₹70 crore
Add: Capital Gains Property sale (50% considered)	= ₹40×50% = ₹20 crore
Net Distributable Cash Flow (NDCF)	= ₹70 + ₹20 = ₹90 crore

(Note: Depreciation is non-cash, so ignored)

(ii) Minimum Distribution to unit holders = 90% × 90 = ₹81 crore

(iii) Distribution Per Unit (DPU)

Total units outstanding = 10 crore

Distribution per unit = ₹81 crore /10 crore = ₹8.10 per unit

(iv) Yield to Investors = (₹8.10/₹120)×100=6.75%

Question 4

(a) Ace Tech Pvt. Ltd., is a start up that requires funding of ₹ 5 crore for expansion. The promoters approach the following :

- *An Angel Fund willing to invest ₹ 1 crore at a pre-money valuation of ₹ 4 crore*
- *A Venture Capital Fund (VCF) willing to invest the remaining amount at a post-money valuation of ₹ 10 crore.*

Additional Information :

- *Existing promoters hold 100% equity (1,00,000 shares)*
- *Face value per share = ₹ 10*

Required :

(i) Calculate the post-investment shareholding pattern

(ii) Determine the price per share for Angel Fund and VCF

(iii) Analyse the control implications for promoters.

(1+2+2=5 marks)

(b) Rural Health Impact Foundation (NPO) plans to raise funds through the Social Stock Exchange (SSE).

***Part A** : NPO (ZCZP Instruments)*

- *Project cost : ₹ 3 crore*
  - *Funds raised via Zero Coupon Zero Principal (ZCZP) : ₹ 2.4 crore*
  - *Minimum subscription required : 75%*
  - *Administrative overheads : ₹ 50 lakh*
  - *Actual project spending : ₹ 1.6 crore*
- *Unutilised funds transferred after 8 months to a separate account*

Required :

(i) Evaluate whether NPO issue is successful

(ii) Check compliance of fund utilisation & transfer rules

(iii) Identify non-compliance and consequences.

(1+2+2=5 marks)

(c) *InvITs issue units to the investors for the amount of investments made by them. However these units differ from traditional investments. Explain.*

(5 marks)

Answer 4(a)

(i) Angel Fund Investment

Pre-money valuation = ₹ 4 crore

Investment = ₹ 1 crore

Post-money valuation = ₹ 5 crore

Angel's ownership: 1/5 = 20%

(ii) Shares issued to Angel

Let total shares after Angel investment = X

Promoters holding = 80%

Angel Holding = 20%

Shares issued to Angel = (1,00,000/80) x 20 = 25000 shares

Price per share for Angel Fund

Value per share = ₹1 crore/ 25000 = ₹ 400

Venture Capital Fund Investment

Investment by Venture Capital Fund = ₹ 4 crore

Post-money valuation = ₹ 10 crore

VCF's ownership: 4/10 = 40%

Total shares after VCF investment

Shareholding by Promoters and Angel investors i.e 60% = 1,25,000 shares

Existing shareholders = (1,25,000/60) x 100 = 2,08,333 shares (approx.)

VCF shares = 2,08,333 – 1,25,000 = 83,333 shares

Price per share for VCF

4,00,00,000/83,333 = ₹ 480 per share

Final Shareholding Pattern

Shareholder	**Shares**	**% Holding**
Promoters	1,00,000	48%
Angel Fund	25,000	12%
VCF	83,333	40%
Total	2,08,333	100%

(iii) Control Implications

- Promoters' holding reduced from 100% to 48%
- They lose majority control (<50%)
- VCF becomes a significant shareholder (40%), may demand board seats
- Angel investors have minor but strategic influence

Answer 4(b)

NPO Analysis

(i) **Minimum Subscription** = 75% × ₹ 3 crore = ₹ 2.25 crore

Funds raised via Zero Coupon Zero Principal (ZCZP) = ₹ 2.4 crore

Condition satisfied and NPO issue is successful.

(ii) Administrative Overheads Check

Administrative expenses = ₹ 50 lakh

Funds raised via ZCZP = ₹ 2.4 crore

Administrative overhead in % = (50/240) × 100 = 20.83%

Permissible limit exceeds *(normally capped around 5% considering CSR provisions – Although no such restrictions are there in Social Stock Exchange framework as it can be incurred based on the disclosure made in offer document)*

Fund Utilisation

Funds raised via ZCZP	= ₹ 2.4 crore
Actual project spending	= ₹ 1.6 crore
Unutilized Funds	= ₹ 0.8 crore

Transfer of Unutilized Funds

- Unutilized Funds transferred after 8 months to a separate account (Unutilized amount shall be transferred within 30 days from end of financial year to a separate bank account and then shall be spent over a period of 3 years. Further, if it remain Unutilized, it should be transferred within 6 months to Unspent CSR/SSE account, if not utilized for the purpose)

(iii) Non-compliance identified

Unutilized amount shall be transferred within 30 days from end of financial year to a separate bank account considering CSR provisions. Since there is no specific timeline for the Social Stock Exchange, it may require to be transferred to a separate Bank account immediately. However, the funds are transferred after 8 months which is a non-compliance. SSE framework ensures transparency, accountability, and genuine social impact, and non-compliance can lead to rejection, penalties, or delisting.

Answer 4(c)

Comparative Analysis

Infrastructure Investment Trust (InvITs) vis-à-vis Traditional Investments

Particulars	InvIT units	Direct Investment in Infrastructure segment	Infrastructure Company Equity Shares
Investment Characteristics	• Minimum lot size of 1 unit • Freely transferable listed securities • Professionally managed • No entry / exit load	• Nothing less than one crore (For strata units) • Illiquid & non-transparent market • Hassles in managing assets • Transaction costs involved	• Minimum lot size of 1 share • Freely transferable listed securities • No entry / exit load
Return Profile	• Returns driven by capital appreciation and regular cash distribution (90% mandatory)	• Returns driven by a timely and profitable exit	• Returns driven by capital appreciation and dividends (Not • mandatory)
Tax Efficiency	• Dividends: Exempted# • Interest: Taxable# • Rent: Taxable#	• Rent is taxable	• Dividends are taxable

 # Investors to check the type of income they receive and tax treatment

Question 5

(a) *Arjun Patel wants to apply for shares in the public issue of Surya Limited. The company is offering 4 crore specified securities at ₹ 400 per share, out of which 2.5 crore are reserved for Qualified Institutional Buyers (QIBs) and 40 lakh for Retail Individual Investors (RIIs).*

The offer document specifies that the minimum application value is ₹ 12,000, and applications must be made in multiples of this value.

Based on SEBI ICDR Regulations, answer the following :

(i) *What is the maximum number of specified securities Arjun Patel can apply for in the net offer category ?*

(ii) *What is the maximum number of specified securities that non-institutional investors can apply for in this issue ?*

(iii) How many shares must an investor apply for at minimum, given the application value of ₹ 12,000 and issue price of ₹ 400 per share ?

(1+2+2=5 marks)

(b) (i) Define a dissenting shareholder in the context of SEBI (ICDR) Regulations, 2018.

(ii) Explain the conditions under which promoters or controlling shareholders are required to provide an exit opportunity to dissenting shareholders.

(2+3=5 marks)

(c) (i) Explain Fund Based and Non-Fund Based Credit Facilities.

(ii) Calculate the amount of fund-based and non-fund-based credit facilities availed by Veena Ltd. from Bank from the following details :

Sr. No.	***Credit Facilities Provided by***	***₹ In Lakhs***
1.	*Standby Letter of Credit*	*2.50*
2.	*Clean Overdraft*	*9.80*
3.	*Bank Guarantee*	*12.50*
4.	*Car Loan*	*60.95*
5.	*Letter of Credit*	*22.50*
6.	*Key Cash Credit*	*35.50*
7.	*Post Shipment Packing Credit*	*80.40*
8.	*Suppliers Credit*	*30.50*
	Total Credit Facilities	***254.65***

(2+3=5 marks)

Answer 5(a)

As per Regulation 47 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018, a person shall not make an application in the net offer category for a number of specified securities that exceeds the total number of securities offered to the public. However, the maximum application by non-institutional investors shall not exceed total number of specified securities offered in the issue less total number of specified securities offered in the issue to qualified institutional buyers.

i. Thus, Arjun Patel, being an individual, can apply as a Retail Individual Investor (RII) for specified securities for a value of up to ₹ 2 Lakhs in the category of RII which is 40 lakh specified securities in the given case. Since applications must be in multiples of ₹12,000, Arjun Patel can apply for maximum 16 applications (₹ 2,00,000/ ₹12,000 i.e 16.67), which equals to 480 shares at ₹400 per share (16 applications x ₹12,000 /400) Therefore, Arjun Patel can apply maximum 480 shares in the net offer category.

The maximum number of specified securities which a non-institutional investor can apply are:

Particulars	No. of Specified Securities
Securities offered in the issue (A)	4 crore
Less: Securities offered to QIBs (B)	2.5 crore
Net available to non-institutional investors (A – B)	1.5 crore

Thus, non-institutional investors can apply for a maximum of 1.5 crore specified securities in this issue.

iii. Minimum application size:

$$\text{Minimum shares} = \frac{\text{Minimum application value}}{\text{Issue price per share}}$$

$$= \frac{₹12{,}000}{₹400} = 30 \text{ shares}$$

Therefore, an investor must apply for at least 30 shares, and applications must be made in multiples of 30.

Answer 5(b)

(i) **Dissenting Shareholder:** As per SEBI (ICDR) Regulations, 2018, a dissenting shareholder is one who votes against the resolution for change in objects or variation in the terms of a contract referred to in the offer document of the issuer.

(ii) **Conditions for Exit Offer** : Promoters or shareholders in control must provide an exit opportunity to dissenting shareholders in case only if a public issue has opened after April 1, 2014; if

a. The proposal for change in objects or variation in contract terms is dissented by at least 10% of shareholders who voted in the general meeting.

b. the amount to be utilized for the objects for which the offer document was issued is less than 75% of the amount raised (including the amount earmarked for general corporate purposes as disclosed in the offer document).

Answer 5(c)

(i) Fund based credit facilities are those in which an actual outflow of funds from the bank to the borrower takes place, typically involve cash transactions, whereas non-fund-based facilities are those, which do not involve such immediate outflow of the bank's funds or do not deal with cash transactions or funds. Examples of fund-based facilities are term loans, cash credit and overdraft whereas non-fund-based facilities are letters of credit, bank guarantees etc.

(ii) Calculation of Fund based and non-fund based credit facilities availed by Veena Ltd.

Credit Facilities provided by	**₹ In Lakh**
Fund Based Credit Facilities	
Clean Overdraft	9.80
Car Loan	60.95
Key Cash Credit	35.50
Post Shipment Packing Credit	80.40
Total Fund Based Credit Facilities	**186.65**
Non-Fund Based Credit Facilities	
Stand by Letter of Credit	2.50
Bank Guarantee	12.50
Letter of Credit	22.50
Suppliers Credit	30.50
Total Non-Fund Based Credit Facilities	**68.00**

Hence, Veena Ltd. has availed ₹186.65 Lakhs fund-based facilities and ₹ 68 Lakh Non-Fund-based facilities from Bank.

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

Question 6

(a) *SEBI vide its notification dated October 31, 2025, made certain amendments in Schedule XIII of ICDR Regulations, 2018 pertaining to the allocation of equity shares to the anchor investors. Briefly explain the changes envisaged.*

(b) *SEBI Vide circular dated September 09, 2025, introduced a new framework enabling Category I and II Alternative Investment Funds (AIFs) to offer co-investment opportunities to accredited investors within the AIF structure itself, through the launch of separate Co-Investment Schemes (CIV schemes). Explain any 5 key highlights of this circular.*

(c) *Explain the changes made by SEBI vide its notification Dated 25th November 2025 in the provisions pertaining to qualification and certification requirement for Investment Advisers.*

(5 marks each)

OR (Alternative question to Q. No. 6)

Question 6A

Distinguish between the following :

(i) Letter of Credit (LC) and Letter of Guarantee (LG).

(ii) Hire purchase and Hypothecation.

(iii) Bill Discounting and Factoring.

(5 marks each)

Answer 6(a)

SEBI has made certain amendments in Schedule XIII of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 pertaining to allocation of equity shares to the anchor investors. According to the amended regulations, the allocation to the anchor investors shall be on a discretionary basis, subject to the following:

In case of public issue on the main board, through the book building process:

(i) minimum of 2 and maximum of 15 such investors shall be permitted for allocation up to ₹ 250 crores, subject to minimum allotment of ₹ 5 crores per such investor;

(ii) in case of allocation above ₹ 250 crores, a minimum of 5 such investors and a maximum of 15 such investors for allocation up to ₹ 250 crores and an additional 15 such investors for every additional ₹ 250 crores or part thereof, shall be permitted, subject to a minimum allotment of ₹ 5 crores per such investor.

Further, 40% of the anchor investor portion, shall be reserved as under:

- 33.33% of the anchor investor portion shall be reserved for domestic mutual funds and
- 6.67% shall be reserved for life insurance companies and pensions funds.

Answer 6(b)

SEBI vide circular dated September 09, 2026 introduced a new framework enabling Category I and II Alternative Investment Funds (AIFs) to offer co-investment opportunities to accredited investors within the AIF structure itself, through the launch of separate Co-Investment Schemes (CIV schemes). Key Highlights of the circular are as under:

i. SEBI has permitted Category I and II AIFs to offer Co-Investment facilities within the AIF structure by launching CIV schemes, in addition to the existing Portfolio Management Services (PMS) route.

ii. A Shelf Placement Memorandum must be filed as per the prescribed template by SEBI, that inter-alia includes governance structure, regulatory framework, and principal terms of co-investment.

iii. Each CIV scheme must maintain separate bank and demat accounts, assets must be ring-fenced from other schemes.

iv. Investor's co-investment via CIV schemes in a company must not exceed 3 times their investment in the main AIF scheme, except for:

- Multilateral/ Bilateral Development finance institutions (DFIs)
- Government-owned entities
- Sovereign Wealth Funds and Central Banks

v. Investors excused, excluded, or defaulting in main AIF scheme investment cannot co-invest via CIV in that company. CIVs must not invest in a manner that:

- creates indirect exposure the investor cannot hold directly;
- requires additional disclosure if done directly;
- breaches eligibility norms for direct investment in the investee. Additionally, no leverage or borrowing is allowed by CIV schemes.

vi. Proceeds and rights from CIV investments are pro-rata, subject to carried interest or equivalent, if applicable. Co-investment expenses to be shared proportionally between AIF scheme and CIV scheme based on investment ratio.

vii. CIV schemes must comply with standards (if any) developed by the Standard Setting Forum of AIFs (SFA) in consultation with SEBI. These standards shall be published by industry associations like Indian Venture and Alternate Capital Association (IVCA), Private Equity Venture Capital Chief Financial Officer Association (PEVCCFO), and Trustee Association of India.

viii. AIF trustees/ sponsors must ensure that the Compliance Test Report (CTR) includes adherence to this framework, as per Chapter 15 of the SEBI Master Circular for AIFs.

Answer 6(c)

Amended provisions pertaining to Qualification and certification requirement for Investment Advisers as per Regulation 7 of the SEBI (Investment Advisers) Regulations, 2013

An individual investment adviser or a principal officer of a non-individual investment adviser registered as an investment adviser under these regulations or persons associated with investment advice shall have the following minimum qualifications, at all times:

(a) A graduate degree or any equivalent educational qualification from a university or institution recognized by the Central Government or any State Government or a recognized foreign university or institution or association or CFA Charter from the CFA Institute, and relevant certification from NISM or from any other organization or institution accredited by NISM; or

(b) A Post Graduate Program in the Securities Market (Investment Advisory) from NISM or a Post Graduate Program in Financial Planning from NISM; or any other program of NISM as may be specified by the SEBI.

However, the investment advisers registered as on the date of commencement of these regulations shall ensure that the individual Investment adviser or principal officer of a non-individual investment adviser registered and persons associated with investment advice shall comply with the qualification and experience requirements as per the timelines specified by SEBI. However, the above requirements shall not apply to such existing individual investment advisers as may be specified by the SEBI.

An individual investment adviser or principal officer of a non-individual investment adviser, registered under these regulations, persons associated with investment advice, and in case of investment adviser being a partnership firm, the partners thereof who are engaged in providing investment advice, shall obtain a fresh relevant NISM certification as specified by the Board from time to time before expiry of the validity of the existing certification or within three years from the date of registration certificate , as the case may be, to ensure continuity in compliance with certification requirements.

Answer 6A(i)

Letter of Credit (LC)

A letter of credit is a document from a bank that guarantees payment. A Letter of Credit is issued by a bank at the request of its customer (importer / buyer) in favour of the beneficiary (exporter/seller). Sometimes, a letter of credit acts as a promissory note from a bank. It represents an obligation taken on by a bank to make a payment once certain criteria are met. Once these terms are completed and confirmed, the bank will transfer the funds to the beneficiary. The letter of credit ensures the payment will be made as long as the services are performed.

Letters of credit are especially important in international trade due to the distance involved and potentially differing laws in the countries of the businesses involved. In these transactions, it is not always possible for the parties to meet in person. The bank issuing the letter of credit holds payment on behalf of the buyer until it receives confirmation that the goods in the transaction have been shipped. Letters of credit are used mostly in international trade agreements, whereas bank guarantees are often used in real estate contracts and infrastructure projects.

Letter of Guarantee (LG) (Bank Guarantees)

Bank guarantees are part of non-fund based credit facilities provided by the bank to the customers. Bank issue bank guarantee on behalf of his client as a commitment to third party assuring her/ him to honor the claim against the guarantee in the event of the non-performance by the bank's customer. A Bank Guarantee is a legal contract which can be imposed by law. The banker as guarantor assures the third party (beneficiary) to pay him a certain sum of money on behalf of his customer, in case the customer fails to fulfil his commitment to the beneficiary. Bank guarantees represent a more significant contractual obligation for banks than letters of credit do.

A bank guarantee, like a letter of credit, guarantees a sum of money to a beneficiary; however, unlike a letter of credit, the sum is only paid if the opposing party does not fulfil the stipulated obligations under the contract. This can be used to essentially insure a buyer or seller from loss or damage due to non- performance by the other party in a contract.

Answer 6A(ii)

Hire Purchase

Hire Purchase transactions are very similar to leasing transactions. Like Leasing Finance, in Hire Purchase, the ownership of the vehicle continues to remain with the Leasing Company till the agreement period ends. However, at the end of the stipulated period, the hirer (lessee) has options either to return the asset to leasing company while terminating the agreement or purchase the asset upon terms set out in the hire-purchase agreement. Under Hire Purchase the financing entity may get the benefit of depreciation as well as ownership of the asset financed. Also, banks cannot take advantage of Hire Purchase Arrangement, as ownership aspect of the asset will result in violating permitted line of activity under the banking license granted by RBI.

Hypothecation

Before SARFARSI Act, 2002, this was not defined legally in India. It is a charge on any movable asset of a borrower for which bank has extended its finance. It is an equitable charge on the assets in favor of the financing bank where the asset is owned by the borrower as well as possession is with him on behalf of the bank. If a borrower fails to repay the finance extended for the movable asset the bank can repossess the asset with the consent of the borrower. If the borrower surrenders the asset to the bank, bank has a legal right to sell the asset without the intervention of the court and adjust the proceeds towards the loan dues. Under SARFAESI Act bank also has got the right to sell the movable asset of a defaulted borrower without the intervention of a court subject to following rules laid down in this regard.

Answer 6A(iii)

Bill Discounting and Factoring

Commercial bills are basically negotiable instruments accepted by buyers for goods or services obtained by them on credit. Such bills being bills of exchange can be kept up to the maturity date and encashed by the seller or may be endorsed to a third party in payment of dues owing to the latter. The most common practice is that the seller who gets the accepted bills of exchange discounts it with the Bank or financial institution or a bill discounting house and collects the money (less interest charged for the discounting).

Factoring is a financial transaction wherein an entity sells its receivables to a third party called a 'factor', at discounted prices. Factoring is a financial option for the management of receivables. In simple definition it is the conversion of credit sales into cash. In factoring, a financial institution (factor) buys the accounts receivable of a company (Client) and pays up to 80% (rarely up to 90%) of the amount immediately on formation of agreement.

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CORPORATE RESTRUCTURING, VALUATION & INSOLVENCY

GROUP 2 PAPER 6

Time allowed : 3 hours **Maximum marks : 100**

Total number of questions : 6

NOTE : *Answer ALL Questions.*

PART–I

Question 1

The Indian healthcare sector is undergoing rapid consolidation. ''Aarogya Healthcare,'' a large, publicly listed hospital chain with a strong presence in South India, is looking to expand its reach and service offerings. They have identified ''Swasth Jeevan Clinics,'' a smaller but well-regarded chain of clinics specializing in primary care and diagnostics, as an attractive acquisition target. Swasth Jeevan Clinics has a strong brand reputation in Western India and a loyal patient base.

Aarogya Healthcare believes that acquiring Swasth Jeevan Clinics will:

- *Expand its geographic footprint into Western India.*
- *Diversify its service offerings into primary care and diagnostics.*
- *Gain access to Swasth Jeevan Clinics' established patient base and brand.*
- *Achieve synergies through economies of scale and shared resources.*

The proposed transaction is structured as an amalgamation, where Swasth Jeevan Clinics will merge into Aarogya Healthcare.

Key Individuals:

- ***Dr. Lakshmi Reddy :** CEO of Aarogya Healthcare*
- ***Mr. Sanjay Desai :** CFO of Aarogya Healthcare*
- ***Dr. Priya Sharma :** CEO of Swasth Jeevan Clinics*
- ***Mr. Rohan Verma :** Lead Partner at ''Verma and Associates,'' the investment bank advising Aarogya Healthcare.*

(a) Mr. Rohan Verma from Verma & Associates is preparing a presentation for Dr. Lakshmi Reddy and Mr. Sanjay Desai on the strategic rationale for the acquisition and the key areas of due diligence.

- *Explain three potential synergies that Aarogya Healthcare could achieve through the acquisition of Swasth Jeevan Clinics. Provide examples that are specific and relevant to the healthcare sector only.*

- *Identify two key areas of due diligence that Aarogya Healthcare should conduct on Swasth Jeevan Clinics beyond the standard financial due diligence. Explain why each area is important in this specific acquisition scenario.*

(5 marks)

(b) Aarogya Healthcare is considering offering a combination of cash and stock to acquire Swasth Jeevan Clinics.

- *Discuss two advantages and two disadvantages of using a stock component in the acquisition offer from Aarogya Healthcare's perspective.*
- *What factors should Mr. Sanjay Desai, the CFO of Aarogya Healthcare, consider when determining the appropriate exchange ratio for the stock component of the deal ?*

(5 marks)

(c) The amalgamation of Aarogya Healthcare and Swasth Jeevan Clinics will require regulatory approval.

- *Identify two key regulatory bodies in India that would likely need to approve this transaction.*
- *Explain one potential legal challenge that could arise during the amalgamation process and suggest a strategy to mitigate it.*

(5 marks)

(d) Dr. Priya Sharma, the CEO of Swasth Jeevan Clinics, is concerned about the integration process and ensuring a smooth transition for her employees and patients.

- *Identify two potential cultural differences that could exist between Aarogya Healthcare and Swasth Jeevan Clinics.*
- *For each cultural difference, suggest a specific strategy that Dr. Lakshmi Reddy, the CEO of Aarogya Healthcare, could use to promote a successful integration and minimize disruption.*

(5 marks)

Answer 1(a)

Strategic Rationale and Due Diligence:

- ***Three Potential Synergies:***

  Revenue Synergies through Cross-Referrals: Aarogya Healthcare can leverage Swasth Jeevan Clinics' primary care network to refer patients needing specialized hospital services, increasing patient volume for Aarogya. Swasth Jeevan Clinics can refer patients needing advanced diagnostics or tertiary care to Aarogya.

  Example: A patient visiting Swasth Jeevan Clinic for a routine check-up is diagnosed with a heart condition and referred to Aarogya Healthcare's cardiology department.

Cost Synergies through Centralized Procurement: Combining the purchasing power of both organizations can lead to lower costs for medical supplies, equipment, and pharmaceuticals.

Example: Aarogya Healthcare can negotiate better prices with pharmaceutical companies by leveraging the combined volume of both hospital chains and clinics.

Operational Synergies through Shared Technology and Best Practices: Aarogya Healthcare can implement its advanced hospital management systems and best practices across Swasth Jeevan Clinics, improving efficiency and patient care. Swasth Jeevan Clinics may have innovative primary care models that can be adopted by Aarogya.

Example: Implementing Aarogya's electronic health record (EHR) system in Swasth Jeevan Clinics to improve data management and patient care coordination.

- ***Two Key Areas of Due Diligence (Beyond Financial):***

  Regulatory Compliance and Licensing: Given the highly regulated nature of the healthcare sector, Aarogya Healthcare needs to thoroughly investigate Swasth Jeevan Clinics' compliance with all applicable regulations and licensing requirements. This includes verifying that all clinics have the necessary permits, licenses, and accreditations to operate legally.

  Importance*:* Non-compliance could result in fines, penalties, or even the revocation of licenses, which would significantly impact the value of the acquisition.

  Reputation and Brand Image: Swasth Jeevan Clinics' brand reputation is a key asset in this acquisition. Aarogya Healthcare needs to assess the strength of the brand, identify any potential reputational risks (e.g., negative patient reviews, past incidents of malpractice), and develop a plan to protect and enhance the brand post-acquisition.

  Importance: A damaged brand reputation could negatively impact patient volume and revenue, undermining the strategic rationale for the acquisition.

Answer 1(b)

Valuation and Deal Structure:

- **Advantages of Using Stock Component:**
  - *Preservation of Cash* : Using stock allows Aarogya Healthcare to conserve its cash reserves, which can be used for other strategic initiatives or to maintain financial flexibility.
  - *Alignment of Interests* : A stock component aligns the interests of Swasth Jeevan Clinics' shareholders with those of Aarogya Healthcare, as they will become shareholders in the combined entity and benefit from its future success.
- **Disadvantages of Using Stock Component:**
  - *Dilution of Existing Shareholders* : Issuing new shares dilutes the ownership stake of Aarogya Healthcare's existing shareholders.

  - *Valuation Risk* : The value of Aarogya Healthcare's stock could decline after the acquisition, which would reduce the value of the deal for Swasth Jeevan Clinics' shareholders.

- **Factors for Determining Exchange Ratio:**
  - *Relative Valuation of Both Companies* : A thorough valuation of both Aarogya Healthcare and Swasth Jeevan Clinics is essential to determine a fair exchange ratio. This should consider factors such as revenue, profitability, growth prospects, and asset values.
  - *Market Conditions and Investor Sentiment*: The prevailing market conditions and investor sentiment towards the healthcare sector and Aarogya Healthcare's stock should be taken into account. A higher exchange ratio may be necessary to attract Swasth Jeevan Clinics' shareholders if the market is uncertain.

Answer 1(c)

Regulatory and Legal Considerations:

- **Two Key Regulatory Bodies:**
  - **Competition Commission of India (CCI):** The CCI would need to approve the transaction to ensure that it does not create an anti-competitive environment in the healthcare sector.
  - **National Company Law Tribunal (NCLT):** Since the transaction is structured as an **amalgamation** between two companies, approval of the scheme under Sections 230–232 of the **Companies Act, 2013** is required from the NCLT. The NCLT examines whether the scheme is fair to shareholders, creditors, and other stakeholders before sanctioning the amalgamation.
- **Potential Legal Challenge and Mitigation Strategy:**
  - **Challenge:** Dissenting shareholders of either Aarogya Healthcare or Swasth Jeevan Clinics may challenge the amalgamation scheme, arguing that it is not in their best interests or that the valuation is unfair.
  - **Mitigation Strategy:** Ensure that the amalgamation scheme is thoroughly vetted by legal experts and that all shareholders are provided with full and fair disclosure of all relevant information. Engage with dissenting shareholders to address their concerns and potentially offer them a revised settlement.

Answer 1(d)

Integration and Change Management

Two Potential Cultural Differences:

- **Corporate Culture (Centralized vs. Decentralized):** Aarogya Healthcare, as a large, publicly-listed company, may have a more centralized and bureaucratic corporate culture, while Swasth Jeevan Clinics, as a smaller, privately-held chain, may have a more decentralized and entrepreneurial culture.

Mitigation Strategy: Implement a phased integration approach that allows Swasth Jeevan Clinics to retain some of its autonomy and entrepreneurial spirit while gradually adopting Aarogya Healthcare's best practices.

- ***Patient Care Philosophy (Specialized vs. Primary Care):*** *Aarogya Healthcare, as a hospital chain, may focus on specialized and tertiary care, while Swasth Jeevan Clinics focuses on primary care and preventive medicine.*

  Mitigation Strategy: Emphasize the importance of integrated care and the benefits of combining specialized and primary care services. Provide training and education to employees from both organizations to promote understanding and collaboration.

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

Question 2

(a) *Comment (with reasons) whether a scheme of merger or amalgamation under section 233 of the Companies Act, 2013, may be entered between the following companies vide the recent notification of The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 (Notification G.S.R. 603(E) dated 4th September, 2025):*

(i) *ABC Private Limited, company recognized by the Department for Promotion for Industry and Internal Trade (DPIIT), incorporated for 5 years, have an annual turnover under ₹ 51 crore, and work toward innovation or improvement of products/processes with XYZ Private Limited, another company recognized by the Department for Promotion of Industry and Internal Trade (DPIIT), incorporated for 9 years, have an annual turnover under ₹ 91 crore, and work toward innovation or improvement of products/processes;*

(ii) *DEF Private Limited, company recognized by the Department for Promotion of Industry and Internal Trade (DPIIT), incorporated for 9 years 9 months, have an annual turnover under ₹ 95 crore, and work toward innovation or improvement of products/processes with XYZ Ltd, having paid up capital of ₹ 4.5 crore & turnover ₹ 49 crore;*

(iii) *QWE Private Limited, unlisted company, with aggregate loans/deposits of ₹ 151 crore, no default in repayment, with IOP Private Limited, another company without profit motive, designed to promote commerce, art, science, etc.*

(iv) *ABC Ltd. (listed & transferor) with its subsidiary company MNP Ltd. (unlisted & transferee);*

(v) *ABC Ltd. (unlisted & transferor) with MNP Ltd. (unlisted & transferee), both are subsidiary of XYZ Ltd.*

(*5 marks*)

(b) *Promoters (acquirers) of ABC Private Ltd. hold 85% share-holding and further acquires another 6% from the market @ ₹ 120 per share; bringing their holding to 91%, they shall trigger a buyout of the remaining 9% minority shares; Book value of the shares is ₹ l05; Earning per share is ₹ 10 and price earnings ratio is l5; Determine the final offer price of*

shares the registered valuer should fix considering the provisions of the Rule 27 of the <u>Companies (Compromises, Arrangements and Amalgamations) Rules, 2016</u> for minority shares under Section 236.

(*5 marks*)

(c) *Due Diligence is an investigation or audit of a potential investment. It seeks to confirm all material facts in regard to a sale. It is a way of preventing unnecessary harm/ hassles to either party involved in a transaction. Briefly explain different types of due diligence that are typically conducted during a Mergers & Acquisitions (M & A) transaction.*

(5 marks)

(d) *Restructuring aims at improving the competitive position of an individual business and maximizing its contribution to corporate objectives. It also aims at exploiting the strategic assets accumulated by a business i.e., monopolies, goodwill, exclusivity through licensing, etc. to enhance the competitiveness advantages. Thus restructuring helps in bringing an edge over competitors. Indian technology majors have embarked upon the process of restructuring and focusing on three core areas Cloud, agile and automation. Mention any five examples of technology restructuring in India.*

(*5 marks*)

OR (Alternate question to Q. No.2)

Question 2A

(i) *X Ltd. makes a bid to purchase Company Y Ltd. Y Ltd. rejects the bid and thereafter used a strategy against X Ltd. to stop the acquisition, Y Ltd. sold off its cement, chemical, and aluminium divisions and borrowed over ₹100 Crore, effectively hurting its own financial position to successfully ward off the takeover. What is the name of this strategy? What are the risk and consequence of this strategy?*

(*5 marks*)

(ii) *ABC Ltd. wanted to buy back its shares and provided the following information as on 31st March, 2026: 60,000 equity shares of ₹ l00 each: General Reserve - ₹ 36,00,000: P & L (Cr) ₹ 40,00,000; Security Premium ₹ 4,00,000; Secured Loans ₹ 40,00,000; Unsecured Loans ₹ 20,00,000; Offer Price ₹ 250; Determine the maximum quantum of buy-back (in amount as well as number of shares) as per provision of section 68 of the Companies Act, 2013.*

(5 marks)

(iii) *StellarTech, a privately held company specializing in innovative battery technology for electric vehicles, has experienced rapid growth in recent years. Founded by Ava Sharma and Ben Carter, StellarTech has developed a ground-breaking battery with significantly improved energy density and charging speed. However, to scale up production and meet growing demand, StellarTech requires substantial capital investment.*

NovaCorp, a publicly listed company in the renewable energy sector, has struggled to maintain profitability and relevance in the face of increasing competition. Catherine Dubois, NovaCorp's CEO, recognizes the need for a strategic shift and is actively seeking opportunities to revitalize the company.

StellarTech and NovaCorp have identified a potential reverse acquistion as a mutally beneficial solution. StellarTech would gain access to the public markets and NovaCorp's listing, while NovaCorp would acquire a promising technology and a new growth engine. The proposed deal would result in StellarTech's shareholders owning 70% of the combined entity, with Ava Sharma becoming the CEO of the newly formed company, "StellarNova Technologies"

From StellarTech's perspective, what are the primary reasons for considering a reverse acquisition with NovaCorp instead of pursuing a traditional Initial Public Offering (IPO)? Identify and analyse the key risks associated with this reverse acquisition for both StellarTech and NovaCorp.

(*5 marks*)

(iv) Company A merges with Company B.

- *The companies sign the agreement on January 1, 2026.*
- *The board decides to set the financial transfer date as April 1, 2025 (beginning of the financial year for accounting convenience).*
- *Legal approvals from the NCLT are obtained, and the final filing with the RoC happens on June 1, 2026.*

What are the appointed and effective dates of this merger? Company A earns a profit of ₹15 Lakh in the period between of April, 2025 to May 2026, which company shall take into account of this profit and why? What is the difference between the appointed date and effective date?

(5 marks)

Answer 2(a)

Below are the answers referring to Rule 25 (1A) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as amended vide notification dated 04th September, 2025:

(i) Here both are Start-up companies, hence merger/amalgamation between two start-up companies is permitted.

(ii) Here DEF Private Limited is a Start-up Company and XYZ Ltd is a public Company, hence merger between start-up and public company is not permitted.

(iii) QWE Private Limited is an unlisted company and IOP Private Limited is section 8 company, not for Profit Company. Merger is not permitted since IOP Private Limited is a section 8 company.

(iv) Merger/amalgamation between a holding company (listed or unlisted) and a subsidiary company (listed or unlisted): Provided that this clause shall not apply where the transferor company or companies are listed; in this case ABC Ltd. is listed & transferor, hence not permitted.

(v) Merger/amalgamation between one or more subsidiary company of a holding company with one or more other subsidiary company of the same holding company where the transferor company or companies are not listed; in this case merger/amalgamation is permitted.

Answer 2(b)

Rule 27 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 requires a Registered Valuer to determine the fair offer price for minority shares under Section 236. For unlisted companies, this considers the highest price paid by the acquirer in the last 12 months, return on net worth, book value, earnings per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies.

Valuation Factors (Registered Valuer): -

1. *Highest Price Paid*: The majority shareholder purchased 6% from the shareholders at ₹120 per share.
2. *Book Value*: The Company's book value per share is ₹105/-;
3. *Earnings Per Share (EPS)*: The company's EPS is ₹10, and the industry P/E ratio is ₹15. Fair value based on earnings = ₹10 * 15 = ₹150/-;

Final Offer Price: The Registered Valuer determines the price, considering the highest price paid is higher than the book value and aligns with earnings, sets the offer price at ₹150 per share.

Answer 2(c)

The different types of due diligence conducted during M&A transaction are as follows:

Legal Due Diligence: Legal Due Diligence is used to ensure that there are no legal issues in buying a business or investing in it. In this, the potential purchaser will review the important legal documents of the target firm such as employment contracts, board meeting minutes, articles and memorandum of association and patents and copyrights or any other property related documents, status of the applicable laws etc.

Tax Due Diligence: This is aimed at ensuring that there are no past tax liabilities in the seller firm that might have materialized due to mistakes or deception and could hold the acquirer liable for it.

IP Due Diligence: IP due diligence is focused on establishing what rights the company may have in various intellectual property and where it might rely on the intellectual property of another entity. Typical areas of interest are patent, copyright and trademark filings; descriptions of the company's IP protection processes; licensing agreements, IP Assignment document, etc.

Operational Due Diligence: Operational due diligence (ODD) is the process by which a potential purchaser reviews the operational aspects of a target company during mergers and acquisitions. The ODD review looks at the main operations of the target company and attempts to confirm (or not) that the business plan that has been provided is achievable with the existing operational facilities plus the capital expenditure that is outlined in the business plan.

Commercial Due Diligence: This aims at understanding the market the target business is operating in. This looks the current market status and the forecast of the market growth in future and the target's position in the market with relation to its competitors. This also involves interaction with the significant customers of the business to understand their opinion about the business.

Information Technology (IT) Due Diligence: This aims at identifying if there are any IT issues in the target business. This involves matters such as scalability of IT systems, robustness of the IT processes, availability of ERP, IT base and infrastructure, capacity of server, the level of documentation of processes, compliance with the legislation and ability to integrate various systems.

HR Due Diligence: This aims at understanding the impact of human capital on the proposed deal. This involves review of number and type of manpower, skills, employment records, compensation schemes, HR processes, ongoing HR litigations, effectiveness of the sales force and cultural factors.

Answer 2(d)

Technological restructuring occurs when a new technology is developed that changes the way an industry operates. This usually affects employees, and tends to lead to new training initiatives, along with some layoffs as the company improves efficiency. This also involves alliances with third parties that have technical knowledge or resources. Joint Venture, Strategic Alliances, Franchising is some of the forms of market and technological restructuring.

Indian technology major Tata Consultancy Services Limited has embarked upon the process of restructuring and focusing on three core areas Cloud, agile and automation.

Here are other key examples of technological restructuring in India:

- **Banking & Financial Sector:** More than a dozen Indian banks formed an institution using blockchain to process inland LCs in four hours, a process that previously took four to five days. Banks are also adopting AI, particularly agentic AI, to enhance service and handle massive, complex data.
- **IT Sector Reorganization:** Major IT firms (TCS, Infosys, HCL Tech) are restructuring internally to prioritize AI. For instance, TCS merged AI and cloud units, while Infosys transitioned to an "AI-first" company, reorganizing to focus on Internet of Things (IoT).
- **Logistics & Retail (Flipkart-Walmart):** Following Walmart's acquisition of Flipkart, the company underwent technological restructuring by integrating AI and advanced data analytics into its logistics and supply chain to enhance operational efficiency.

- **Digital Public Infrastructure (UPI):** The adoption of Unified Payments Interface (UPI) by the financial sector represents a massive technological overhaul, shifting the country from cash-heavy to digital-first, allowing 24/7 banking services.
- **Government Digital Transformation:** Central and State governments enterprises are implementing AI and technology for digital transformation across various sectors.

Answer 2A(i)

The name of the strategy is called "scorched earth approach". This approach is highly aggressive, and potentially self-destructive takeover defense strategy used by target companies to evade a hostile bid. It is a more extreme form of the "crown jewel " strategy in which the central theme is to divest the most coveted asset (known as crown jewel) Consequently, the hostile bidder is deprived of the primary intention behind the takeover bid.

"Scorched earth approach" is a variation of the crown jewel strategy and more radical in approach as the target not only sells off the crown jewel asset, but also properties to diminish its worth.

Risks and Consequences

- Self-Destruction ("Suicide Pill"): The strategy is so extreme that it can lead to the destruction of the company's own value, making it difficult to recover even if the takeover is prevented.
- Business Failure: The long-term impact of losing core assets, coupled with high debt, can lead to bankruptcy or liquidation.
- Legal Challenges: The acquiring company may seek a court injunction to stop these actions, viewing them as a violation of fiduciary duties.
- Shareholder Backlash: Because this method often destroys value, it can lead to a revolt from shareholders who would prefer the value offered by the acquirer.

Answer 2A(ii)

Based on Section 68 of the Companies Act, 2013, the maximum quantum of buy-back is 15,000 shares (25% of total shares of 60,000) amounting to a maximum cost of ₹ 37,50,000 (25% of aggregate of paid-up capital + free reserves). The debt-equity ratio after buy back remains well within the 2:1 limit.

1. **Calculation of Maximum Quantum: -**
   - Total Shares: 60,000 Equity Shares
   - Maximum Shares (25% rule): 60000 * 25% = 15000;
   - Offer Price: ₹ 250
   - Maximum Amount (Shares): 15000 * 250 = ₹37.50 Lakh
2. **Financial Capability** (25% of aggregate of Paid-up Capital + Free Reserves)
   - Equity Share Capital: ₹ 60,00,000 (60000 * ₹100)
   - Add: General Reserve: ₹ 36,00,000

- Add: P&L (Cr): ₹ 40,00,000
- Add: Security Premium: ₹ 4,00,000
- Total Net Worth: ₹ 1,40,00,000
- Max Buy-back Value Allowed: 25% of 1,40,00,000 = ₹35 Lakh;

3. **Conclusion**

The maximum amount allowed by the 25% net worth criteria (₹35,00,000) is lower than the amount required for 25% of the shares (₹37,50,000). Therefore, the number of shares must be limited based on the financial capacity: -

- Maximum Number of Shares: 35 Lakh / Rs. 250 = 14000 shares;
- Maximum Amount of Buy-back: ₹ 35,00,000

Note: The debt-equity ratio

Before buy-back:

Secured Loan = ₹40,00,000 and Unsecured Loan =₹ 20,00,000

$$\text{Debt} = 40{,}00{,}000 + 20{,}00{,}000 = ₹60{,}00{,}000$$
$$\text{Net Worth} = ₹1{,}40{,}00{,}000$$

Debt-Equity Ratio:

$$60{,}00{,}000/1{,}40{,}00{,}000 = 0.43{:}\,1$$

After buy-back:

$$\text{Net Worth} = 1{,}40{,}00{,}000 - 35{,}00{,}000 = ₹1{,}05{,}00{,}000$$

Debt Equit Ratio (after Buy Back) =$60{,}00{,}000/1{,}05{,}00{,}000 = 0.57{:}\,1$

Both are well within the statutory limit of 2:1.

Answer 2A(iii)

Reverse Acquisition are often pursued for several reasons, applicable in the given case as well:

Quicker Access to Public Markets: It provides a faster and less costly route to becoming a publicly traded company compared to an IPO.

Less Regulatory Scrutiny: Reverse acquisitions typically involve less regulatory scrutiny and disclosure requirements compared to traditional IPOs.

Enhanced Credibility: Being publicly traded can enhance the credibility and visibility of company, making it easier to raise capital and attract investors.

Tax Benefits: Depending on the structure and jurisdiction, there may be potential tax benefits associated with a reverse acquisition.

However, Reverse acquisition also come with potential challenges and risks, including:

Due Diligence: It's crucial to conduct thorough due diligence on the target company to assess its financial condition, liabilities and potential risks.

Integration: Integrating the operations and cultures of the two companies can be complex and challenging.

Market Perception: Reverse acquisition may be viewed skeptically by investors, leading to volatility in the company's stock price.

Regulatory Compliance: The combined entity must comply with ongoing regulatory requirements and reporting obligations associated with being a public company.

Answer 2A(iv)

Appointed Date: April 1, 2025 (Start of financial year).

Effective Date: July 1, 2026 (Date NCLT approval is filed with RoC).

Who Owns the Earnings?

Between the Appointed Date and the Effective Date, the transferor company (seller, Company A here) acts as a trustee for the transferee (buyer, Company B here). Therefore, **all profits/earnings and liabilities accrued during this period belong to the Transferee Company (i.e., Company B)**.

The appointed date is the specific date specified in a scheme of arrangement from which assets, liabilities, and transactions of a transferor company formally vest in the transferee company, often used for accounting purposes, whereas the effective date is the date when all legal formalities, such as filing approval orders with the Registrar of Companies (RoC), are completed, making the merger legally enforceable.

PART-II

Question 3

(a) *"Sunrise Technologies" (target company), a privately held software development firm, is being acquired by "Global Innovations" (acquiring company), a publicly listed technology conglomerate. Both companies are based in India. Priya Sharma, the CFO of Global Innovations, needs to determine a fair exchange ratio for the share swap.*

Information Available:

- *Financial statements for both companies are available.*
- *Industry standards and regulatory requirements are understood.*
- *Global Innovations plans to use a combination of the income approach (Discounted Cash Flow) and market value approach (comparable company analysis) for valuation.*
- *Strategic fit and potential synergies have been identified as significant factors.*

You, being Priya, considering the planned acquisition of Sunrise Technologies by Global Innovations, outline your end-to-end valuation process from gathering data to justifiable exchange ratio, for Board approval.

(5 marks)

(b) *Examine whether ABC Private Limited, set up for rendering professional or financial services, including valuation services, can get itself registered as a registered valuer in the following (independent) cases under the Companies (Registered Valuers and Valuation) Rules, 2017:*

(i) *XYZ Pvt. Limited holds 50% of the voting power of ABC Pvt. Limited and has control over the composition of board of directors of the company.*

(ii) *ABC Private Limited has only two directors and all the directors are registered valuers.*

(iii) *Ethical track record, honesty, and trustworthiness of A, one of directors, of ABC Private Limited, are not good.*

(5 marks)

Answer 3(a)

End to end valuation process typically involves the following steps:

1. **Gather financial information:** Collect the financial statements and relevant information of the companies involved, including their assets, liabilities, revenues and expenses.
2. **Select Valuation Method:** Determine the appropriate valuation method or combination of methods based on the nature of the business, industry standards and regulatory requirements. Common methods include the market approach, income approach and asset-based approach.
3. **Determine Exchange Ratio:** Once the values of the companies are determined, the exchange ratio or share swap ratio is calculated. The ratio determines how many shares of the acquiring company will be issued for each share of the target company.
4. **Consider other factors:** Apart from valuation, other factors such as strategic fit, synergies, and management considerations are also considered during the amalgamation process.
5. **Obtain Approvals:** The valuation results and exchange ratio are presented to the board of directors and shareholders of the companies involved. They must approve the terms of the amalgamation, including the valuation methodology and the exchange ratio.

It is important to note that the specific details and requirements of amalgamation and valuation can vary depending on the jurisdiction, industry and individual circumstances of the companies involved. Consulting with financial advisors, valuation experts and legal professionals is recommended to ensure compliance with applicable laws and regulations and to obtain fair and accurate valuation in the context of an amalgamation.

Answer 3(b)

The Companies (Registered Valuers and Valuation) Rules 2017 provides that:

Rule 3(2)- No partnership entity or company shall be eligible to be a registered valuer if-

(a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate.

In this circumstance, ABC Private Limited is the subsidiary of XYZ limited (having 50% voting power of ABC Private Limited and controlling composition of it's Board of Directors), and hence it cannot be registered as a valuer.

Rule 3(2) (d)- three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers.

In this circumstance, ABC Private Limited has two directors and all the directors are registered valuers, and hence it can be registered as a valuer.

Rule 3(1) (k)- is a fit and proper person: -

Explanation – For determining whether an individual is a fit and proper person under these rules, the authority may take account of any relevant consideration, including but not limited to the following criteria-

(i) Integrity, reputation and character,

(ii) Absence of convictions and restraint orders, and

(iii) Competence and financial solvency.

Rule 3(2) (c)- all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (f), (g), (h), (i), (j) and (k) of sub-rule (1).

Ethical track record, honesty, and trustworthiness of A, one of directors, of the ABC Private Limited, are not good, in other words, it hits the provisions of Integrity, reputation and character, and hence it cannot be registered as a valuer.

Question 4

(a) A company is selling a division (Slump Sale) for a lump sum consideration.

Data:

- *Book Value of Assets: ₹ 100 Lakhs*
- *Revalued Market Value of Assets: ₹ 150 Lakhs*
- *Liabilities to be transferred: ₹ 40 Lakhs*
- *Synergy gains expected: ₹ 10 Lakhs*

Compute the Adjusted Net Assets Value and Minimum Sales Consideration.

(5 marks)

(b) Company A is merging with Company B, determine a fair exchange ratio based on Net Asset Value (NAV) and Earnings per Share (EPS).

Particulars	***Company A (Acquirer)***	***Company B (Target)***
Equity Shares	*10,00,000*	*5,00,000*

Net Assets (Book)	*₹ 50,00,000*	*₹ 20,00,000*
Fair Value of Assets	*₹ 60,00,000*	*₹ 30,00,000*
Net Profit (PAT)	*₹ 10,00,000*	*₹ 4,00,000*
Market Price per Share	*₹ 100*	*₹ 60*

(5 marks)

Answer 4(a)

Adjusted Net Asset Value (NAV): Revalued Assets - Liabilities

₹ 150 Lakhs - ₹40 Lakhs = ₹110 Lakhs

Minimum Sale Consideration: The base valuation is ₹110 Lakhs, but to include synergy, the final price is often negotiated higher (e.g., ₹110 Lakhs + Synergy gains = ₹120 Lakhs).

Answer 4(b)

Step 1: Calculation of exchange ratio on the basis Net Asset Value (NAV) per Share

Company A: NAV_A = ₹60,00,000/10,00,000= 6

Company B: NAV_B = ₹30,00,000/5,00,000= 6

Exchange Ratio (NAV): 6/6 = 1

Step 2: Calculation of exchange ratio on the basis Earnings per Share

Company A: EPS_A= ₹10,00,000/10,00,000= 1

Company B: EPS_B= ₹4,00,000/5,00,000= 0.80

Exchange Ratio (EPS): 0.80/1 = 0.80

Step 3: Calculation of fair exchange ratio: -

Fair exchange ratio = (1+0.80)/2 = 0.90 (as no weights are given in the question therefore, equal weight is being given to both the methods in valuation).

PART-III

Question 5

(a) *A company, "ABC Ltd.", contributed ₹10 Lakhs to the Insolvency and Bankruptcy Fund to support the corporate restructuring framework, as enabled under Section 224 of the IBC, 2016. A financial creditor initiates Corporate Insolvency Resolution Process (CIRP) against ABC Ltd. due to default. During the CIRP, ABC Ltd. faces a severe cash crunch, unable to pay crucial salary dues to its labourers, risking the preservation of its manufacturing unit. Advice the company about the options available in this circumstance. Which are the amounts credited for the creation of Insolvency and Bankruptcy Fund?*

(5 marks)

(b) *"Tech Growth Pvt. Ltd." is undergoing liquidation by the NCLT. A forensic audit reveals that Mr. Sharma, a director and major shareholder (contributory), has transferred ₹ 5 crores of company funds to his personal offshore account.*

The Liquidator issues a notice for Mr. Sharma to appear and explain the transactions and pay the calls due on his shares.

Mr. Sharma ignores the summons and books a flight to Dubai, intending to flee India. What courses of action is available under the provisions of section 301 of the Companies Act, 2013?

(5 marks)

(c) *A (Individual Insolvency Professional), is associated for last 10 years in the field of Insolvency Professional.*

Current Assignment Load as on 1st January 2026 as follows:

3 ***Liquidations****: Companies L_1, L_2, L_3 (admitted Claims of ₹ 700, 750 & 1000 Crore)*

2 ***RPs****: Companies R_1, R_2 (admitted Claims of ₹ 800, 950 Crore)*

2 ***IRPs****: Companies I_1, I_2 (admitted Claims of ₹ 1050, 1100 Crore)*

Scenario A: New Assignments Offered from T Group

A is asked to act as RP for new three companies, admitted Claims ₹ 750, 850, 950 Crore.

Scenario B: New Assignments Offered from R Group

A is asked to act as Liquidator for a new three companies with admitted Claims ₹ 900, 950, 1050 Crore.

Scenario C: New Assignments Offered from U Group

A is asked to act as Liquidator for a new two companies with admitted Claims ₹ 1050, 1100 Crore.

Advice A (IP) which group's offer of assignments can be accepted?

(5 marks)

(d) *ACIL ("Corporate Debtor") was admitted into Corporate Insolvency Resolution Process ("CIRP") under the IBC by the NCLT.*

The Resolution Plan submitted by RF Limited ("Successful Resolution Applicant/SRA") was approved by the Committee of Creditors (CoC) for the Corporate Debtor. Accordingly, the Resolution Professional filed an application under Section 30(6) of IBC before the NCLT, seeking approval of resolution plan.

On 01.09.2021, the NCLT kept the approval of SRA's Resolution Plan in abeyance and directed the Official Liquidator (OL) to provide exact figures/value of assets. The SRA filed an appeal before the National Company Law Appellate Tribunal ("NCLAT") against the order dated 01.09.2021.

The main issue before the Supreme Court was regarding the jurisdiction of the NCLT's to order a revaluation when there were no objections raised regarding the Resolution Plan's Approval process. The Court had the question of whether the NCLT & NCLAT have overstepped their powers in overlooking the decision of the CoC (Committee of Creditors).

Discuss whether the NCLT & NCLAT have overstepped their powers in overlooking the decision of the CoC, based on a decided case law.

(*5 marks*)

Answer 5(a)

Section 224(3) of the IBC, 2016, allows a contributor to the Insolvency and Bankruptcy Fund to withdraw up to their contributed amount during insolvency proceedings if they are subject to such proceedings. This withdrawal is authorized by the Adjudicating Authority (NCLT) specifically for critical needs like paying workmen, protecting assets, or meeting incidental costs etc. The Adjudicating Authority, upon verification of the contribution and the necessity of the payment, permits the withdrawal. This provision ensures that companies in distress, which have previously supported the fund, can use those funds to maintain asset value and pay workers during insolvency.

Section 224 (2) of the IBC provides that the following amounts shall be credited to the Insolvency and Bankruptcy Fund: -

- the grants made by the Central Government for the purposes of the Fund;
- the amount deposited by persons as contribution to the Fund;
- the amount received in the Fund from any other source; and
- the interest or other income received out of the investment made from the Fund.

Answer 5 (b)

Section 301 of the Companies Act, 2013 empowers the National Company Law Tribunal (NCLT) to order the arrest of a person who is trying to leave India or abscond to evade payment of dues (calls) or avoid examination during the winding up of a company.

The Tribunal, if satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the tribunal may cause –

(a) the contributory (Mr. Sharma in the given case) to be detained until such time as the tribunal may order; and

(b) his books and papers and movable property to be seized and safely kept until such time as the tribunal may think fit.

Answer 5(c)

Number of Assignments

According to Regulation 7B of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, an insolvency professional who is not an insolvency professional entity, shall not at any point of time, have more than ten assignments in aggregate as interim resolution professional and resolution professional in a corporate insolvency resolution process and as a liquidator in a liquidation process, of which not more than three assignments shall have admitted claims exceeding one thousand crore rupees each:

Provided that an insolvency professional who is not an insolvency professional entity, already holding more such assignments than the limit specified in this regulation on the date of commencement of Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2025, shall not accept any such new assignment until the number of his ongoing assignments falls below the limit specified in this regulation."

Current Assignments: 3+2+2 = 7 (Maximum 10 assignments allowed)

Large Assignments: admitted claims >1000 Crore is 2 (maximum 3 such assignment allowed)

Scenario A: - to act as RP for new three companies, admitted claims of ₹ 750, 850 & 950 Crore, therefore total assignments = 7+3 = 10 is within the limit, and Large Assignments remains 2 (i.e., not more than 3) within the maximum limit, hence new assignments from T group can be accepted.

Scenario B: - to act as Liquidator for new three companies with admitted claims of ₹ 900, 950, 1050 Crore, therefore, total assignments =7+3=10 within the limit, and Large Assignments 2+1=3 (i.e., not more than 3), within the maximum limit, hence new assignments from R group can be accepted.

Scenario C: - to act as Liquidator for new two companies with admitted claims of ₹ 1050, 1100 Crore, therefore, total assignments = 7+2=9 within the limit, and Large Assignments 2+2=4 (i.e., more than 3), not within the maximum limit, hence new assignments from U group cannot be accepted.

Therefore, any of the offer from Scenario A or B, can be accepted.

Answer 5(d)

The present case is similar to the case of *Ramkrishna Forgings Limited vs. Ravindra Loonkar, Resolution Professional of ACIL Limited & Anr, Civil Appeal No.1527 of 2022;*

In the above case the Supreme Court held that the Resolution Professional has complied with the statutory requirements of involving two approved valuers for giving reports regarding the fair market value and the liquidation value.

The Court emphasised the fact that the NCLT should not interfere with the commercial decisions of the CoC, especially when there were no irregularities raised. The Judgment also underlined the fact that the objective of the Resolution Plan was revival and not liquidation.

The Court highlighted the CoC's Authority to decide on the Corporate Debtor's Debt Resolution.

Therefore, NCLT and NCLAT have overstepped their powers in overlooking the decision of CoC, considering the above judgement.

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

Question 6

(a) *The enactment of the Insolvency and Bankruptcy Code (IBC) has impacted corporate governance and the rule of law in India. Discuss this impact with reference to the case of Arun Kumar Jagatramka v. Jindal steel and Power Ltd, particularly regarding the shift in control, the time-bound resolution process, and the role of the Committee of Creditors (CoC)?*

(*5 marks*)

(b) *A corporate debtor is a specialized manufacturing unit with valuable machinery but poor cash flow. Instead of selling the machinery, the CoC uses 39BA (1) to recommend that the RP invite a "compromise" arrangement where the current promoter pays off 60% of debt over 2 years, allowing the company to stay operational. Prepare a note on Assessment of Compromise or Arrangement as per Regulation 39BA(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

(*5 marks*)

(c) *In the context of cross-border insolvency proceedings under the Insolvency and Bankruptcy Code (IBC), what is the significance of determining the "Centre of Main Interests" (COMI) of a corporate debtor, and how does the COMI influence the recognition and enforcement of foreign insolvency proceedings in India?*

(*5 marks*)

(d) *Imagine that you're advising a Government that wants to improve its insolvency and creditor rights system to boost economic growth and attract more investment. Based on the World Bank's principles, what specific, actionable steps should they take to strengthen:*

(1) ***The overall legal framework for lending and debt recovery?*** *(Focus: Compatible Credit and Enforcement Systems)*

(2) ***The system for registering and enforcing claims on assets used as security for loans?*** *(Focus: Collateral Systems)*

(3) ***The courts and processes used to resolve insolvency cases and enforce creditor rights?*** *(Focus: Enforcement Systems)*

(4) ***The availability and reliability of information about borrowers' creditworthiness?*** *(Focus: Credit Information System)*

(5) ***The options for companies and creditors to negotiate solutions outside of formal court proceedings?*** *(Focus: Informal Corporate Workouts)*

(5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

(i) *Collins & Aikman (C&A), an automotive supplier, operated as a multinational group. It entered insolvency with its main insolvency proceedings initiated in the United States (the Center of Main Interests-COMI).*

Simultaneously, multiple non-main proceedings were initiated in several European jurisdictions (including UK, Germany, and France) where C & A had subsidiaries and assets.

Each national court had the power to manage the assets within its jurisdiction. This fragmentation posed a risk of dismantling the company's European network, making a groupwide restructuring impossible.

Therefore, the company needs such coordination among all the proceedings, how should the company proceed with to manage this problem.

(5 marks)

(ii) *Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016, mandates that a liquidator must constitute a Stakeholders' Consultation Committee (SCC) to ensure transparency, accountability, and creditor participation, with voting rights proportional to admitted claims.*

(a) *What is the time limit of forming the SCC and by whom?*

(b) *What is composition of SCC and on which matters it advices?*

(5 marks)

(iii) *Recognizing the need to alleviate the compliance burden for Insolvency Professionals (IPs), the IBBI has issued a circular dated June 28, 2024, concerning the filing of forms to monitor voluntary liquidation processes under the Insolvency and Bankruptcy Code (IBC) and the regulations made thereunder.*

(a) *What are the advantages of the new forms introduced or modified by this circular?*

(b) *What is the scope and coverage of the information required in these forms? (i.e., What specific aspects of the voluntary liquidation process do these forms address?)*

(c) *What are the prescribed timelines for filing each of the forms introduced or modified by this circular?*

(5 marks)

(iv) *M/s. Agarwal Textiles Ltd., a company based in Surat, Gujarat, faced significant financial distress due to a downturn in the textile industry and accumulated debts of ₹ 500 crore. Investigations revealed that during the period of 2015-2018, before the initiation of the Corporate Insolvency Resolution Process (CIRP), Mr. Rajesh Agarwal, the then Managing Director, had allegedly engaged in fraudulent transactions, diverting funds to shell companies owned by his relatives. These transactions are currently under investigation by the Enforcement Directorate (ED) for offences under the Prevention of Money Laundering Act 2002 (PMLA).*

The CIRP commenced on January 1, 2024. A resolution plan was approved by the Committee of Creditors (CoC) on December 1, 2024, and subsequently sanctioned by the National Company Law Tribunal (NCLT) on January 15, 2025. The resolution plan *involved a complete change in management, with M/s. Khanna Ventures Pvt. Ltd., led by Mr. Sanjay Khanna, taking over the company. Mr. Khanna and his team were not in any way related to the previous management and had no prior involvement with Agarwal Textiles Ltd.*

Following the approval of the resolution plan, the ED sought to attach the assets of Agarwal Textiles Ltd., arguing that the company was a beneficiary of the proceeds of crime committed by the former MD, Mr. Agarwal. M/s. Khanna Ventures Pvt. Ltd. filed an application before the NCLT, seeking immunity from such attachment under Section 32A of the IBC, contending that the resolution plan had been approved and implemented in good faith, and the new management was entirely independent of the previous wrongdoers.

Can Agarwal Textiles Ltd., under the new management of M/s. Khanna Ventures Pvt. Ltd. claim immunity under Section 32A of the IBC from the attachment of assets by the ED for offences committed by the former management before the commencement of the CIRP? Analyse the applicability of Section 32A in this scenario.

(5 marks)

Answer 6(a)

The enactment of the Insolvency and Bankruptcy Code (IBC) has significantly improved corporate governance and the rule of law in India. The case of *Arun Kumar Jagatramka v. Jindal Steel and Power Ltd.* serves as a key illustration of this impact, particularly in the following ways:

1. **Shift in Control from Promoter to Creditors:**
   - **Pre-IBC:** Promoters often retained control even when companies were deeply in debt, leading to mismanagement.
   - **Post-IBC:** The IBC shifted control to the Committee of Creditors (CoC) upon initiation of the Corporate Insolvency Resolution Process (CIRP), empowering creditors to make decisions in their best interests.
   - ***Arun Kumar Jagatramka Case:*** *The Supreme Court emphasized that the CoC has the ultimate authority to decide on the resolution plan, even if it means the promoters lose control. The court upheld the CoC's decision to reject the promoter's settlement offer, reinforcing the creditors' primacy.*
2. **Time-Bound Resolution Process:**
   - **Pre-IBC:** Debt recovery was lengthy and uncertain.
   - **Post-IBC:** The IBC mandates a time-bound resolution process (typically 180-270 days), ensuring faster resolution and preventing value erosion.
   - ***Arun Kumar Jagatramka Case:*** *The case demonstrates the time-bound nature of the IBC process, as the underlying CIRP was conducted within the IBC's timelines.*

3. **Role of the Committee of Creditors (CoC):**
   - **IBC:** The CoC plays a central role in deciding the fate of the corporate debtor, with the power to approve or reject resolution plans.
   - ***Arun Kumar Jagatramka Case:*** *This case underscores the supremacy of the CoC in the decision-making process. The Supreme Court's judgment clarified that the NCLT and NCLAT should generally refer to the commercial wisdom of the CoC, and the scope of judicial review is limited to ensuring that the CoC's decision-making process is fair and in accordance with the law.*

In summary, the IBC has brought about a paradigm shift by empowering creditors, promoting transparency, and ensuring a time-bound resolution process. The *Arun Kumar Jagatramka* case exemplifies how the IBC has strengthened the rights of creditors and promoted a more disciplined and accountable corporate environment.

Answer 6(b)

Assessment of Compromise or Arrangement

Regulation 39BA(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that while deciding to liquidate the corporate debtor under section 33, the committee shall examine whether to explore compromise or arrangement as referred to in Regulation 2B(1) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016 and the resolution professional shall submit the committee's recommendation to the Adjudicating Authority while filing application under section 33.

Where a recommendation has been made as specified above, the resolution professional and the committee shall keep exploring the possibility of compromise or arrangement during the period the application to liquidate the corporate debtor is pending before the Adjudicating Authority.

Answer 6(c)

The "Centre of Main Interests" (COMI) is a crucial concept in cross-border insolvency proceedings, particularly when dealing with multinational corporations that have assets and operations in multiple countries.

- **Significance of COMI:** The COMI is essentially the location where the debtor conducts its regular business and where the majority of its creditors would reasonably expect the debtor to administer its interests. It is presumed to be the location of the debtor's registered office unless proven otherwise.
- **Influence on Recognition and Enforcement:** The determination of the COMI is significant because it influences the recognition and enforcement of foreign insolvency proceedings in India. Under the IBC, if a foreign insolvency proceeding is recognized in India, the Indian courts may grant relief to the foreign representative of the debtor, such as a stay on legal proceedings against the debtor's assets in India.

- **Factors Considered:** To determine the COMI, Indian courts consider various factors, including:
  - Location of the debtor's headquarters or management.
  - Location of the debtor's principal assets.
  - Location of the debtor's major creditors.
  - Jurisdiction governing the debtor's key contracts.
  - Debtor's perception by its creditors.
- **Impact on Indian Proceedings:** If the COMI is determined to be in a foreign jurisdiction, Indian courts are more likely to recognize and cooperate with the foreign insolvency proceedings. This can facilitate a coordinated and efficient resolution of the debtor's financial distress across multiple jurisdictions.
- **Importance of Evidence:** *The determination of COMI is a factual inquiry, and the burden of proof lies on the party asserting a particular location as the COMI. Therefore, it is essential to present sufficient evidence to support the claim.*

Answer 6(d)

Key elements of the World Bank Principles for Effective Insolvency and Creditor Rights Systems:

1. **Compatible Credit and Enforcement Systems:**
   - **Scope and Objectives:** The system should cover a broad range of debtors and aim to balance the interests of debtors and creditors, promote efficient resource allocation, and foster economic stability.
   - **Treatment of Creditors:** The system should recognize and protect the rights of secured creditors while providing fair treatment of unsecured creditors. Clear rules for priority of claims are essential.
   - **Debtor's Rights and Obligations:** Debtors should have rights (participation, discharge) and obligations (disclosure, cooperation).
   - **Transparency and Predictability:** The system should be transparent, predictable, and consistently applied.
   - **Efficiency and Timeliness:** Proceedings should be efficient and timely to minimize costs and maximize asset value.
2. **Collateral Systems:**
   - This aspect is implicitly addressed within the "Treatment of Creditors" element. An effective system must have clear and enforceable rules regarding the creation, registration, and enforcement of security interests (collateral). This ensures that secured creditors can realize the value of their collateral in a predictable manner.

3. **Enforcement Systems:**

   - **Institutional Framework:** An independent and impartial judiciary is crucial for resolving insolvency cases. Qualified insolvency professionals should be regulated and supervised.
   - **Commencement of Proceedings:** Clear rules for initiating proceedings are necessary for both debtors and creditors.
   - **Reorganization and Liquidation:** The system should provide for both reorganization and efficient liquidation to maximize asset recovery.
   - **Creditor Rights:** A strong creditor rights system is essential for promoting lending and investment. Creditors should be able to enforce their claims effectively.

4. **Credit Information System:**

   - While not explicitly stated as a separate principle, the existence of a reliable credit information system is implicitly linked to the overall effectiveness of the insolvency and creditor rights framework. Access to accurate and comprehensive credit information enables lenders to make informed lending decisions, assess risk, and manage their portfolios effectively. This, in turn, reduces the likelihood of defaults and the need for insolvency proceedings.

5. **Informal Corporate Workouts:**

   - While the World Bank Principles primarily focus on formal insolvency proceedings, they recognize the importance of informal workouts as a means of resolving financial distress outside of the court system. An effective insolvency system should not discourage or impede informal workouts but rather provide a framework that supports and encourages them. This can be achieved by:
     - **Providing a Clear Legal Framework:** The legal framework should clearly define the rights and obligations of debtors and creditors in the context of informal workouts.
     - **Encouraging Good Faith Negotiations:** The system should encourage debtors and creditors to engage in good faith negotiations to reach a mutually acceptable resolution.
     - **Protecting Creditor Rights:** The system should ensure that creditors who participate in informal workouts do not lose their rights or priority.
     - **Providing a "Fallback" Option:** The availability of a formal insolvency process provides a "fallback" option if informal workouts fail, which can incentivize parties to negotiate in good faith.

By addressing these key elements, countries can create an effective insolvency and creditor rights system that promotes economic growth, encourages investment, and provides a fair and efficient mechanism for dealing with financial distress.

Answer 6A(i)

Article 30 of the UNCITRAL Model Law on Cross-Border Insolvency (and similar provisions in the EU Recast Insolvency Regulation) addresses the coordination of more than one foreign proceeding, specifically when a debtor is subject to multiple insolvency proceedings in different jurisdictions.

This article empowers a court to modify or terminate relief previously granted to a foreign representative to ensure that the proceedings are coordinated, preventing conflicting decisions and ensuring equitable treatment of creditors.

Coordination of more than one Foreign Proceeding (Article 30)

Article 30 deals with cases where the debtor is subject to insolvency proceedings in more than one foreign State and foreign representatives of more than one foreign proceeding seek recognition or relief in the enacting State. The provision applies whether or not an insolvency proceeding is pending in the enacting State. If, in addition to two or more foreign proceedings, there is a proceeding in the enacting State, the court will have to act pursuant to both Article 29 and Article 30.

In respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under Articles 25, 26 and 27, and the following shall apply:

(a) any relief granted under Article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(b) if a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under Article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding; and

(c) if, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

The objective of Article 30 is similar to that of Article 29 in that the key issue in the case of concurrent proceedings is to promote cooperation, coordination and consistency of relief granted to different proceedings.

Such consistency will be achieved by appropriate tailoring of relief to be granted or by modifying or terminating relief already granted. Unlike Article 29, which, as a matter of principle, gives primacy to the local proceeding, Article 30 gives preference to the foreign main proceeding, if there is one.

Answer 6A(ii)

Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 mandates that the Liquidator shall constitute a Stakeholders' Consultation Committee (SCC) comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date.

SCC comprises of all creditors of the corporate debtor, includes representatives from all classes of stakeholders, such as financial creditors, operational creditors, workmen, and employees.

It is formed to advise him on matters-

(a) remuneration of professionals appointed under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;

(c) fees of the liquidator;

(d) valuation under sub- regulation (2) of regulation 35;

(e) the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed;

(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;

(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice.

It may be noted that-

A secured creditor who has not relinquished his security interest under section 52 shall not be part of the consultation committee; Promoters, directors, partners or their representatives may attend the meeting of the consultation committee, but shall not have any right to vote. Financial creditor or his representative, if he is a related party of the corporate debtor, shall not have right to vote.

Answer 6A(iii)

To alleviate the compliance burden for Insolvency Professionals (IPs), a set of forms on an electronic platform has been created by the IBBI to capture the details of the voluntary liquidation process. These forms are vital for the voluntary liquidation procedure under the Insolvency and Bankruptcy Code (IBC), as they enable systematic and transparent record keeping and seamless reporting.

The primary advantages of these forms include:

- Boosting the efficiency and effectiveness of the voluntary liquidation process.
- Allowing liquidators to conveniently access and submit forms online, reducing delays and enhancing efficiency.
- Decreasing the chances of errors and omissions, ensuring more accurate and reliable information.

Form No.	Period Covered and Scope	Timeline
VL 1	This includes details of the Corporate Debtor (CD) and the details of the Voluntary Liquidation Process	On or before the 10th day of the second month after the public announcement

VL 2	Details of the meetings of contributories with the reasons for delay in the process and details of replacement of liquidator, if any.	On or before the 10th day of the subsequent month, after the meeting of contributories or replacement of liquidator
VL3	Details of dissolution application, details of unclaimed proceeds, details of realization and distribution made to stakeholders, details of pending litigations, detection of fraud or insolvency, if any	On or before the 10th day of the subsequent month, after submission of the dissolution application of the CP or withdrawal / suspension application for the voluntary liquidation process, to the Adjudicating Authority
VL 4	Details of order for Dissolution: This includes details of the distribution of proceeds, receipts and payments etc. (The details required in these forms are carried forward from the VL3 form and hence need not be filled again)	On or before the 14th day of passing of the order for dissolution of the CP, or withdrawal / suspension of the voluntary liquidation process

Answer 6A(iv)

The central issue here is whether Section 32A of the IBC provides immunity to Agarwal Textiles Ltd. under the new management of M/s. Khanna Ventures Pvt. Ltd. from actions taken by the ED concerning offences committed by the previous management before the CIRP commencement date.

Section 32A of the IBC provides immunity to the corporate debtor from prosecution for offences committed prior to the commencement of the CIRP, provided that:

1. The resolution plan has been approved by the NCLT.
2. The resolution plan results in a change in the management or control of the corporate debtor.
3. The new management or control was not a related party of the previous offenders.
4. The new management has not abetted or conspired in the commission of the offence.

In this case:

- Resolution Plan Approval: The resolution plan was approved by the NCLT on January 15, 2025.
- Change in Management: M/s. Khanna Ventures Pvt. Ltd. has taken over the management, representing a complete change in control.
- Independence of New Management: Mr. Sanjay Khanna and his team are not related to the previous management (Mr. Rajesh Agarwal) and had no prior involvement with Agarwal Textiles Ltd.

- No Abetment: There is no indication that the new management abetted or conspired in the commission of the offences.

Based on these facts, Agarwal Textiles Ltd., under the new management of M/s. Khanna Ventures Pvt. Ltd., can claim immunity under Section 32A of the IBC and the NCLT should consider to grant immunity to Agarwal Textiles Ltd. under the new management from the attachment of assets by the ED, as it meets the criteria specified under Section 32A of the IBC.

The purpose of Section 32A is to encourage genuine resolution applicants to take over distressed companies without fear of being penalized for the misdeeds of the previous management. Denying immunity in this case would defeat the purpose of the IBC, as it would deter potential resolution applicants.

However, it is important to note that the immunity under Section 32A is not absolute. The ED could still pursue action against the former MD, Mr. Rajesh Agarwal, for his alleged fraudulent activities. The immunity applies to the corporate debtor itself, provided the conditions of Section 32A are met.

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ARBITRATION, MEDIATION & CONCILIATION

GROUP 2 ELECTIVE PAPER 7.1

Time allowed : 3 hours **Maximum marks : 100**

Total number of questions : 6

NOTE : *Answer* ***ALL*** *Questions.*

PART-I

Question 1

Protech Engineers Limited (Referred as 'Protech'), a Bangalore-based company engaged in manufacturing high-tech equipment, as part of its long-term business strategy, decided to expand into renewable energy sector. In January 2024, it entered into a commercial agreement with Zong Energy Pte. Limited, (Referred as 'Zong Energy') a Singapore-based company known for executing large-scale solar power projects across Asia.

The agreement relates to supply, installation and commissioning of a 100 MW solar power plant in Rajasthan. Under the contract, Zong Energy was responsible for supplying solar photovoltaic equipment, providing technical installation support and offering specialized engineering services required for setting up the project. The project involved strict timelines because the electricity generated from the plant was to be supplied to industrial consumers under long-term supply arrangements.

The contract contained detailed provisions relating to performance obligations, payment terms, dispute resolution and risk allocation. As per the agreed financial structure, Protech was required to pay :

- *30% of the contract value as advance payment.*
- *50% upon delivery of equipment and*
- *The remaining 20% after successful commissioning of the solar plant.*

The agreement also provided for a Force Majeure clause, by which either party would be excused from performance if unforeseen circumstances beyond their control occurred. Such events included natural disasters, pandemics, and government restrictions affecting the import or export of equipment.

A dispute resolution mechanism was also contemplated between the parties. It provided that any dispute arising out of or in connection with the contract would be referred to arbitration in Singapore under UNCITRAL Rules, with Singapore designated as the seat of arbitration. The governing law of the contract was stated to be the Indian Contract Act, 1872.

However, it later came to light that the arbitration clause was not incorporated in the main contract document signed by both parties. Instead, the clause was included through a Supplementary Letter dated 12th January 2024, which was signed on behalf of Zong Energy by *its Chief Executive Officer (CEO). The main agreement made reference to certain supplementary documents forming part of the overall contractual understanding between the parties.*

Initially, the project progressed without any major issues. Zong Energy supplied certain components required for the solar plant and installation work commenced at the project site in Rajasthan. However, after partial delivery and commencement of installation, Protech began to face operational diffculties.

Protech alleged that some of the components supplied by Zong Energy were sub-standard and not in accordance with the agreed technical specifications. According to Protech, these defects were likely to affect the efficiency and output of the solar power plant and could result in financial losses estimated at approximately ₹ 8 Crore.

The parties attempted to resolve the dispute through discussions and mutual negotiations. Senior representatives from both sides held several meetings to explore possible solutions, including replacement of defective equipment and revision of project timelines. Despite these efforts, the dispute could not be resolved amicably.

Consequently, on 1st October 2024, Protech issued a Notice of Arbitration, seeking to invoke the arbitration mechanism.

At this stage, Zong Energy raised an objection to the arbitration proceedings. It contended that the arbitration clause was not valid and binding, as it was introduced through the supplementary letter signed by the CEO, who allegedly did not have proper board authorization to include such a clause. Therefore, Zong Energy argued that there was no valid arbitration agreement between the parties.

Despite this objection, Protech proceeded to file an application before an Indian Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.

Zong Energy opposed the application on the ground that Indian Courts lacked jurisdiction, as the contract clearly specified Singapore as the seat of arbitration. According to Zong Energy, Courts at the seat of arbitration alone would have supervisory jurisdiction over the arbitral process.

The dispute further escalated when Zong Energy withheld 15% of the contract payment, citing foreign exchange fluctuations and invoking the Force Majeure clause. Zong Energy also raised counter-claims amounting to ₹4 Crore, alleging that delays in the project were caused due to defective components supplied or mishandled by Protech.

Protech disputed these allegations and contended that some of the claims raised by Zong Energy were not covered within the scope of the arbitration arrangement between the parties.

Meanwhile, Protech became concerned about the advance payment already made to Zong Energy. Since a portion of the advance remained unutilized and was held in Indian bank accounts, Protech approached an Indian Court under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim relief for protection and attachment of such funds.

In these circumstances, multiple issues have arisen between the parties relating to the existence and validity of the arbitration arrangement, the jurisdiction of Courts in view of the foreign seat, the scope of disputes that may be referred to arbitration and the availability of remedies *to safeguard financial interests pending resolution of the dispute. The parties are also considering whether the dispute can be resolved through an expedited procedure, if permissible under the applicable legal framework.*

In the light of the above scenario, answer the following questions :

(a) Examine whether the arbitration clause included through the Supplementary Letter dated 12th January 2024 is valid and enforceable under Indian law in the context of the authority of the CEO, the requirement of a written agreement and the relevance of pre-contractual negotiations.

(5 marks)

(b) (i) State whether Indian Courts can entertain Protech's application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator.

(2 marks)

(ii) Explain the limitations and conditions governing the jurisdiction of Indian Courts in cases of foreign-seated arbitrations, with reference to relevant legal provisions and judicial precedents.

(3 marks)

(c) Advise whether Protech can seek interim relief from Indian Courts under Section 9 of the Arbitration and Conciliation Act, 1996 for attachment or protection of unspent advance payments held in Indian bank accounts of Zong Energy in view of the foreign seat of arbitration and the Force Majeure claim raised by Zong Energy.

(5 marks)

(d) Analyse whether the counter-claims raised by Zong Energy fall within the scope of the arbitration agreement contained in the contract, based on the relevant provisions of the Arbitration and Conciliation Act, 1996 (as amended) and judicial precedents.

(5 marks)

(e) Discuss whether Protech can invoke Fast Track Arbitration under Section 29B of the Arbitration and Conciliation Act, 1996 in the given situation. Also explain the procedure, key features and limitations of Fast Track Arbitration, with reference to statutory provisions and judicial precedents.

(5 marks)

Answer 1(a)

Issue:

Whether the arbitration clause introduced through a Supplementary Letter signed by the CEO of Zong Energy Pte. Ltd. (Zong Energy) is valid and enforceable.

Rule:

Under Section 7 of the Arbitration and Conciliation Act, 1996, an arbitration agreement must be in writing and may be contained in a separate document, exchange of letters or other communications evidencing intention to arbitrate. Further, Section 7(4)(b) and Section 7(5) recognise arbitration agreements contained in exchange of letters, communications, or documents incorporated by reference. The doctrine of incorporation by reference permits an arbitration clause contained in another document to become part of the principal contract if the reference is clear and indicates an intention to incorporate the clause.

The Supreme Court in *Trimex International FZE Ltd* v *Vedanta Aluminium Ltd* recognised that arbitration agreements may arise through related contractual documents or correspondence. Further, in MTNL v Canara Bank the Court held that arbitration agreements may exist in connected contractual documents forming part of the transaction.

Application:

In the given case, the arbitration clause is contained in a written supplementary letter, thereby satisfying the requirement of writing under Section 7. The principal contract incorporates such documents by reference. Since the letter was signed by the CEO of Zong Energy, a senior managerial officer, the company may be bound on the basis of apparent authority or subsequent ratification, particularly if it continued performance without objection.

Therefore, the arbitration clause is likely enforceable because:

(i) it is in writing;

(ii) it forms part of a supplementary document referred to in the principal transaction;

(iii) parties acted upon the contract; and

(iv) questions regarding authority of the CEO are matters requiring evidence and ordinarily do not defeat the arbitration agreement at the referral stage.

Alternate Answer

Issue:

Whether the arbitration clause introduced through a Supplementary Letter signed by the CEO of Zong Energy Pte. Ltd. (Zong Energy) is valid and enforceable.

Rule:

Under Section 7 of the Arbitration and Conciliation Act, 1996, an arbitration agreement must be in writing and may be contained in a separate document, exchange of letters or other communications evidencing intention to arbitrate. Further, Section 7(4)(b) and Section 7(5) recognise arbitration agreements contained in exchange of letters, communications, or documents incorporated by reference. The doctrine of incorporation by reference permits an arbitration clause contained in another document to become part of the principal contract if the reference is clear and indicates an intention to incorporate the clause.

The Supreme Court in *Trimex International FZE Ltd* v *Vedanta Aluminium Ltd* recognised that arbitration agreements may arise through related contractual documents or correspondence. Further, in *MTNL* v *Canara Ban*k the Court held that arbitration agreements may exist in connected contractual documents forming part of the transaction.

Application

In the given case, arbitration clause contained in the supplementary letter may be challenged as invalid or unenforceable, if it has been proved that CEO lacked authority and the board never ratified the clause or the letter does not qualify to be an agreement.

Thus, the arbitration agreement/clause is subject to proof regarding the authority of the CEO or ratification by the company and satisfaction of conditions under section 7 of the Act.

Answer 1(b)(i)

Issue:

In the given circumstances, whether Indian courts can appoint an arbitrator under Section 11 of Arbitration and Conciliation Act, 1996 (the Act) despite Singapore being the seat.

Rule:

Under Section 11 of the Act, courts may appoint arbitrators where parties fail to do so. However, the Supreme Court in *Bharat Aluminium Co* v *Kaiser Aluminium Technical Services Inc* (BALCO Judgement) held that the seat of arbitration determines supervisory jurisdiction, and courts of the seat alone have primary control over arbitration proceedings.

Application:

The contract clearly provides that arbitration shall be conducted in Singapore under UNCITRAL Rules, making Singapore the juridical seat of arbitration.

Conclusion

Since Singapore is the seat of arbitration, Part I generally does not apply in terms of BALCO judgement. However, before declining jurisdiction in Protech's application for appointment of Arbitrator, an Indian Court may undertake the limited examination contemplated under Section 11(6A), namely whether a prima facie arbitration agreement exists. Once the existence of the arbitration agreement is established, appointment should be governed by the agreed procedure under UNCITRAL Rules and the law of the seat.

Answer 1(b)(ii)

Limitations on Indian Courts in Foreign-Seated Arbitration

Rule / Legal Position:

Indian courts cannot supervise or appoint arbitrators for arbitrations seated outside India (Part I of the Arbitration Act does not apply).

Key precedents:

- o *Bharat Aluminium Co.* v. *Kaiser Aluminium* – Section 11 of Arbitration and Conciliation Act, 1996 does not apply to foreign-seated arbitration.
- o *Indus Mobile Distribution* v. *Datawind* – the seat determines jurisdiction.

Exceptions:

Indian courts may exercise limited jurisdiction such as provided under:

- Section 9
- Section 27

unless expressly excluded by agreement.

Indian courts can grant interim relief under Section 9 or assist in taking evidence under Section 27, if the parties submit to Indian jurisdiction (PASL Wind Solutions v. GE Power, 2021 SC).

Application:

For Zong Energy, since Singapore is the seat, Indian courts cannot appoint the arbitrator, but may grant interim relief in India, if necessary.

Conclusion

Indian courts have limited jurisdiction in foreign seated arbitration such as interim relief or evidence assistance.

Answer 1(c)

Issue:

Whether Protech Engineers Limited (Protech) can seek interim protection in India despite the foreign seat and effect of Force Majeure defence.

Rule:

Under Section 9 of Arbitration and Conciliation Act, 1996, courts may grant interim measures such as preservation of property, securing disputed amount, or attachment of assets. The 2015 Amendment inserted a proviso to Section 2(2) allowing Section 9 relief even for foreign-seated arbitration unless excluded by agreement. In *Sundaram Finance Ltd* v *NEPC India Ltd* courts recognised the power to grant interim protection before arbitration. Also, in *PASL Wind Solutions Pvt. Ltd.* v. *GE Power Conversion India Pvt. Ltd.,* the Supreme Court affirmed that parties to foreign-seated arbitration may seek interim relief from Indian Courts unless expressly excluded.

The existence of a Force Majeure claim does not automatically bar interim relief. The court will independently evaluate the genuineness of the Force Majeure event, the nexus between the event and non-performance, and the risk to the recoverability of funds.

Application:

Since the advance funds are held in Indian bank accounts, Protech may seek attachment or protective orders to secure its claim.

However, if the contract expressly excludes Part I provisions, Indian courts may refuse such relief.

Conclusion:

Hence, interim relief under Section 9 is generally maintainable in India, subject to satisfying the established principles governing interim measures, unless expressly excluded by the contractual agreement.

Answer 1(d)

Rule

Under Section 23(2A) of Arbitration and Conciliation Act, 1996 respondents may raise counter-claims. In State of Goa v Praveen Enterprises, the Supreme Court held that counter-claims arising from the same contract may be adjudicated by the arbitral tribunal.

Section 23(2A) specifically permits respondents to submit counterclaims or set-offs provided they fall within the scope of the arbitration agreement.

Application

The arbitration clause covers disputes "arising out of or in connection with the contract", which is interpreted broadly. Zong Energy's counter-claims relating to project delay and breach of contractual obligations arise directly from the contractual relationship.

Since the counterclaims arise out of alleged delay, defective performance and contractual obligations under the same project agreement, they satisfy the "arising out of or in connection with" requirement.

However, if the arbitration clause were narrowly drafted, certain counter-claims unrelated to the contract might fall outside its scope.

Conclusion

In view of the above discussion, it can be said that the counter-claims are generally maintainable before the arbitral tribunal.

Answer 1(e)

The provisions relating to Fast Track Arbitration under section 29B of the Arbitration and Conciliation Act, 1996 is as follows:

(1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):—

   (a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;

   (b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;

(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;

(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of subsections (3) to (9) of section 29A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.

Application

In the given case, since the contract provides for Singapore as the seat, Section 29B cannot be directly invoked. However, Parties may mutually adopt expedited arbitration procedures under UNCITRAL Rules.

Conclusion

There is no indication that parties agreed to Fast Track Arbitration. Thus, statutory Fast Track Arbitration under Section 29B may not be applicable, though expedited arbitration by agreement remains possible through pre or post dispute written agreement.

Key Feature

Key features of Fast Track Arbitration inter alia includes:

- Mutual written agreement by the parties to adopt fast track procedure
- Sole arbitrator on agreement of the parties
- Primarily based on documents
- Limited oral hearings
- Flexible and simplified procedure
- Time-bound award

In the case of *Gayatri Balasamy* v. *M/S. ISG Novasoft Technologies Limited*, honourable Supreme Court has referred to Gary B. Born's, commentary "International Commercial Arbitration", South Asian Reprint Edition published by Wolters Kluwer in which it has been said that technically complex disputes can include specialized procedures for testing and presenting expert evidence, or "fast track" procedures can be adopted where time is of the essence, or tailor-made dispute resolution mechanisms can be adopted in particular commercial markets.

Limitations

The limitation of Fast Track Procedure may inter alia includes:

- Restricted oral hearings
- Limited opportunity to present full arguments due to abbreviated procedure.

- Fewer procedural steps, limited discovery, and constrained evidence process.
- Proceedings are primarily based on documents; oral hearings are minimal or absent.

Question 2

(a) *Glen International AG (Referred as 'Glen'), a Swiss company handling the business of mining and commodity trading, entered into a series of contracts with SG Metals (Referred as 'SG') for the supply of zinc metals. All contracts contained identical arbitration clauses with London as the seat of arbitration. A fresh contract was proposed to purchase 6,000 metric tons of zinc metal from Glen. SG only negotiated the provisional price and exchanged some email correspondence with Glen. On 11th March 2016, Glen sent the duly signed version of the contract to SG after incorporating the negotiated terms and modalities of the transaction (Referred as 'Contract').*

Interestingly, the Contract remained unsigned by SG, but it continued to discharge its obligations, including the acceptance of 2,000 metric tons of zinc metal supplied by Glen. Subsequently, another series of correspondence revealed that SG understood its payment obligations under the unsigned Contract.

Disputes arose when SG failed to furnish the Letter of Credit (Referred as 'LC') for September 2016, and Glen encashed the previous LCs. SG proceeded to file a civil suit before the High Court of Delhi (Referred as 'High Court'), inter alia, claiming recovery of US$ 1,200,000 and a permanent injunction against encashment of further LCs by Glen. In response, Glen filed an application under Section 45 of the Arbitration and Conciliation Act, 1996 seeking a referral to arbitration owing to the existence of an arbitration clause in the unsigned Contract. This request for referral was refused by the High Court and later affirmed in appeal on the premise that there was no record to show that SG had, either expressly or impliedly, agreed to the terms and conditions set out in the unsigned Contract.

The Supreme Court was concerned with a singular issue of determining whether there is a binding arbitration agreement between Glen and SG in view of the unsigned Contract. On this background stating the key elements of Section 45 of the Arbitration and Conciliation Act, 1996, state whether Glen will succeed in this case.

(5 marks)

(b) *In a case, the learned Arbitrator reserved his Arbitral Award on 28th July 2012 but pronounced it only on l6th March 2016, i.e., nearly three years and eight months later, with no definite resolution of the matter. Significantly, no explanation worth the name was offered by him for the delay. Two questions arise for consideration in the appeal :*

(i) *What is the effect of undue and unexplained delay in the pronouncement of an Arbitral Award upon its validity ?*

(ii) *Is an Arbitral Award that is unworkable, in terms of not settling the disputes between the parties finally while altering their positions irrevocably thereby leaving them no choice but to initiate further litigation, liable to be set aside on grounds of perversity, patent illegality and being opposed to the public policy of*

India ? If so, would it be a fit case for exercise of jurisdiction under Article 142 of the Constitution ?

Examine the matter on the basis of a judicial pronouncement.

(5 marks)

(c) Rim Industries Limited (Referred as 'Rim Limited'), a supplier of industrial equipment entered into a contract with Sanju Products Private Limited (Referred as 'SPPL'), for supply and installation of machinery. The agreement contained an arbitration clause providing that dispute would be resolved through arbitration by a sole Arbitrator. A dispute later arose regarding non-payment of the balance contract amount by SPPL, despite completion of supply and installation by Rim Limited. The matter was referred to arbitration. After considering the pleadings, documents and hearing both parties, the sole arbitrator concluded that SPPL was liable to pay the outstanding amount along with reasonable interest and costs of arbitration.

Draft the operative portion of an Arbitral Award that the Arbitrator may issue in the above case in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

(5 marks)

Answer 2(a)

Key Elements of Section 45 of Arbitration and Conciliation Act, 1996

The essence of Section 45 of Arbitration and Conciliation Act, 1996 (the Act) is to restrict unnecessary court interference when parties have already agreed to settle disputes through foreign arbitration.

Judicial Authority: Courts in India have the power and duty, to refer parties to arbitration if the dispute is covered by a valid foreign arbitration agreement under Section 44.

Mandatory Referral: Once an arbitration clause is established, courts cannot adjudicate the matter on merits but must refer the dispute to arbitration.

Scope: Applies only to foreign awards covered under the New York Convention countries (as per Section 44 of the Act).

The given situation is based on the decided case law *Glencore International AG* v. *M/s. Shree Ganesh Metals and another* decided by Supreme Court on 25th August, 2025.

In this case, whilst determining the issue, the Supreme Court ostensibly based its decision on the 'second alternative' of an agreement in writing, i.e., inferring the validity of an arbitration agreement through an exchange of communications such as emails, which provides a record of agreement. Along with invoking the second alternative to an agreement in writing, it was held that SG Metals cannot blithely bank upon its own failure to sign the said Contract and now renege from the binding terms and conditions contained therein. One of the most crucial factors that weighed-in against SG Metals was its communication regarding modifying the provisional prices, that was subsequently accepted by Glencore as it shared the Contract for signing by SG Metals.

Thereafter, the Supreme Court relied upon *Govind Rubber Limited* v. *Louis Dreyfus Commodities Asia Private Limited*, to hold that an arbitration clause must be interpreted in a manner to give effect to the same rather than invalidate it. Coupled with this, it reiterated that at the referral stage, the scope of inquiry is limited to prima facie proof of the existence of an arbitration agreement. Subsequently, through the doctrine of Kompetenz-Kompetenz, the validity and existence of an arbitration agreement may be decided by the arbitral tribunal.

Accordingly, the Supreme Court set-aside the orders passed by the High Court, restored the application filed by Glencore, and directed the parties to be referred to arbitration.

Conclusion

A valid and binding arbitration agreement exists notwithstanding the absence of SG's signature on the Contract because Section 45 does not require a formally signed agreement in every case. Section 7 recognizes agreements evidenced through correspondence and conduct. SG accepted delivery of goods and acted upon the Contract. Subsequent communications demonstrated acceptance of contractual obligations. The arbitration clause forms part of the Contract accepted by SG. In view of the above discussion, Glen International AG can succeed in the case before the Supreme Court.

Answer 2(b)

The appropriate position of law in the given circumstances can be understood from the decision of the case *M/s Lancor Holdings Limited* v. *Prem Kumar Menon & Ors.* decided by Supreme Court on 31st October, 2025.

In this case, the Hon'ble Supreme Court has held that delay in the delivery of an arbitral award, by itself, is not sufficient to set aside that award. However, each such case would have to be examined on its own individual facts to ascertain whether that delay had an adverse impact on the final decision of the arbitral tribunal, whereby that award would stand vitiated due to the lapses committed by the arbitral tribunal owing to such delay. It is only when the effect of the undue delay in the delivery of an arbitral award is explicit and adversely reflects on the findings therein, such delay and, more so, if it remains unexplained, can be construed to result in the award being in conflict with the public policy of India, thereby attracting Section 34(2)(b)(ii) of the Act of 1996 or Section 34(2A) thereof, as it may also be vitiated by patent illegality. Further, it would not be necessary for an aggrieved party to invoke the remedy under Section 14(2) of the Act of 1996 as a condition precedent to lay a challenge to that delayed and tainted award under Section 34 thereof.

The basis and public policy underlying the process of arbitration is that it is less time-consuming and results in speedier resolution of disputes between the parties, The Court held that if that premise is not fulfilled by an unworkable arbitral award that does not resolve the disputes between the parties, on one hand, leaving them with no choice but to initiate a fresh round of arbitration/litigation but the arbitrator, in the meanwhile, also changed their positions, irrevocably altering the pre-existing balance between the parties prior to the arbitration, then such an arbitral award would not only be in conflict with the public policy of India but would also be patently illegal on the face of it. It would therefore be liable to be set aside under Section 34(2)(b)(ii) and/or Section 34(2A) of the Arbitration and Conciliation Act, 1996.

It was also held that where the conditions for exercise of power under Article 142 of the Constitution are satisfied, such jurisdiction may be justifiably exercised in accordance with the principles laid down in *Gayatri Balasamy* v. *ISG Novasoft Technologies Limited*.

Answer 2(c)

IN THE MATTER OF ARBITRATION

Between

Rim Industries Limited – Claimant

And

Sanju Products Private Limited – Respondent

ARBITRAL AWARD

1. The dispute between the parties arose out of the contract dated ______ relating to supply and installation of machinery.
2. The claimant contended that the respondent failed to pay the balance contract amount despite completion of contractual obligations.
3. After examining the pleadings, documents and submissions of both parties, the undersigned arbitrator finds that the respondent is liable to pay the outstanding amount to the claimant.
4. Award

   The Claimant, Rim Industries Limited, has successfully established that it duly performed its contractual obligations relating to the supply and installation of machinery under the Agreement entered into with the Respondent, Sanju Products Private Limited.
5. The respondent Sanju Products Private Limited is hereby directed to pay to the claimant Rim Industries Limited the sum of ₹________ together with interest at ___% per annum from the date of claim till realization.
6. The respondent shall also bear the costs of arbitration amounting to ₹________.
7. The Respondent shall pay the amounts awarded under Clauses 5 and 6 above within thirty (30) days from the date of receipt of this Award.
8. All other claims, counterclaims, if any, and reliefs not expressly granted herein stand rejected.
9. This Award is final and binding upon the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
10. This award is made and signed on this ___ day of ______ at ______.

(Signature of Arbitrator)

Name: __________

Sole Arbitrator

Question 3

(a) *OG (Appellant) entered into a contract with GT Private Limited (Respondent). Disputes arose regarding payment of outstanding amounts under various invoices. The matter was referred to a three-member Arbitral Tribunal. Arbitral Award dated 21st November 2004. The Arbitral Tribunal :*

- *Allowed claims totalling USD 6,56,272.34 in favour of the respondent*
- *Rejected claims for interest on individual invoices*
- *However, awarded interest at 12% per annum on the total sum from 12th December, 1998 (the date when the statement of claim was affirmed) till recovery.*
- *Awarded costs of ₹ 5 lakhs.*

Subsequent Proceedings :

- *OG filed a Special Leave Petition before the Supreme Court, which was limited to the issue of whether interest on the tolal awarded amount at the rate of 12% could be awarded or not;*

OG's Argument before Supreme Court was :

Section 31(7) of the Arbitration and Conciliation Act, 1996, clearly provides that the power of the Arbitral Tribunal to award interest for the period between the dates the cause of action arose up to the date of the Award is subject to the agreement between the parties. Therefore, in view of specific Clause in the Agreement (Clause 18.1 of the Agreement executed between the Parties), no interest could have been awarded. The Arbitral Award is liable to be set aside to the extent it awards interest.

GT Private Limited's Argument before the Apex Court was :

Clause 18.1, if read as a whole, indicates that payment is not to be withheld if the amount is not in dispute. Interest is not payable only when there is a dispute. The Arbitral Tribunal did not award interest on the pre-reference period but awarded interest from the date the claim was affirmed before the tribunal. Once it was found that the balance amount on the invoices was unjustifiably withheld, payment of interest is lawful.

Referring to the judicial pronouncement, decide on the matter.

(5 marks)

(b) *Mohabat Limited issued a notice on 4th April 2021 to Construct Coy (The other Party to the Agreement executed between them) requesting appointment of an Arbitrator as per their agreement. Construct Coy did not respond. After several communications between the parties, Mohabat Limited filed an application before the Court on 20th June, 2025 under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.*

Construct Coy opposed the application stating that it is time-barred under Article 137 of the Limitation Act, 1963. Mohabat Limited argued that the delay should be excused due to ongoing discussions and disruptions caused by COVID-19.

Examine whether :

(i) The application filed by Mohabat Limited under Section 11(6) is barred by limitation.

(ii) The underlying dispute is ex facie time-barred.

(iii) How the Limitation Act, 1963 applies to such applications.

(iv) Under what circumstances a Court can refuse to appoint an Arbitrator on the ground of limitation ?

(5 marks)

(c) Sara Limited (Referred as 'Sara') entered into a contract with Yaso Infra Limited (Referred as 'Yaso Infra') for installation of pipeline equipment. The contract contained an arbitration clause for resolving disputes. During execution, disputes arose regarding delay in payment for completed work. Yaso Infra invoked arbitration and claimed the outstanding amount along with interest for the period during which the arbitration proceedings were pending. The Arbitral Tribunal passed an award directing Sara to pay the principal amount and also pendente lite interest from the date of commencement of arbitration till the date of award. Sara challenged the Award contending that the tribunal had no power to grant such interest.

Whether an Arbitral Tribunal has the power to grant pendente lite interest during arbitration proceedings under the Arbitration and Conciliation Act, 1996 ? Discuss with reference to legal provisions and judicial precedent.

(5 marks)

Answer 3(a)

The facts of the given situation are similar to the case of *Oil and Natural Gas Corporation Ltd.* v. *M/s G & T Beckfield Drilling Services Pvt. Ltd.* decided by Supreme Court on 2nd September, 2025.

In this case, the apex court clarified the scope of an arbitral tribunal's authority to grant interest during the pendency of proceedings.

The Court ruled that arbitrators retain their statutory power to award pendente lite interest unless the parties' agreement contains language that either explicitly or through necessary inference removes this authority. A provision simply stating that no interest shall accrue on delayed or disputed payments does not, standing alone, amount to such a restriction.

Examining Clause 18.1 of the contract in question, the Court found no express prohibition against pendente lite interest. The clause merely specified that the Corporation would not pay interest on delayed payments or contested amounts. Critically, it neither restricted the tribunal's authority to grant such interest nor declared that interest would be unavailable under all circumstances. The Court therefore concluded that Clause 18.1 left intact the tribunal's statutory discretion to award interest pending resolution of the dispute.

The Supreme Court dismissed the appeal and upheld the award of pendente lite interest. The Court held:

1. No error was found in the award of pendente lite interest warranting interference;
2. The rate of 12% per annum was reasonable, being lower than the statutorily prescribed rate of 18% under Section 31(7)(b) as it existed then;
3. Post-award interest was in line with the statutory provision of Section 31(7)(b) as it then existed.

In view of the decision of this case, it may be said that the arguments of GT Private Limited seems appropriate and it can succeed in the matter.

Answer 3(b)

Rule

- Section 11(6) of Arbitration and Conciliation Act, 1996: Court may appoint an arbitrator where a party fails to act as required.
- Article 137, Limitation Act, 1963: Residual limitation period of 3 years applies to Section 11 applications (from the date when the right to apply accrues).

Judicial precedent

The facts of the given situation can be examined with the help of the case *M/S Arif Azim Co Ltd* v. *M/S Aptech Ltd*. decided by Supreme Court on 1st March, 2024.

In this case, inter alia the following two important questions were considered:

I. Whether the Limitation Act, 1963 is applicable to an application for appointment of arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996?

II. Whether the court may refuse to make a reference under Section 11 of Act, 1996 where the claims are ex-facie and hopelessly time-barred?

The Apex court inter alia has laid down that the plain reading of Section 11(6) of the Act, 1996, which provides for the appointment of arbitrators, indicates that no time-limit has been prescribed for filing an application under the said section. However, Section 43 of the Act, 1996 provides that the Limitation Act, 1963 would apply to arbitrations as it applies to proceedings in court.

Since none of the Articles in the Schedule to the Limitation Act, 1963 provide a time period for filing an application under Section 11(6) of the Act, 1996, it would be covered by Article 137 of the Limitation Act, 1963 which is the residual provision.

In his authoritative commentary, "International Commercial Arbitration, Wolters Kluwer, 3rd Edition, pp. 2873- 2875", Gary B. Born has observed that as a general rule, limitation statutes are applicable to arbitration proceedings.

The Apex Court laid down that having traversed the statutory framework and case law, we are of the clear view that there is no doubt as to the applicability of the Limitation Act, 1963 to arbitration proceedings in general and that of Article 137 of the Limitation Act, 1963 to a petition under Section 11(6) of the Act, 1996 in particular.

The following paragraph may also be referred,

"Thus, from an exhaustive analysis of the position of law on the issues, we are of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, 1996, the courts should satisfy themselves on two aspects by employing a two-pronged test – first, whether the petition under Section 11(6) of the Act, 1996 is barred by limitation; and secondly, whether the claims sought to be arbitrated are ex-facie dead claims and are thus barred by limitation on the date of commencement of arbitration proceedings. If either of these issues are answered against the party seeking referral of disputes to arbitration, the court may refuse to appoint an arbitral tribunal."

COVID-19 EXTENSION

COVID-19 extension (SC orders): Period from 15.03.2020 to 28.02.2022 excluded for limitation computation. This will not have effect on the given case.

APPLICATION

- Mohabat Limited issued notice on 4 April 2021.
- Construct Coy failed to appoint arbitrator → cause of action arose shortly thereafter (reasonable time ~30 days).
- Limitation (3 years) as per Limitation Act, 1963 would ordinarily expire around May 2024.

Ongoing Communications

- As per *Arif* v. *Aptech*, mere negotiations do not extend limitation unless there is clear acknowledgment of liability.
- No such acknowledgment is indicated → argument weak.

Ex Facie Time-Barred Claim

- If the underlying dispute itself is stale (beyond 3 years without acknowledgment), court may refuse appointment. (*BSNL* v. *Nortel principle*).
- However, if there is any arguable issue, courts generally prefer referring to arbitration.

The Court while considering a Section 11 petition is therefore required to undertake a two-fold inquiry:

(i) whether the Section 11 application itself is within limitation; and

(ii) whether the substantive claims proposed to be referred to arbitration are ex facie dead or hopelessly time-barred.

Only where either issue is answered against the applicant may the Court decline appointment of an arbitrator.

Conclusion

- Section 11(6) application is likely time-barred, even after considering COVID-19 exclusion.

- Ongoing discussions alone do not save limitation.

If the underlying claim is clearly stale, the court may refuse appointment; otherwise, it may still refer the matter to arbitration for adjudication.

Answer 3(c)

Under Section 31(7)(a) of the Arbitration and Conciliation Act, 1996, an arbitral tribunal may include in the award interest for the whole or part of the period between the date on which the cause of action arose and the date of the award, unless the parties have agreed otherwise.

The expression "unless otherwise agreed by the parties" contained in Section 31(7)(a) indicates that the arbitral tribunal's power to award interest may be excluded only through an express contractual stipulation. In the absence of such exclusion, award of pendente lite interest remains within the tribunal's discretion.

In the case of *Oil and Natural Gas Corporation Ltd*. v. *M/s G & T Beckfield Drilling Services Pvt. Ltd.,* the Court ruled that arbitrators retain their statutory power to award pendente lite interest unless the parties' agreement contains language that either explicitly or through necessary inference removes this authority.

In the given case, the arbitral tribunal granted interest for the period during which arbitration was pending. Since there is no indication that the contract prohibited grant of interest, the tribunal acted within its statutory powers.

Therefore, the grant of pendente lite interest by the arbitral tribunal is legally valid, and the challenge by Sara Limited is unlikely to succeed.

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

Question 4

(a) *Akaash, aged 34, a Company Secretary in practice for last six years, wishes to empanel as a conciliator or arbitrator by the Online Dispute Resolution Institutions. Advise Akaash, mentioning the 'suggested norms for empanelment of Conciliators and Arbitrators', in respect of age, experience as well as professional experiences, qualifications, with reference to Master Circular for Online Resolution of Disputes in the Indian Securities Market updated as on 20th December, 2023.*

(5 marks)

(b) *''When parties to a contract have an arbitration agreement but have not agreed on the procedure for appointing Arbitrators, the appointment is guided by statutory default provisions (such as Section 11 of the Indian Arbitration and Conciliation Act, 1996 (Referred as 'the Act') or institutional rules.'' Answer the following on the basis of the provisions of Section 11 of the Act :*

(i) *Company A and Company B have a dispute. The contract is silent on the method of appointment. Company A sends a notice to Company B proposing an arbitrator. If Company B does not agree on the person within 30 days, what is the option available to Company A ?*

(ii) A joint venture agreement stipulates a three-arbitrator tribunal. Party X appoints an arbitrator. Party Y fails to appoint an arbitrator within 30 days of a request. What is the option available to Party X ?

(5 marks)

(c) Green Field Agro Private Limited (Referred as 'Green Field Agro'), a food-processing company, entered into a long-term supply agreement with Sunrise Farmers' Cooperative Society for procurement of organic vegetables. Due to fluctuations in market prices, disputed arose regarding revision of supply rates and delayed payments. To preserve their commercial relationship, both parties mutually agreed to initiate conciliation proceedings under the Arbitration and Conciliation Act, 1996. A Conciliator was appointed who conducted meetings with both parties and proposed a mutually acceptable settlement. After negotiations, both parties signed a written Settlement Agreement prepared by the Conciliator resolving the pricing and payment issues. However, later Green Field Agro refused to honour the Settlement stating it was merely a negotiated understanding.

On this background, state whether a Settlement Agreement reached through conciliation proceedings is binding and enforceable on the parties under the Arbitration and Conciliation Act, 1996 ? Explain with reference to the relevant provisions and judicial precedents.

(5 marks)

OR (Alternate Question to Q. No. 4)

Question 4A

(i) Mars Limited, a manufacturing company, entered into a technology supply contract with Neptune private Limited. The agreement contained an arbitration clause providing that dispute would be resolved through institutional arbitration. After a dispute arose regarding delay in supply, Neptune Private Limited initiated arbitration proceedings. During the proceedings, Mars Limited raised an objection that the Arbitration Agreement was invalid and that the Arbitral Tribunal had no jurisdiction to decide the dispute. The Arbitral Tribunal decided to first examine whether it had jurisdiction to hear the dispute before proceeding with the merits of the case. Mars Limited challenged the authority of the tribunal to decide such jurisdictional issues.

Whether an Arbitral Tribunal has the power to rule on its own jurisdiction, including the validity of the arbitration agreement ? Explain with reference to the relevant principles and provisions of the Arbitration and Conciliation Act, 1996.

(5 marks)

(ii) Explain the recent amendments to the Arbitration and Conciliation Act, 1996 that have an impact and effect on the drafting of arbitration clauses and enforcement of Arbitral Awards. How do these amendments help in reducing procedural and administrative delays and improving efficiency in arbitration ?

(5 marks)

(iii) *An individual investor entered into an online trading arrangement with a registered stock broker through a digital platform. The terms and conditions, accepted electronically, contained an arbitration clause for resolution of disputes. Subsequently, the investor alleged that certain trades were executed without proper authorization, resulting in financial losses. The investor approached a civil Court seeking relief, contending that the online agreement lacked informed consent and that the arbitration clause was not binding. The broker objected to the maintainability of the suit and sought reference of the dispute to arbitration based on the agreed terms.*

Examine whether disputes arising out of online trading transactions can be referred to arbitration. Discuss the validity and enforceability of the arbitration clause in such electronic agreements.

(5 marks)

Answer 4(a)

Suggested norms for empanelment of Conciliators and Arbitrators as per Master Circular for Online Resolution of Disputes in the Indian Securities Market updated as on 20th December, 2023

The following factors are suggested for empaneling a person as a conciliator or arbitrator by the ODR Institutions:

1. Age: between 35 years to 75 years.
2. Qualification in the area of law, finance including securities market, accounts, economics, technology, management, or administration.
3. Experience: Minimum 7 years of experience as provided below.
4. Professional experience as outlined below could be considered:
   a. Financial services including securities market i.e. Banks, NBFCs, MIIs, other intermediaries of securities market;
   b. Legal services – Certified professionals handling conciliation, and /or arbitration independently; and/or
   c. Ex-officials from the Indian financial sector regulators viz., the Insurance Regulatory and Development Authority, the Pension Funds Regulatory and Development Authority, the Reserve Bank of India and the Securities and Exchange Board of India.

Therefore, Akaash may not become eligible for empanelment as a conciliator or arbitrator by the ODR Institutions, considering the above-mentioned norms.

Answer 4(b)

(i) Section 11 of the Arbitration and Conciliation Act, 1996 primarily recognises the principle of party autonomy. Under Section 11(2), parties are free to agree upon a procedure for appointment of arbitrators.

Where no such procedure is agreed and the arbitration is to be conducted by a sole arbitrator, Section 11(5) provides that if the parties fail to agree on the appointment within thirty days from receipt of a request by one party to the other, the appointment may be made upon an application to the Supreme Court or the High Court or an arbitral institution designated by such Court.

In the present case, the contract is silent regarding the procedure for appointment of arbitrators. Company A issued a notice proposing an arbitrator. Company B failed to agree to the proposed arbitrator within thirty days.

Therefore, Company A may approach the appropriate High Court or the arbitral institution designated by it under Section 11(5) seeking appointment of a sole arbitrator.

(ii) Section 11(3) provides that in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two appointed arbitrators shall appoint the presiding arbitrator.

Section 11(4) provides a statutory default mechanism where:

(a) a party fails to appoint its arbitrator within thirty days of receipt of a request from the other party; or

(b) the two appointed arbitrators fail to appoint the third arbitrator within thirty days.

In either case, the appointment may be made by the Supreme Court or High Court or an arbitral institution designated by such Court.

In the present case, Party X has already appointed its arbitrator. Party Y has failed to appoint an arbitrator within thirty days from the request made by Party X.

Accordingly, Party X may approach the appropriate Court or designated arbitral institution under Section 11(4)(a) for appointment of an arbitrator on behalf of Party Y.

Answer 4(c)

Under Section 73 of the Arbitration and Conciliation Act, 1996, when the conciliator perceives elements of settlement acceptable to the parties, a settlement agreement may be drawn up and signed by the parties.

Further, Section 74 provides that a settlement agreement shall have the same status and effect as an arbitral award on agreed terms under Section 30.

Moreover, according to section 36(1), where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court.

The Supreme Court in Haresh Dayaram Thakur v. State of Maharashtra held that once parties sign a settlement agreement in conciliation proceedings, it becomes final, binding, and enforceable like an arbitral award, and parties cannot unilaterally withdraw from such settlement.

In the given case, the conciliator facilitated negotiations and the parties signed a written settlement agreement resolving the dispute. As per Sections 73 and 74, such agreement attains the legal status of an arbitral award. Therefore, Green Field Agro Private Limited cannot subsequently refuse to comply with the settlement.

Hence, a settlement agreement reached and signed during conciliation proceedings is final and binding on the parties and enforceable as an arbitral award, as recognised under the Arbitration and Conciliation Act, 1996 and affirmed by the Supreme Court.

Answer 4A(i)

Under Section 16 of the Arbitration and Conciliation Act, 1996, the arbitral tribunal is empowered to rule on its own jurisdiction, including objections regarding the existence or validity of the arbitration agreement. This principle is known as "Competence–Competence" principle.

Recent developments in arbitration practice emphasize minimal judicial interference and greater autonomy of arbitral tribunals in determining jurisdictional questions at the initial stage of proceedings.

In the recent case of *Cox & Kings Ltd*. V. *SAP India Pvt. Ltd. & Anr* decided by Supreme Court on 09th September, 2025, the Honourable Supreme Court has ruled on the power of Arbitral Tribunal to rule on its jurisdiction. According to the decision, Section 16 of the Arbitration Act enshrines the principle of competence-competence in Indian arbitration law. The provision empowers the Arbitral Tribunal to rule on its own jurisdiction, including any ruling on any objections with respect to the existence or validity of arbitration agreement.

In the present case, the arbitral tribunal decided to examine whether it had jurisdiction before proceeding with the merits of the dispute. Such action is consistent with Section 16, which expressly authorizes the tribunal to determine objections relating to jurisdiction or validity of the arbitration agreement.

Therefore, the arbitral tribunal has the statutory authority to rule on its own jurisdiction including the validity of the Agreement, and the objection raised by Mars Limited cannot invalidate the tribunal's power to decide the jurisdictional issue.

Answer 4A(ii)

The Arbitration and Conciliation Act, 1996 has undergone significant amendments through the:

- Arbitration and Conciliation (Amendment) Act, 2015;
- Arbitration and Conciliation (Amendment) Act, 2019; and
- Arbitration and Conciliation (Amendment) Act, 2021.

These amendments were introduced to make India an arbitration-friendly jurisdiction by reducing court intervention, expediting proceedings, strengthening enforcement mechanisms, and promoting institutional arbitration.

I. Impact on Drafting of Arbitration Clause:

1. *Greater Importance of Seat of Arbitration*

   Amendment Impact: Judicial developments following the amendments have reinforced the principle that the "seat" of arbitration determines supervisory jurisdiction.

   Drafting Implication: Arbitration clauses should clearly specify following:

   - Seat of arbitration;
   - Venue (if different);
   - Governing law;
   - Procedural rules.

   This minimizes jurisdictional disputes and prevents delays caused by parallel court proceedings.

2. Preference for Institutional Arbitration- 2019 Amendment

   The amendment sought to encourage institutional arbitration and empowered designated arbitral institutions to handle appointments under Section 11. Institutional rules provide fixed timelines, Administrative support, and transparent appointment mechanisms. This significantly reduces delays in constituting tribunals.

3. *Appointment Procedure Clauses*

   Section 11 now restricts judicial scrutiny primarily to the existence of an arbitration agreement. This avoids deadlock situations and reduces court intervention.

4. *Fast-Track Arbitration Clauses- Section 29B*

   Parties may agree to fast-track arbitration. This results in faster dispute resolution and lower costs.

5. *Emergency and Interim Relief Provisions*

   Parties frequently incorporate provisions allowing emergency arbitrators, interim measures, preservation of assets. This protects parties' interests without lengthy court proceedings.

II. Impact on Enforcement of Arbitral Awards

1. *Automatic Stay Removed- Position Prior to 2015*

   Merely filing an application under Section 34 automatically stayed the enforcement of the award. This resulted in prolonged delays.

   In 2015 Amendment Section 36 was amended.

   Now, filing a Section 34 challenge does not automatically stay enforcement. A separate stay application must be filed. Award creditors can proceed with enforcement unless a stay is specifically granted. This has substantially improved enforceability.

2. *Conditional Stay of Awards*

   Courts may impose conditions while granting stay. For example deposit of awarded amount or furnishing security. This will discourage frivolous challenges which were intended solely to delay payment.

3. *Time-Bound Disposal of Challenges- Section 34*

   Applications challenging awards are intended to be disposed of expeditiously. This will reduces prolonged litigation and uncertainty.

4. *Limited Grounds for Challenge*

   The amendments narrowed the scope of judicial interference. The concept of "public policy" has been restricted. Awards can now be challenged only on limited grounds such as fraud, corruption, patent illegality (for domestic awards), violation of fundamental policy of Indian law. This will, strengthens finality of arbitral awards.

5. *Protection Against Fraudulent Awards- 2021 Amendment*

   Where fraud or Corruption is prima facie established in obtaining the contract or award, courts may grant an unconditional stay. This will balance speedy enforcement with protection against fraudulent awards.

III. Amendments Reducing Procedural and Administrative Delays

1. *Expedited Appointment of Arbitrators- Section 11*

   Courts now undertake only a limited examination regarding the existence of an arbitration agreement. Earlier courts examined several preliminary issues, causing delays.

2. *Statutory Time Limits- Section 29A*

   Award should generally be made within 12 months from completion of pleadings which is extendable by consent for 6 months. Further extension requires court approval.

3. *Completion of Pleadings- Section 23(4)*

   Statement of Claim and Defence must ordinarily be completed within six months from the date arbitrators receive notice of appointment.

4. *Cost Regime -Section 31A*

   Introduced the "costs follow the event" principle. The unsuccessful party may be directed to bear legal costs, tribunal fees, administrative expenses.

Conclusion

The amendments have transformed arbitration into a faster, more efficient and commercially effective dispute resolution mechanism. They have strengthened arbitral autonomy, reduced court interference and enhanced the enforceability of arbitral awards.

Answer 4A(iii)

Issue:

Whether an arbitration clause contained in an online trading agreement is valid and enforceable, mandating reference to arbitration.

Legal Position:

- Section 7 specifically recognises arbitration agreements concluded through electronic communications. Further, the Information Technology Act, 2000 recognises electronic records and electronic acceptance as legally valid and enforceable.
- Section 8: Court must refer parties to arbitration where valid agreement exists.

Application:

- Electronic acceptance of terms constitutes a valid contract.
- Arbitration clause forms part of the binding agreement.
- Dispute arising out of online trading transaction relates has the element of contractual obligations and is arbitrable.
- The Court may refer parties to arbitration under Section 8.

Conclusion

The arbitration clauses in electronic agreements are valid and enforceable; dispute arising out of online trading transactions can be referred to arbitration.

PART–II

Question 5

(a) The Iceberg Model is a concept from psychology that is used to understand human behaviour and the underlying processes. It illustrates how only a small part of our thoughts, feelings and motivations are visible, while the largest part - similar to the hidden part of an iceberg under water - remains invisible. This metaphor is particularly useful in psychology and communication to explore the often-unrecognized depths of human interactions and personal decision-making processes. In corporate communications, the model is used to better understand the complexity of organizational dynamics and employee behaviour.

The iceberg model is a metaphor used to illustrate how most of the human psyche-our unconscious thoughts, motives and feelings - is hidden beneath the surface, much like most of a real iceberg remains hidden beneath the water. The visible part above the surface represents what we show publicly : our behaviour, speech and actions. These visible aspects are only a small part of what is actually going on within an individual. The model helps us to realize that the true causes and motivations of human behaviour are often deeply hidden and can only be accessed through deeper psychological understanding. On background of this discuss how the Iceberg Concept applies to Conflict Resolution ?

(5 marks)

(b) *Genome Limited (Referred as 'G Ltd.'), a pharmaceutical company, had a contractual dispute with Hitro Traders Private Limited (Referred as 'Hitro Traders') regarding supply quality. The parties agreed to resolve the dispute through mediation at a recognized Mediation Centre. During mediation, Hitro Traders admitted that some goods supplied were defective but requested time to compensate the loss. However, the mediation failed and the matter later proceeded to Court litigation. During the Court proceedings, G Ltd. attempted to produce statements made by Hitro Traders during mediation as evidence of liability. Hitro Traders objected and argued that discussions made during mediation are confidential and cannot be disclosed before the Court. At this backdrop :*

(i) *Whether statements made during mediation can be used as evidence in subsequent Court proceedings ? Explain with reference to relevant provisions and judicial precedents.*

(2 marks)

(ii) *Prepare a stagewise checklist for an effective mediation process.*

(3 marks)

(c) *Identify with justification the most appropriate mediation method/technique for each of the following scenarios :*

(i) *Two multinational companies are in dispute. Though physical meetings are possible, they prefer a process that allows flexible scheduling across time zones and reduces travel costs.*

(ii) *A dispute involves technical contractual issues along with strained personal relations between senior executives. More than one Neutral is involved to manage different aspects of the conflict.*

(iii) *Parties are already in litigation. The Court directs them to attempt settlement through Alternate Dispute Resolution before proceeding further.*

(iv) *Residents of a locality are facing disputes regarding common resource usage. A Neutral from within the community facilitates discussions informally to resolve the issue amicably.*

(v) *Parties voluntarily approach a recognized Mediation Centre to resolve a commercial dispute under structured rules, without approaching the Court.*

(5×1=5 marks)

Answer 5(a)

How the Iceberg Concept Applies to Conflict Resolution

1. *Identify the visible*:

   Recognize that stated positions are only the tip of the iceberg and may not reveal the true issue.

2. *Explore the hidden*:

   Ask "Why?" or "What really matters here?" to uncover the deeper interests behind the positions.

3. *Find common ground*:

   By addressing shared or compatible interests (like the desire for peace or well-being), you can find creative solutions that satisfy everyone's needs, even if their original positions were in conflict.

4. *Shift focus from people to problems*:

   The process of uncovering interests helps separate people from the problem, leading to more constructive dialogue and collaboration.

Conclusion

The Iceberg Concept demonstrates that effective conflict resolution requires examination of both visible disputes and hidden interests. Addressing only the visible issues may provide temporary relief, whereas understanding the deeper causes enables durable and mutually beneficial solutions.

Answer 5(b)(i)

Issue:

Whether statements made during mediation can be used as evidence in subsequent court proceedings.

Under Section 75 of the Arbitration and Conciliation Act, 1996, confidentiality is recognised in conciliation.

Judicial Precedents:

- In *Moti Ram (D) Tr. LRs* v. *Ashok Kumar*, the Supreme Court held that statements made during mediation are confidential and cannot be relied upon in subsequent litigation.
- In *Salem Advocate Bar Association* v. *Union of India*, the Court emphasised that confidentiality is essential for effective mediation.

Application to the Case:

- The admission by Hitro Traders regarding defective goods was made during mediation proceedings.
- Such communication is protected by confidentiality.
- Therefore, G Ltd. cannot produce or rely upon such statements as evidence in court.
- The objection raised by Hitro Traders is valid in law.

Conclusion:

The admission allegedly made by Hitro Traders during mediation proceedings is protected and cannot ordinarily be relied upon as evidence in subsequent court proceedings.

Consequently, the objection raised by Hitro Traders is legally sustainable and G Ltd. cannot use such mediation communications as evidence against it.

Answer 5(b)(ii)

Mediation Checklist:

Pre-Mediation:

- Obtain consent of parties and appoint mediator
- Fix date, venue, and procedure
- Collect and review relevant documents

During Mediation:

- Explain process and ensure confidentiality
- Set agenda and ground rules
- Maintain neutrality and balanced participation

Post-Mediation (After Stage):

- Record settlement agreement (if reached)
- Ensure signing and enforceability
- If no settlement, proceed to arbitration/litigation.

Alternate Answer

Stage-wise Checklist for Effective Mediation

A. *Pre-Mediation Stage*

1. Obtain consent of parties.
2. Appoint mediator.
3. Fix date, venue and procedure.
4. Collect and review relevant documents.
5. Explain mediation process and confidentiality obligations.

B. *Opening Session*

1. Introduce mediator and parties.
2. Explain objectives and ground rules.
3. Establish confidentiality and neutrality.
4. Encourage respectful communication.

C. *Joint Discussion Stage*

1. Allow each party to present its position.
2. Identify issues in dispute.

3. Clarify interests and concerns.
4. Explore areas of agreement.

D. *Private Caucus Stage*

1. Conduct separate meetings if necessary.
2. Identify underlying interests.
3. Explore settlement possibilities.
4. Maintain confidentiality of caucus discussions.

E. *Negotiation Stage*

1. Generate settlement options.
2. Evaluate alternatives.
3. Facilitate compromise and consensus.

F. *Settlement Stage*

1. Draft settlement agreement.
2. Verify clarity and legality.
3. Obtain signatures of parties.

G. *Closure Stage*

1. Explain consequences of settlement.
2. Provide copies to parties.
3. Close proceedings formally.

Answer 5(c)

The appropriate mediation techniques applicable to the given situations are as follows:

(i) E-Mediation (Online Mediation)

Where parties are situated in different places and wish to resolve the dispute without extensive travel, E-Mediation is the most suitable method. It is conducted through electronic platforms such as video conferencing, emails and other digital communication tools. It reduces costs, saves time and enables effective participation despite geographical distance.

(ii) Co-Mediation

Where a dispute involves technical, commercial and interpersonal issues requiring expertise from different fields, Co-Mediation is appropriate. Under this method, two or more mediators jointly conduct the mediation process. The combined expertise and perspectives of multiple mediators assist in resolving complex disputes more effectively.

(iii) Court-Annexed Mediation

Where a matter is already pending before a court and is referred for amicable settlement, the appropriate technique is Court-Annexed Mediation. This process aims to reduce litigation, encourage negotiated settlements and facilitate speedy resolution of disputes while preserving relationships between the parties.

(iv) Community Mediation

Where a dispute arises within a neighbor-hood or local community and the parties prefer assistance from respected neutral persons, Community Mediation is appropriate. This technique promotes social harmony, mutual understanding and long-term cooperation among members of the community.

(v) Institutional Mediation

Where commercial parties agree to resolve disputes through a recognised mediation centre operating under established rules and procedures, Institutional Mediation is appropriate. The mediation institution provides administrative support, trained mediators and procedural guidance, thereby ensuring efficiency, neutrality and credibility of the process.

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

Question 6

(a) Country A and Country B are in dispute over a cross-border trade restriction affecting pharmaceutical exports. To avoid escalation, both countries agree to appoint a neutral Mediator through an international organisation. During mediation, political sensitivities arise and public statements by Country A create mistrust. Country B threatens to withdraw, alleging lack of good faith and confidentiality breach. In this scenario, identify the role of mediation in international diplomacy and suggest how such issues should be handled.

(5 marks)

(b) Mediation Council of India, has been established in pursuant to section 31(1) of the Mediation Act, 2023, is planning to purchase immovable properties in Mumbai and London to establish another office, in addition to its Delhi Office.

One of its members, a person having knowledge and experience in law related to mediation or alternative dispute resolution mechanisms, appointed by the Central Government, objected that the Council cannot have power to acquire an immovable property.

Another member, an eminent person having experience in research or teaching in the field of mediation and alternative dispute resolution laws, appointed by the Central Government, objected that the Council cannot establish an office abroad.

Mentioning the relevant provision(s) of the applicable law, comment on the validity of these objections.

(5 marks)

(c) *The Chief Executive Officer of the Mediation Council of India, approaches a renowned Professional firm Anup Das LLP, in practice of audit and accounts for last fifty years, for annual statutory audit of the Council and to submit report to the Chairperson.*

But the Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law, who is a member of the Council, objected that such an appointment is invalid, as private firm cannot be appointed as statutory auditor of the Council.

Referring relevant provisions of the Mediation Act, 2023, state whether the contention of Department of Legal Affairs is correct.

(5 marks)

Or (Alternate Question to Q. No. 6)

Question 6A

(i) *Analyse the validity of the following with reference to the Companies (Mediation and Conciliation) Rules, 2016 :*

(a) *Nirma, a practicing Company Secretary for last eleven years and before starting Practice, she was in employment as Company Secretary for five years, now she wishes to empanel as a mediator or conciliator;*

(b) *Sumu, a legal practitioner for last nine years. She has successfully undergone training in mediation and practises for expert Mediator for last 2 years, now she wishes to empanel as a mediator or conciliator.*

(5 marks)

(ii) *In Zoya Soft Limited, a mid-sized organization, conflicts have arisen between two project teams leading to frequent delays, poor coordination and disputes over task allocation. The management initially attributed the issues to operational inefficiencies. However, informal discussions revealed deeper concerns such as lack of trust between team leaders, feelings of inadequate recognition, and unresolved past misunderstandings. Despite repeated instructions to improve performance, the conflicts persist, affecting overall productivity and workplace harmony.*

As the Company Secretary and HR Head, how would you identify the real causes of the conflict and suggest measures for a sustainable resolution.

(5 marks)

(iii) *Buddhi Mediation Associates is a firm consisting of 80 mediators. Out of these, 25 Mediators have more than 15 years of experience, 35 Mediators have experience between 1 - 3 years, and the remaining are trainees. The firm has recently noticed that junior Mediators lack confidence in handling real disputes, while trainees depend heavily on theoretical knowledge. Senior Mediators suggest introducing a structured system where Mediators regularly evaluate their own performance, participate in guided discussions and learn from practical experiences.*

Identify the most suitable practice and explain its relevance and applicability for each category of Mediators.

(5 marks)

Answer 6(a)

Role of Mediation in International Diplomacy

Mediation is an important diplomatic tool used for peaceful resolution of disputes between States. A neutral mediator assists the parties in reaching a mutually acceptable solution while preserving international relations.

Role of the Mediator

1. *Facilitates Communication*

   The mediator acts as a communication bridge between the parties and reduces misunderstandings.

2. *Builds Trust*

   The mediator promotes confidence-building measures and encourages constructive dialogue.

3. *Maintains Neutrality*

   The mediator remains impartial and does not impose a solution.

4. *Preserves Confidentiality*

   Sensitive diplomatic discussions are protected from public disclosure.

Application to the Present Case

Country A and Country B are involved in a cross-border dispute concerning pharmaceutical exports.

The public statements made by Country A have created mistrust. The mediator should encourage confidential discussions and discourage public escalation.

Country B has threatened to withdraw from mediation alleging lack of good faith and confidential breach. The mediator should conduct separate consultations, reassure both parties regarding neutrality and restore confidence in the process.

Political sensitivities should be addressed through careful diplomacy, confidential negotiations and gradual confidence-building measures.

Answer 6(b)

Section 31 of Mediation Act, 2023: Establishment and incorporation of Mediation Council

(1) The Central Government shall, by notification, establish for the purposes of this Act, a Council to be known as the Mediation Council of India to perform the duties and discharge the functions under this Act.

(2) The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued.

(3) The head office of the Council shall be at Delhi or at such other place as may be notified by the Central Government.

(4) The Council may, in consultation with the Central Government, establish offices at other places in India and abroad.

Section 31(2) expressly provides that the Mediation Council of India shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of movable and immovable property. Section 31(4) further authorises the Council, in consultation with the Central Government, to establish offices in India as well as abroad. Therefore, these objections are not valid.

Answer 6(c)

Section 46 of Mediation Act, 2023: Accounts and audit

(1) The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including the balance sheet, in such form and manner as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Council to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Council shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the audit of the Government accounts, and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the offices of the Council.

(4) The accounts of the Council as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

From the above provisions,

Audit Authority: The accounts must be audited by the Comptroller and Auditor-General of India (CAG).

Process: The CAG or their appointees hold full authority over the audit. The accounts of the Council as certified together with the audit report thereon shall be forwarded annually to the Central Government.

While the statutory auditor is the CAG, Section 46 allows for the appointment of "any other person" by the CAG to conduct the audit. Consequently, Professional firms can perform this audit if authorized by the CAG, acting with the same authority, rather than being directly appointed by the Chief Executive Officer or Council.

Therefore, the power to appoint an auditor does not vest independently in the Chief Executive Officer unless such appointment is consistent with the mechanism contemplated under Section 46.

Hence, the contention of Secretary to the Government of India in the Department of Legal Affairs, Ministry of Law relating to the invalid appointment of professional firm is correct. However, Section 46 allows for the appointment of "any other person" by the CAG to conduct the audit. But, Direct appointment by Chief Executive Officer is not appropriate in the given situation.

Answer 6A(i)

The following qualifications are prescribed under rule 4 of the Companies (Mediation and Conciliation) Rules, 2016:

A person shall not be qualified for being empanelled as mediator or conciliator unless he -

(a) has been a Judge of the Supreme Court of India; or

(b) has been a Judge of a High Court; or

(c) has been a District and Sessions Judge; or

(d) has been a Member or Registrar of a Tribunal constituted at the National level under any law for the time being in force; or

(e) has been an officer in the Indian Corporate Law Service or Indian Legal Service with fifteen years' experience; or

(f) is a qualified legal practitioner for not less than ten years; or

(g) is or has been a professional for at least fifteen years of continuous practice as Chartered Accountant or Cost Accountant or Company Secretary; or

(h) has been a Member or President of any State Consumer Forum; or

(i) is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

In view of this,

a) Nirma cannot be empanelled as mediator or conciliator as she is not or has not been a professional having the qualification of at least fifteen years of continuous practice as Company Secretary as per rule 4(g).

b) Though Sumu is not a "qualified legal practitioner for not less than ten years", she can be empanelled as mediator or conciliator under rule 4(i) if she is an expert in mediation or conciliation who has successfully undergone training in mediation or conciliation.

Answer 6A(ii)

Identifying and Resolving Workplace Conflict

Iceberg Concept of Conflict: Visible conflicts (delays, reporting issues, coordination problems) are often symptoms. The deeper causes include emotions, perceptions, mistrust, lack of recognition, and unresolved past misunderstandings. Effective resolution addresses both visible and hidden dimensions.

Application:

- Visible issues: delays, task allocation disputes, lack of coordination.
- Hidden causes: mistrust between team leaders, lack of recognition, past grievances.
- Steps for sustainable resolution:
    1. Conduct open discussions to understand perceptions and concerns.
    2. Encourage active listening and expression of emotions.
    3. Implement recognition mechanisms, build trust, improve communication.
    4. Establish clear coordination processes and collaborative decision-making.

Focusing only on visible issues may offer short-term relief, but underlying conflicts will persist.

By addressing both visible and hidden factors, the Company Secretary and HR Head can resolve the conflict sustainably, improve team cooperation, and prevent recurrence.

Alternate Answer

Issue

How should the Company Secretary and HR Head of Zoya Soft Limited identify and resolve the conflict between the two project teams to ensure long-term organisational effectiveness?

Conflict Analysis

Conflict is a natural phenomenon in organisations and may arise due to differences in goals, perceptions, communication styles, allocation of resources, leadership approaches, personality traits and organisational pressures. If not managed effectively, workplace conflict can adversely affect productivity, employee morale and organisational performance.

Identification of the Conflict

In the present case, the conflict appears to involve both task-related and relationship-related issues. The visible manifestations of conflict include delays in project execution, coordination problems and disagreements between team leaders. However, the underlying causes may include lack of trust, poor communication, competition for resources, inadequate recognition, unclear responsibilities and unresolved past grievances.

Steps for Resolution

1. *Diagnose the Root Cause*

    The Company Secretary and HR Head should first identify the actual source of conflict through meetings, discussions and feedback from both teams. Understanding the root cause is essential before implementing corrective measures.

2. *Encourage Open Communication*

   The parties should be encouraged to express their concerns openly in a structured and respectful manner. Effective communication often removes misunderstandings and incorrect assumptions.

3. *Adopt a Collaborative Approach*

   The Company Secretary and HR Head should encourage collaboration rather than competition. Both teams should be guided towards identifying common organisational objectives and mutual interests.

4. *Clarify Roles and Responsibilities*

   Many workplace disputes arise due to ambiguity regarding duties and authority. Clearly defining responsibilities and reporting structures can significantly reduce conflict.

5. *Facilitate Negotiation and Mediation*

   Where direct discussions do not resolve the dispute, a neutral manager, mediator or HR professional may facilitate discussions and assist the parties in arriving at a mutually acceptable solution.

6. *Build Trust and Team Cohesion*

   Trust-building exercises, joint meetings and collaborative projects can improve relationships and reduce future conflicts.

7. *Develop Long-Term Conflict Management Mechanisms*

   The organisation should establish formal grievance redressal mechanisms, communication channels and conflict management policies to prevent recurrence of similar disputes.

Benefits of Effective Resolution

Effective conflict resolution improves teamwork, communication, employee satisfaction, productivity and organisational harmony. It also reduces stress, absenteeism and employee turnover.

Conclusion

The Company Secretary and HR Head should adopt a problem-solving and collaborative approach by identifying the root causes of the dispute, facilitating communication and encouraging cooperation between the teams. By addressing both organisational and interpersonal dimensions of the conflict, Zoya Soft Limited can achieve a sustainable resolution and improve overall organisational effectiveness.

Alternate Answer

As Company Secretary and HR Head of Zoya Soft Limited, the first step would be to identify the underlying causes of conflict rather than merely addressing the visible symptoms. Conflicts often arise due to differences in perceptions, interests, communication gaps, emotional concerns, lack of trust, personality clashes and unmet expectations. Mediation seeks to uncover the actual interests behind the stated positions of the parties.

In the present case, while the apparent issues relate to project delays and task allocation, the real causes appear to be following:

1. *Lack of Trust between Team Leaders:* Distrust often leads to poor cooperation and reluctance to share information. Team members may become defensive and less willing to collaborate.
2. *Feeling of Inadequate Recognition*: Employees who believe that their contributions are not appreciated may develop resentment and resistance towards other teams.
3. *Unresolved Past Misunderstandings*: Previous disagreements that were not properly resolved may continue to influence current interactions and create negative perceptions.
4. *Communication Barriers*: Miscommunication frequently results in duplication of efforts, misunderstandings and blame shifting.
5. *Role Ambiguity and Resource Competition*: Conflicts often arise when responsibilities are not clearly defined or where teams compete for limited resources.

Methods to Identify the Real Causes

1. Conduct confidential meetings with team leaders and team members.
2. Hold separate discussions to understand individual concerns.
3. Review project workflows and communication channels.
4. Identify common issues, recurring complaints and behavioural patterns.
5. Analyse whether the conflict is task-related or relationship-related.
6. Determine the interests and expectations of both teams.

Measures for Sustainable Resolution

1. *Use Mediation as a Conflict Resolution Tool*: As HR Head, CS would act as a neutral facilitator or appoint an independent mediator to encourage open dialogue, clarify misunderstandings, identify common objectives, and restore working relationships.
2. *Improve Communication Mechanisms*: Regular coordination meetings should be organized between the project teams to share information, discuss project status, resolve issues promptly and prevent future misunderstandings.
3. *Clarify Roles and Responsibilities*: A clear allocation of duties should be established through responsibility matrices would reduce disputes relating to task allocation.
4. *Rebuild Trust*: Trust-building measures may include:
   - Joint workshops.
   - Collaborative problem-solving sessions.
   - Cross-functional team activities.

- Shared project goals and performance indicators.

5. *Recognition and Appreciation*: A transparent recognition system should be introduced to ensure that contributions of both teams are acknowledged fairly.

Answer 6A(iii)

Best practice for mediators

Identification:

The suitable practice in the given circumstances can be Reflective Practice.

Reflective Practice is recognised internationally as a professional development tool through which mediators critically evaluate their own performance, identify strengths and weaknesses and continuously improve their dispute resolution skills.

Explanation:

Reflective Practice refers to a continuous learning process where mediators:

- Analyse their past experiences
- Engage in peer discussions
- Improve their skills through feedback and self-evaluation

Application to Scenario:

Senior Mediators:

Act as mentors and guide reflective discussions.

Junior Mediators (1–3 years):

Improve confidence by reflecting on real-life dispute handling.

Trainees:

Move beyond theory by participating in peer groups and practical reflections.

Regular reflection also promotes ethical awareness, better decision-making and improved communication skills, all of which are essential attributes of an effective mediator.

Reflective Practice enhances professional competence, practical exposure, and continuous improvement across all levels.

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GOODS AND SERVICES TAX (GST) & CORPORATE TAX PLANNING

GROUP 2 ELECTIVE PAPER 7.2

Time allowed : 3 hours **Maximum marks : 100**

Total number of questions : 6

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

(ii) All the references to section in Part-I of the question paper relates to the provisions of GST Laws.

(iii) All the references to section in Part-II of the question paper relates to the Income Tax Act, 1961 and relevant Assessment Year 2026-27 unless stated otherwise.

(iv) Wherever necessary, suitable assumptions can be made and the same to be stated clearly in the answer.

(v) Working notes should form part of the answer.

Question 1

Yashita Industries Ltd. is a manufacturing company registered under GST in the state of Gujarat. Its aggregate annual turnover in the preceding financial year was ₹ 3.5 crore. The details relating to outward for the month of December, 2025 is as follows :

S. No.	***Particulars***	***Amount (₹)***
(i)	*Domestic outward supply of taxable product 'P' in the State of Maharashtra*	*54,00,000*
(ii)	*Domestic turnover of other outward supply of services in the State of Gujarat of which tax is payable under reverse charge mechanism*	*6,00,000*
(iii)	*Export of product 'P' under Letter of Undertaking (LUT)*	*12,00,000*
(iv)	*Product 'P' supplied under a Letter of Undertaking (LUT) to M/s Rajlakshmi Pvt. Ltd., located in a Special Economic Zone (SEZ) in the state of Gujarat*	*8,00,000*

(v)	*Sale of land (excluding stamp duty value of ₹ 2,84,000, being 2% of value considered for the purpose of stamp duty)* *Land was purchased in the month of November, 2023.*	*1,35,00,000*

The following further details have been provided by Yashita Industries Ltd. regarding GST on Inputs, Input Services and Capital Goods for the month of December, 2025 :

Particulars	***IGST Amount (₹)***
Raw material purchased from a dealer registered in the State of Rajasthan used for manufacturing of product 'P'	*3,84,000*
Machine 'A' purchased on 11th December, 2025 for being exclusively Used for non-business purposes	*14,400*
Machine 'B' purchased on 1st December, 2025 for being exclusively used in manufacturing zero-rated supplies	*57,600*
Machine 'C' purchased on 5th December, 2025 for being used in manufacturing of product 'P' for both domestic and export supplies	*64,000*
IGST paid on Common Input Services are used for taxable supply as well as exempted supply made during the month of December, 2025 (Nothing has been used for any non-business purpose)	*1,92,000*

Additional information :

(i) *Yashita Industries Ltd. filed its GSTR-3B for the month of November, 2025 on 28th December, 2025. Assume the amount of tax payable for the month of November, 2025 was ₹ 2 lakh each CGST and SGST.*

(ii) *Both inward and outward supplies given above are exclusive of taxes, wherever applicable.*

(iii) *All inward and outward supplies are inter-state supplies except where specifically mentioned. Rate of CGST, SGST and IGST to be charged 9%, 9% and 18% respectively.*

(iv) *Opening balance of input tax credit at the beginning of December, 2025 was ₹ 95,000 CGST, ₹ 1,32,000 SGST and ₹ 1,25,000 IGST.*

(v) *Assume that all the conditions necessary for availing the input tax credit have been fulfilled except mentioned above.*

(vi) *Useful life of all the machines should be considered as 5 years.*

(vii) Company is not covered under any of the exception provided in rule 86B of the CGST Rule, 2017 regarding restriction on use of available input tax credit. Based on the above case scenario and information, you are required to answer the following questions with reference to GST Law :

(a) Compute the Output Tax Liability of Yashita Industries Ltd. for the month of December, 2025.

(5 marks)

(b) Compute the Exempted Turnover and Total Turnover of Yashita Industries Ltd. for the month of December, 2025 for the purpose of distribution of common input tax credit.

(5 marks)

(c) Compute the eligible Input Tax Credit to be credited to the electronic credit ledger of Yashita Industries Ltd. for set-off for the month of December, 2025.

(5 marks)

(d) Compute Net minimum GST Payable in Cash or carry forward of CGST, SGST and IGST Liability of Yashita Industries Ltd. for the month of December, 2025.

(5 marks)

(e) Whether any late fee payable by Yashita Industries Ltd. for the delay in filing of GSTR-3B for the month of November, 2025 ? Explain the provisions relating to the late fee payable under section 47 of the CGST Act, 2017.

(5 marks)

Answer 1(a)

Computation of Output Tax Liability of Yashita Industries Ltd. for the month of Dec, 2025

S. No.	*Particulars*	*CGST (₹)*	*SGST (₹)*	*IGST (₹)*
(i)	Domestic outward supply of Product 'P' in the state of Maharashtra (IGST would be charged @ 18%) (54, 00,000 x 18%)	-	-	9,72,000
(ii)	Outward Supply of Services on which tax is payable under RCM (No outward tax is payable by Yashita Industries Ltd., since recipient is liable to pay tax).	-	-	-

(iii)	Export of product 'P' under LUT (Export is a zero-rated supply. Further, No outward tax is payable by Yashita Industries Ltd., since goods are supplied under LUT).	-	-	-
(iv)	Product 'P' supplied to SEZ under LUT (Supply to SEZ unit is a zero-rated supply. Further, No outward tax is payable by Yashita Industries Ltd., since goods are supplied under LUT).	-	-	-
(v)	Sale of land (Sale of land is neither supply of goods nor supply of services, as it is covered in schedule III. Thus, it is not a supply).	-	-	-
	Total Output Tax Liability	-	-	9,72,000

Answer 1(b)

Computation of Exempted Turnover and Total Turnover of Yashita Industries Ltd. for the month of December, 2025

S. No.	*Particulars*	*Exempted Turnover (₹)*	*Total Turnover (₹)*
(i)	Domestic outward supply of Product 'P' in the state of Maharashtra	-	54,00,000
(ii)	Outward Supply of Services on which tax is payable under RCM (It is treated under exempted supply for Yashita Industries Ltd.)	6,00,000	6,00,000
(iii)	Export of product 'P' under LUT (Export is a zero-rated supply. It is not an exempted supply. Hence, included only under total turnover)	-	12,00,000

(iv)	Product 'P' supplied to SEZ under LUT (Supply to SEZ unit is a zero-rated supply. It is not an exempted supply. Hence, included only under total turnover)	-	8,00,000
(v)	Sale of land (It is treated under exempted supply. Value of exempted supply in respect of land is the value adopted for paying stamp duty.) (2,84,000/2 x 100)	1,42,00,000	1,42,00,000
	Total	1,48,00,000	2,22,00,000

Answer 1(c)

Computation of eligible Input Tax Credit of Yashita Industries Ltd. available for the month of Dec, 2025

S. No.	*Particulars*	*CGST (₹)*	*SGST (₹)*	*IGST (₹)*
(i)	ITC of Raw material purchased for used of Product 'P' [ITC is fully available for Input used for taxable supplies include zero- rated supplies]	-	-	3,84,000
(ii)	ITC on Machine 'A' [ITC is not available under rule 43(1)(a) of CGST Rules, 2017, Since exclusively used for non-business purposes]	-	-	-
(iii)	ITC on Machine 'B' [ITC is fully available for Capital Goods used for zero- rated supplies also under rule 43(1)(b) of CGST Rules, 2017]	-	-	57,600
(iv)	ITC on Machine 'C' [ITC is fully available for Capital Goods used for taxable supplies include zero-rated supplies under rule 43(1)(b) of CGST Rules, 2017]	-	-	64,000

(v)	IGST on Common Input Services Less: Common credit attributable to exempt supplies in December, 2025 under rule 42 of the CGST Rules, 2017 = (Common Credit x Turnover of exempt supplies/ Total turnover) = (1,92,000 x 1,48,00,000 / 2,22,00,000)	-	-	1,92,000 (1,28,000)
	Total ITC Available for set-off	**-**	**-**	5,69,600

Alternatively: If Opening balance is part of eligible ITC for the month of Dec 2025

Then answer shall be:

	IGST	*CGST*	*SGST*
Opening Balance	1,25,000	95,000	1,32,000
Total ITC Available for set-off for the month of Dec, 2025 as calculated above)	5,69,600	-	-
Total	6,94,600	95,000	1,32,000

Answer 1(d)

Computation of Net minimum GST payable in Cash by Yashita Industries Ltd. for the month of December, 2025

Particulars	*CGST (₹)*	*SGST (₹)*	*IGST (₹)*
Total output GST Liability	-	-	9,72,000
Less: Set-off of Opening Input Tax Credit	(95,000)	(1,32,000)	(1,25,000)
Less: Set-off of Input GST Liability during the month	-	-	(5,69,600)
Net GST Liability	(95,000)	(1,32,000)	2,77,400
Set-off of opening CGST credit against IGST	95,000	-	(95,000)
Set-off of opening SGST credit against IGST	-	1,32,000	(1,32,000)
Net GST after Set-off of CGST, SGST and IGST Liability	Nil	Nil	50,400
Add: Late fees of GSTR-3B for the month of November 2025 paid in December 2025	200	200	-

(₹ 25 CGST and ₹ 25 SGST each day for 8 days) [Late fees should not be set-off against input credit, it should be paid by Cash only]			
Net GST payable in Cash	200	200	50,400

Answer 1(e)

Provisions relating to Late Fee under GST

(i) As per section 47 of the CGST Act, 2017 read with Notification No 19/2021 CT dated 01.06.2021, the registered persons whose aggregate turnover is ≤ ₹ 1.5 crores in the preceding FY, and who fails to furnish the returns required under section 39 by the due date shall pay a late fee of lower of -

(a) ₹ 2,000 (₹ 1,000 each under CGST & SGST/UTGST)

(b) ₹ 50 each day of delay (₹ 25 each under CGST & SGST/UTGST)

(ii) As per section 47 of the CGST Act, 2017 read with Notification No 19/2021 CT dated 01.06.2021, the registered persons whose aggregate turnover is more than ₹ 1.5 crores but less than equal to ₹ 5 crores in the preceding FY, and who fails to furnish the returns required under section 39 by the due date shall pay a late fee of lower of–

(a) ₹ 5,000 (₹ 2,500 each under CGST & SGST/UTGST)

(b) ₹ 50 each day of delay (₹ 25 each under CGST & SGST/UTGST)

(iii) As per section 47 of the CGST Act, 2017 read with Notification No 19/2021 CT dated 01.06.2021, any registered person whose total amount of tax payable in the GSTR-3B is Nil and who fails to furnish the returns required under section 39 by the due date shall pay a late fee of lower of –

(a) ₹ 500 (₹ 250 each under CGST & SGST/UTGST)

(b) ₹ 20 each day of delay (₹ 10 each under CGST & SGST/UTGST)

In the given case due date of filing of GSTR-3B for November, 2025 is 20th December, 2025.The actual date of filing of GSTR-3B is 28th December, 2025, so delay days is 8 Days. So, Late fees is lower of:

(a) ₹ 5,000 (₹ 2,500 each under CGST & SGST/UTGST); or

(b) ₹ 50 x 8 days = 400 (₹ 200 each under CGST & SGST/UTGST)

= ₹ 200 CGST and ₹ 200 SGST/UTGST

For registered persons having turnover more than ₹5 crores in the preceding financial year, late fees will be lower of:

a) ₹10,000 (₹5000each under CGST &SGST/UTGST or

b) ₹ 50 each day of delay (₹ 25 each under CGST & SGST/UTGST) for each day during which such failure continues

Further section 47 of the CGST Act provides that:

Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or returns required under section 39 or section 45 or section 52 by the due date shall pay a late fee of two hundred rupees (Rs. 100 under CGST & Rs. 100 under SGST/UTGST) for every day during which such failure continues subject to a maximum amount of ten thousand rupees (Rs. 5,000 under CGST & Rs. 5,000 under SGST/UTGST).

Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee under CGST of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent of his turnover in the State or Union territory and similar amount under SGST/UTGST.

Question 2

(a) Sunshine Enterprises, registered in Delhi, enters into a contract with TML Ltd., an advertising company located and registered in Noida, Uttar Pradesh, to arrange the display of an advertisement for Sunshine Enterprises, a newly launched product on a hoarding placed at Sardar Market, Jodhpur, Rajasthan, for the initial two months after the launch of the product. TML Ltd., in turn, enters into a contract with the owner of Hotel Hinduja Haveli, located and registered in Sardar Market, Jodhpur, Rajasthan, for the display of the advertisement on a hoarding placed in the lawn of the hotel.

Determine the place of supply of the services provided in the above case in the context of CGST Act, 2017.

(5 marks)

Manish, a registered dealer under GST in Madhya Pradesh is engaged in business of toys for kids. Ashwani, a registered dealer under GST in Uttar Pradesh, a regular return filer supplies toys in bulk to Manish for selling to end consumers. Manish paying tax in regular scheme in Madhya Pradesh, has not filed GSTR-3B for last 2 months. Ashwani wants to generate e-way bill for toys amounting to ₹ 4,00,000 to be supplied to Manish. Also Ronak from Rajasthan approached Manish for purchasing toys amounting to ₹ 1,25,000 for the purpose of return gift on his son's birthday party. Ashwani and Manish want to generate an e-way bill in respect of an outward supply of goods.

Examine with reference to the provisions under GST law, whether Ashwani and Manish can generate e-way bill or not in the context of CGST Act, 2017.

(5 marks)

(b) Gopal Das is running a restaurant in Kanpur (Uttar Pradesh). In the preceding financial year 2025-26, his turnover was ₹ 125 lakh from the restaurant services. In the current financial year, apart from restaurant service, he also wants to provide food delivery services to other restaurants. He estimates that the turnover of such services will be ₹ 5.75 lakh.

Gopal Das wishes to opt for composition scheme in the financial year 2026-27. You are required to advise him according to the provision of GST Law, whether he is eligible to opt for composition scheme for both the businesses or not ?

(5 marks)

Answer 2(a)

In the given case, two supplies are involved:

(i) Services provided by TML Ltd. to Sunshine Enterprises by way of arranging the display of the advertisement of its newly launched product, and

(ii) Services provided by Hotel Hinduja Haveli to TML Ltd. by way of placing a hoarding in the lawn of the hotel.

The place of supply in each of the above supplies is as follows:

(i) As per section 12(2) of the IGST Act, 2017, the place of supply of services, except the services specified in sub-sections (3) to (14) of section 12 of the IGST Act, 2017, made to a registered person is the location of the person receiving the services.

Advertisement services provided by TML Ltd. to Sunshine Enterprises is not covered in any of the above sub-sections of section 12 of the IGST Act, 2017. Therefore, the place of supply shall be determined by the default provision under section 12(2)(a) of the IGST Act, 2017, viz. the location of the recipient.

Thus, the place of supply, in the given case, is the location of Sunshine Enterprises, i.e., Delhi.

(ii) As per the provisions of section 12(3) of the IGST Act 2017, directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work is the location of immovable property. Therefore, the place of supply of service provided by way of grant of rights to use the hoarding/ structure for advertising in this case would be the location of immovable property where such hoarding/ structure is located.

Thus, the place of supply, in the given case, is location of hotel where the hoarding is located, viz. Sardar Market- Jodhpur, Rajasthan.

Answer 2(b)

Rule 138E of the CGST Rules, 2017 contains provisions pertaining to blocking of e-way bill generation facility, i.e., disabling the generation of e-way bill.

In view of provisions of Rule 138E, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in Part A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who, -

(a) being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.

(b) being a person, whose registration has been suspended under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of Rule 21A.

In terms of rule 138E, a person paying tax under regular scheme who has not furnished the returns for a consecutive period of 2 tax periods is considered as a defaulting person.

Suspended GSTIN cannot generate e-way bill as supplier. However, the suspended GSTIN can get the e-way bill generated as recipient or as transporter.

In other words, e-way bill generation facility is blocked only in respect of any outward movement of goods of the registered person who is not eligible for e-way bill generation as per rule 138E. E-way bills can be generated in respect of inward supplies of said registered person.

Thus, applying the above provisions, there will be no restriction in generating e-way Bill by Ashwani as Ashwani who is making outward movement of goods is a regular return filer.

E-way bill generation is blocked in case of movement of goods made by Manish to Ronak as it's an outward movement of goods of Manish who has not filed GSTR-3B for past 2 months.

Answer 2(c)

As per section 10 of the CGST Act, 2017 a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1.5 crore, may opt to pay tax under composition scheme, provided that he is not engaged in the supply of services other than restaurant services.

However, the scheme permits supply of other marginal non restaurant services for a specified value along with the supply of goods and restaurant service, as the case may be.

Such marginal services can be supplied for a value up to 10% of the aggregate turnover in the preceding financial year or ₹ 5 lakh, whichever is higher.

In the present case, since the turnover of Gopal Das is ₹ 125 lakh in preceding financial year, he is eligible for composition scheme in the current financial year. Further, in the current financial year, he can also supply services other than restaurant services for a value upto ₹ 12.5 lakh (10% of ₹ 125 lakh) or ₹ 5 lakh, whichever is higher.

Thus, till the time his turnover from food delivery services does not exceed ₹ 12.5 lakh, he is eligible for the composition scheme.

Question 3

(a) Vikram Energy Pvt. Ltd., a registered supplier of Thiruvananthapuram (Kerala), is a manufacturer of Goods. The company provides the following information pertaining to GST paid on input supplies made during the month of November, 2025.

S.No.	***Particulars***	***GST Amount (₹)***
(i)	*Raw material purchased from a registered dealer of Karnataka for which Invoice is missing but delivery challan is available.*	*45,500*
(ii)	*Work contractor's service used for repair of factory building which is debited in profit and loss account of company*	*36,000*
(iii)	*Motor Vehicle purchased for transportation of goods*	*4,50,000*
(iv)	*Membership fees paid for Health and Fitness Club of its employees working in the factory (not mandatory under any law)*	*72,000*
(v)	*Goods are purchased, 50% of which are used for providing services during the free warranty period.*	*84,000*

Compute the amount of Input Tax Credit available for Vikram Energy Pvt. Ltd. for the month of November, 2025 with necessary explanations for the treatment of each item as the provision of the CGST Act, 2017.

Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

(b) *"Any person aggrieved by an order passed against him by Appellate Authority (AA) or Revisional Authority (RA) may appeal to Appellate Tribunal under section 112 of the CGST Act, 2017."*

In context to the above statement, answer the following questions independently elaborating the relevant provisions of section 112 of the CGST Act, 2017 :

(i) *What is the time limit for filing an appeal ?*

(ii) *What is the date of filing the appeal ?*

(iii) *When can the Appellate Tribunal refuse to admit an appeal ?*

(iv) *What is the fee to be paid for filing an appeal or application ?*

(v) *What is the time limit to file cross objections ?*

(5 marks)

(c) Examine the taxability of supplies in the following independent cases in terms of the relevant provisions of the CGST Act, 2017. Brief reason should form part of your answer:

(i) Services of health insurance business provided by A ONE Insurance Company to Mr. Aadish and his family.

(ii) A2Z Hotels provided supply of accommodation services having value of supply equal to ₹ 20,000 per month to a MBBS student, Mr. Rajiv Singh for a continuous period of 179 days.

(5 marks)

Answer 3(a)

Computation of Input Tax Credit available to Vikram Energy Pvt. Ltd. for the month of November, 2025

S. No.	*Particulars*	*Eligible ITC (₹)*
(i)	Raw material purchased from a registered dealer of Karnataka for which Invoice is missing [ITC cannot be taken since invoice is missing and delivery challan is not a valid document to avail ITC as per section 16(2) (a)]	Nil
(ii)	Work contractor's service used for repair of factory building [ITC is blocked on work contract services when supplied for construction of an immovable property. However, "construction" includes only that repair which are capitalized along with the said immovable property. Since, the repair of building in this case is debited to P&L A/c, and the same does not amount to "construction" and hence ITC thereon is available.]	36,000
(iii)	Motor Vehicle purchased for transportation of goods [ITC available, since it is not blocked under section 17(5)]	4,50,000
(iv)	Membership fees paid for Health and Fitness Club of its employees [ITC is respect of fees paid for health and fitness club is blocked u/s17(5) of the CGST Act, 2017]	Nil
(v)	Goods used for providing services during free warranty period [Inputs are used in the course or furtherance of business and hence, ITC thereon is allowed]	84,000
	Total ITC Available	5,70,000

Answer 3(b)

i.	An appeal can be filed before the Appellate Tribunal within 3 months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal, The Tribunal can condone the delay of up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.
ii.	If the certified copy of the decision/order appealed against shall be submitted to the Registrar within 7 days from the date of filing appeal, the date of filing the appeal shall be the date of the issue of the provisional acknowledgement. However, if the said copy is submitted after 7 days, the date of filing the appeal shall be the date of the submission of such copy. The appeal shall be treated as filed only when the final acknowledgement is issued.
iii.	The Appellate Tribunal can refuse to admit an appeal if The tax or input tax credit (ITC) involved or the difference in tax or input tax credit (ITC) involved or the amount of fine, fee or penalty determined by such order does not exceed ₹ 50,000.
iv.	The fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1,00,000 of tax or input tax credit (ITC) involved or the difference in tax or input tax credit (ITC) involved or the amount of fine, fee or penalty determined in the order appealed against. However, the fee shall not exceed ₹ 25,000. There shall be no fee for application made before Appellate Tribunal for rectification of errors.
v.	As per section 112 of CGST Act, 2017, on receipt of notice that an appeal has been filed with the Appellate Tribunal, the party against whom the appeal has been preferred may file a memorandum of cross-objections against any part of the order appealed against within 45 days of the receipt of notice. Appellate Tribunal can condone the delay of up to 45 days beyond the specified time period of 45 days, if it is satisfied that there was sufficient cause for the delay.

Answer 3(c)

(i) Services of health insurance business provided by an insurer to the insured, where the insured is not a group are exempt from GST.

Further, this exemption is applicable to a contract of insurance where the insured is an individual, or an individual and family of the said individual. Family includes all individuals insured as family in the contract of insurance.

Thus, services provided by A ONE Insurance Company to Mr. Aadish and his family is exempt from GST.

(ii) Supply of accommodation services having value of supply less than or equal to ₹20000 per person per month provided that the accommodation service is supplied for a minimum continuous period of ninety days is exempt from GST.

Thus, supply of accommodation services provided by A2Z Hotels having value of supply equal to ₹ 20000 per month to a MBBS student, for a continuous period of 179 days is exempt from GST

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

Question 4

(a) Secure Insurance Co. Ltd., Mumbai registered under GST, provided the following intra state insurance services during the month of December, 2025. The premiums given below are exclusive of GST unless otherwise stated.

(i) A life insurance policy providing the dual benefit of risk coverage and investment has been issued to Mr. Rishi with an annual premium of ₹ 2,40,000, out of which 25% is allocated towards investment/savings.

(ii) A Group Life Insurance Policy has been issued to ABC Pvt. Ltd. for 25 employees, with an annual risk cover premium of ₹ 8,00,000.

(iii) A family floater health insurance policy has been issued to Mr. Gautam and his spouse with a premium of ₹ 60,000.

(iv) A third-party motor insurance policy has been issued to Mr. Kishan with a premium of ₹ 35,000.

(v) A travel insurance policy has been issued to Mrs. Priyanka for overseas travel with a premium of ₹ 30,000.

You are required to compute the GST payable by Secure Insurance Co. Ltd. for the month of December, 2025. Rate of CGST, SGST and IGST is 9%, 9% and 18% respectively. All the above figures are exclusive of GST, wherever applicable.

(5 marks)

(b) Satya Yadav a person who is not registered under GST, appointed as an independent director in accordance with the provisions of the Companies Act, 2013, of Dhanlaxmi Industries Pvt. Ltd. He has received ₹ 2,25,000 as sitting fee for attending the Board meetings and ₹ 16,00,000 as Salary from Dhanlaxmi Industries Pvt. Ltd. during the financial year 2025-26. Company deducts TDS u/s 194J on sitting fees and TDS u/s 192 on Salary amount as per the Income Tax Act, 1961.

Examine whether the above transactions are covered under GST liability. If yes, explain the person who is liable to pay GST with reference to the provision of GST Law.

(5 marks)

(c) Examine the implications regarding the bailability and quantum of punishment on

prosecution in respect of the following cases pertaining to the month of August, 2025 under the Central Goods and Services Tax Act, 2017 :

(i) *Daksh collects ₹ 272 lakh as tax from his clients and deposits ₹ 265 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper books of account.*

(ii) *Nishant collects ₹ 750 lakh as tax from his clients but deposits only ₹ 80 lakh with the Central Government.*

It may be assumed that the offences are proved in the court. Explain the implications in each case.

(5 marks)

Or (Alternate to Question No. 4)

Question 4A

(i) Ramesh is a registered person in the state of Madhya Pradesh (MP). He wants to maintain accounts and records relating to GST at his principal place of business. Advise him about the accounts and other records to be maintained under section 35(1) of the CGST Act, 2017.

Mention the period for which the accounts or other records to be retained as per the provision of section 36 of the CGST Act, 2017.

Whether your answer differs as regard the period of retention where he is under an investigation for an offence under chapter XIX of the CGST Act, 2017 ?

(5 marks)

(ii) In the following independent cases, decide taxability or otherwise and also state which person is liable to pay GST, if any.

You may assume that recipient is located in the taxable territory. Ignore the aggregate turnover of previous year :

(a) Mr. Vivaan, a registered air-conditioner dealer of Jaipur needs 4 airconditioner for his newly constructed house. He transferred 4 air-conditioners (on which ITC has already been availed by it) from its stock in trade, for the said purpose.

(b) Mr. Ghanshyam an unregistered person sold an air-conditioner to ABK Sales Ltd. for ₹ 17,000. Mr. Ghanshyam had bought the said air-conditioner 7 months ago for his residence.

(c) TTY Ltd., provided service to RRE Ltd. regarding service by way of renting of motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient. RRE Ltd. opted to pay GST @ 5%.

(5 marks)

(iii) As per the latest development, discuss in brief the Monetary limits prescribed for issuance of SCNs and passing of orders under section 74A of the CGST Act, 2017 in reference to Circular No. 254/11/2025-GST dated 27.10.2025.

(5 marks)

Answer 4(a)

Computation of GST Payable by Secure Insurance Co. Ltd. for the month of December, 2025

S. No.	*Particulars*	*GST (₹)*
(i)	Life insurance policy with dual benefit of risk coverage and investment [All Individual Life Insurance policies are covered under the ambit of GST exemption w.e.f. 22nd September, 2025. Hence, GST payable is Nil]	Nil
(ii)	Group Life Insurance Policy issued to ABC Pvt. Ltd. [Group Life Insurance policies are not covered under GST exemption. Hence, it is taxable @ 18%] (8,00,000 x 18%)	1,44,000
(iii)	Family Floater Health insurance policy [All Individual and Family Health Insurance policies are covered under the ambit of GST exemption w.e.f. 22nd September, 2025. Hence, GST payable is Nil]	Nil
(iv)	Third Party Motor insurance policy [Note 1] [Premium paid on Motor Insurance policies are taxable @ 18%]	6300
(v)	Travel Insurance policy [Premium paid on Travel Insurance policies are covered under the ambit of GST exemption w.e.f. 22nd September, 2025. Hence, GST payable is Nil]	Nil
	Total GST Payable	1,50,300

Note 1: In third party motor insurance, if it is assumed that motor insurance is on goods carriage vehicle and rate 5% is applicable, is also correct. In that case GST on ₹ 35000 will be ₹1,750 and accordingly Total GST payable will be ₹145750

Answer 4(b)

The part of director's remuneration which is declared as salaries in the books of a company and subject to TDS under section 192 of the Income-tax Act, 1961, is not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment is outside the scope of supply in terms of Schedule III of the CGST Act, 2017.

Further, the part of employee director's remuneration which is declared separately other than salaries in the company's accounts and subject to TDS under section 194J of the Income-tax Act, 1961 as fees for professional or technical services or siting fees are treated as consideration for providing services which are outside the scope of Schedule III and is therefore, taxable.

The recipient of the said services i.e., the company, is liable to pay the applicable GST on it under reverse charge basis.

In lieu of the above provisions, ₹ 2,25,000 as sitting fees paid to Satya Yadav, an independent director is taxable under reverse charge basis.

Therefore, recipient of the said services i.e., Dhanlaxmi Industries Pvt. Ltd., is liable to pay the GST @ 18% on it under RCM.

Further ₹ 16,00,000 as Salary on which TDS is deducted u/s 192 of the Income-tax Act, 1961, is not taxable as per Schedule III CGST Act 2017.

Answer 4(c)

<table>
<tr><td>(i)</td><td>Failure to pay any amount collected as tax beyond 3 months from due date of payment is a specified offence as per clause (d) of Section 132(1).
In the present case, failure to deposit the tax is of ₹ 7 lakh (272 lakh – 265 lakh).
Prosecution: Since the amount of tax involved does not exceed ₹100 lakh (₹1 crore):
• As per section 132, no imprisonment is prescribed where the amount of tax involved is below ₹1 crore.
• Therefore, prosecution leading to imprisonment is not attracted in this case.
Bailability: Not relevant as imprisonment provision is not triggered.
Punishment for Falsification of records:
As per sec 132(1)(f): A person who falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act; shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
Bailability: Bailable</td></tr>
<tr><td>(ii)</td><td>Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds 500 lakhs in terms of section 132(1)(d) read with clause (i) of section 132(1).
Prosecution: Since the amount of tax evaded by 'Nishant' exceeds ₹ 500 lakh (750 lakh - 80 lakh):
• 'Nishant' is punishable with an imprisonment for a term which may extend to 5 years.</td></tr>
</table>

	• Also liable to fine. Bailability: Offences where the amount of tax involved exceeds ₹5 crore are cognizable and non-bailable under section 132(5).

Answer 4A(i)

Ramesh is required to keep and maintain a true and correct account of:

- Production or manufacture of goods
- Inward and outward supply of goods or services or both
- Stock of goods
- Input tax credit availed
- Output tax payable and paid and
- such other particulars as may be prescribed

Ramesh is required to retain the accounts or other record until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and record.

Where he is under an investigation under chapter XIX, shall retain the books of account and other records pertaining to the investigation for a period of one year after final disposal of such investigation or for the period specified i.e., 72 months, whichever is later.

Answer 4A(ii)

a) As per Section 7 of the CGST Act, 2017, Permanent transfer of air-conditioner its stock for personal use at its residence, though without consideration, would amount to supply because ITC taken on it and Mr. Vivaan will pay Tax.

b) Sale of air-conditioner by Mr. Ghanshyam will not qualify as supply under section 7 of the CGST Act, 2017 as although it is made for a consideration, but it's not in the course or furtherance of business.

c) In this case, supplier will pay tax because supplier is body corporate hence RCM provision will not be applicable here HENCE 'TTY Ltd. will pay tax under forward charges (Notification 13/2017).

Answer 4A(iii)

As per Circular No. 254/11/2025-GST dated 27.10.2025, monetary limits prescribed for issuance of SCNs and passing of orders under section 74A of the CGST Act

Board has assigned the officers mentioned in table below, the functions as the proper officers in relation to issue of SCNs and passing orders under sections 74A of the CGST Act and section 20 of the IGST Act (read with section 74A of the CGST Act), up to the prescribed monetary limits of tax (including cess) not paid/ short paid/ erroneously refunded/ ITC of tax (CGST/IGST/CGST & IGST) wrongly availed/utilized for issuance of SCNs and passing of orders under section 74A:

CGST Officer	*Monetary limit of CGST*	*Monetary limit of IGST*	*Monetary limit of CGST and IGST*
Superintendent of Central Tax	Not exceeding ₹ 10 lakh	Not exceeding ₹20 lakh	Not exceeding ₹ 20 lakh
Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakh and not exceeding ₹ 1 crore	Above ₹ 20 lakh and not exceeding ₹ 2 crores	Above ₹ 20 lakh and not exceeding ₹2 crores
Additional or Joint Commissioner of Central Tax	Above ₹1 crore without any limit	Above ₹ 2 crores without any limit	Above ₹ 2 crores without any limit

It is clarified that where a show cause notice issued under section 74A of CGST Act, 2017 involves demand of both CGST and IGST (including cess), the proper officer shall be determined on the basis of the combined amount of CGST and IGST (including cess), irrespective of the individual amounts of CGST or IGST (including cess) which may exceed the prescribed monetary limit.

The proper officer shall be determined based on the highest amount of tax specified in the show cause notice and statement across all tax periods.

The proper officer shall be determined based solely on the amount of tax demanded, excluding penalties from the calculations.

PART - II

Question 5

A scheme of amalgamation between Beta Manufacturing Ltd. (amalgamating company) and Gunjan Industries Ltd. (amalgamated company) was approved by the National Company law Tribunal. The amalgamation of two companies became effective from 1st April, 2025.

The following business losses and unabsorbed depreciation of Beta Manufacturing Ltd. are given below :

Assessment Year	***Business Loss (₹)***	***Unabsorbed Depreciation (₹)***
A.Y. 2017-18	*25,00,000*	*10,00,000*

A.Y. 2018-19	*18,00,000*	*5,00,000*
A.Y. 2024-25	*12,00,000*	*6,00,000*
A.Y. 2025-26	*35,00,000*	—

Other Information :

(1) The amalgamated company had a net profit of ₹ 20,00,000 before set-off of losses for the Financial Year 2025-26.

(2) All the conditions specified under Section 72A of the Income-tax Act, 1961, as amended by the Finance Act, 2025, for the carry forward of losses and unabsorbed depreciation in the case of amalgamation are satisfied.

(3) Gunjan Industries Ltd. has not opted for the provision of section 115BAA.

Based on the above information, answer the following :

(a) Examine whether Gunjan Industries Ltd. is eligible to carry forward and set-off the accumulated business losses and unabsorbed depreciation of Beta Manufacturing Ltd. for the Assessment Year 2026-27. Also state the period for which such accumulated losses and unabsorbed depreciation can be carried forward by the amalgamated company.

(*3 marks*)

(b) Examine the conditions to be satisfied by the amalgamating company as specified under Section 72A(2) of the Income-tax Act, 1961, for claiming the benefit of carry forward and set-off of accumulated losses and unabsorbed depreciation in the case of amalgamation.

(*2 marks*)

(c) Compute the taxable income of Gunjan Industries Ltd. for the assessment year 2026-27 after its amalgamation with Beta Manufacturing Ltd.

(*5 marks*)

(d) Determine the losses and unabsorbed depreciation that can be carried forward by Gunjan Industries Ltd. and state the last assessment year up to which such losses and unabsorbed depreciation are allowed to be carried forward.

(*5 marks*)

Answer 5(a)

Where an amalgamation takes place and the prescribed conditions under Section 72A of the Income Tax Act, 1961 are satisfied, the amalgamated company is allowed to carry forward and set-off the accumulated business losses and unabsorbed depreciation of the amalgamating company.

Hence, Gunjan Industries Ltd., being the amalgamated company, shall be eligible to carry forward and set off the accumulated business losses and unabsorbed depreciation of Beta Manufacturing Ltd. from the Assessment Year 2026-27 and onwards.

Period of Carry Forward

1. *Accumulated Business Loss:* As per the amendment vide Finance Act, 2025, the amalgamated company can claim such losses and it can be carried forward only for the remaining period out of the original 8 assessment years counted from the year in which the loss was first incurred by the amalgamating company.
2. *Unabsorbed Depreciation:* As per Section 32(2) of the Income-tax Act, 1961, unabsorbed depreciation can be carried forward indefinitely. Therefore, the amalgamated company can continue to carry forward and set off such unabsorbed depreciation without any time limit until it is fully absorbed.

Answer 5(b)

Conditions to be satisfied by the Amalgamating Company u/s 72A(2):

(i) The amalgamating company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for 3 or more years prior to the date of amalgamation.

(ii) The amalgamating company has held continuously as on the date of the amalgamation at least 75% of the book value of fixed assets held by it 2 years prior to the date of amalgamation.

Answer 5(c)

Computation of the Taxable Income of Gunjan Industries Ltd. for the Assessment Year 2026-27

Particular	*Amount (₹)*
Profit before set-off of losses & Unabsorbed Depreciation	20,00,000
Less: Set-off of loss for A.Y. 2017-18 [Not allowed, since period of 8 year has been expired]	--
Less: Set-off of loss for A.Y. 2018-19	(18,00,000)
Less: Set-off of losses for A.Y. 2024-25	(2,00,000)
Net Profit after set-off of losses	Nil

Working Note: The brought forward business losses are set-off first, as they are subject to a specified time limit for carry forward. Unabsorbed depreciation is set off only after adjusting all the business losses, since it can be carried forward indefinitely. This method ensures that the assessee derives the maximum benefit from the provisions relating to carry forward and set-off of losses and depreciation.

This treatment is consistent with the provisions relating to amalgamation under Section 72A of the Income-tax Act, 1961, where accumulated losses and unabsorbed depreciation of the amalgamating company are treated as those of the amalgamated company, subject to prescribed conditions.

Answer 5(d)

Computation of carry forward of Business Losses and maximum period for set-off

Assessment Year	*Carry forward-loss (₹)*	*Last AY for Set-off (Total 8 years rule)*
A.Y. 2017-18	Nil	No Carry forward (Since maximum period of 8 year has been expired)
A.Y. 2018-19	Nil	No Carry forward (Since fully utilized against profit of A.Y. 2026-27)
A.Y. 2024-25	10,00,000 (12,00,000 - 2,00,000)	Carry forward up to A.Y. 2032-33
A.Y. 2025-26	35,00,000	Carry forward up to A.Y. 2033-34

Computation of carry forward of unabsorbed depreciation and maximum period for set-off

Assessment Year	*Carry forward Unabsorbed Depreciation (₹)*	*Last AY for Set-off*
A.Y. 2017-18	10,00,000	Indefinite Period
A.Y. 2018-19	5,00,000	Indefinite Period
A.Y. 2024-25	6,00,000	Indefinite Period
A.Y. 2025-26	--	--

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

Question 6

(a) Mr. Manish, a resident individual engaged in the business of trading in mobile accessories, had a turnover of ₹ 1.80 crore during the Previous Year 2025-26. Being an eligible

assessee, he opted for the presumptive taxation scheme under Section 44AD for the said year.

You are required to briefly explain the consequences of opting for the presumptive taxation scheme under Section 44AD, of the Income-tax Act, 1961.

(5 marks)

(b) *Deepjyoti Pvt. Ltd., a company incorporated on 1st April, 2025, is engaged in the business of developing innovative software solutions. The company is recognized as a start-up by the Department for Promotion of Industry and Internal Trade (DPIIT) under the provisions of the Income-tax Act, 1961.*

During the Previous Year 2025-26, the company had a total turnover of ₹ 850 Lakh from its start-up business and earned a profit of ₹ 75 lakh before tax. Assume the company has not opted for the provision of section 115BAA or 115BAB.

You are required to :

(i) *Examine whether Deepjyoti Pvt. Ltd. is eligible to claim deduction under Section 80IAC of the Income-tax Act, 1961.*

(ii) *State the conditions for claiming the deduction under Section 80IAC.*

(5 marks)

(c) *PVK Power and Infrastructure Limited was incorporated on 1st April, 2023 and is engaged in the business of developing and operating a road project under a public-private partnership (PPP) agreement. The project was commenced on 1st August, 2025.*

During the Previous Year 2025-26, the company earned the following income from its business :

Particulars	***Amount (₹ in lakh)***
Toll collection from the road project	*120*
Profit before tax and dep. from road project	*35*
Income from solid waste management system	*15*
Interest on bank deposits	*18*
Income from rental of office premises	*12*
Income from inland waterway	*20*

Additional Information :

(1) The company has claimed depreciation of ₹ 4 lakh on the road project asset.

(2) The business carried on by PVK Power & Infrastructure Limited qualifies as an eligible infrastructure facility under Section 80 IA of the Income-tax Act, 1961.

Compute the deduction allowable under Section 80IA for the assessment year 2026-27 for PVK Power & Infrastructure Limited. Assume the company has not opted for the provision of section 115BAA or 115BAB.

(5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

(i) Specify with reason, whether the following acts can be considered as tax planning, tax avoidance, tax management, or tax evasion :

(a) Tilak an individual, engaged in business of wholesale trading pays his wife salary ₹ 18,000 per month. She is an MBA by profession but does not take part in his business and is a housewife. This is done to create some income for his wife and to take advantage of the exemption available to individuals upto ₹ 2,50,000 and also to reduce his income from business.

(b) An individual tax payer making tax saver deposit of 5 years of ₹ 1,20,000 in a nationalized bank in the name of his minor son.

(c) A company remitted provident fund contribution of both its own contribution and employees' contribution on monthly basis before due date.

(d) ABC Ltd. engaged in manufacturing business has opened a new 3-star hotel near its factory to claim deduction u/s 35AD.

(e) SM Finance Ltd. obtains Form 60 in lieu of PAN card from all its customers for whom PAN is not yet allotted.

(5 marks)

(ii) Bhavyansh Industries Ltd. was incorporated on 1st July, 2023 and has established a unit in a Special Economic Zone (SEZ) for chemical manufacturing. The SEZ unit commenced commercial operations on 1st June, 2025. The following information relates to the Previous Year 2025-26 is provided :

Particulars	***Amount (₹ in lakh)***
Profit before depreciation and other deductions from SEZ unit	*250*

Depreciation allowable under the Income-tax Act for SEZ unit	*40*
Depreciation allowable under Companies Act for SEZ Unit	*50*
Other deductions under Chapter VI-A for SEZ unit	*25*
Total turnover of SEZ unit	*400*
Export turnover from SEZ unit	*240*

Additional Information :

(1) The SEZ unit is eligible for 100% deduction of profits under Section 10AA for the first five years from the commencement of commercial operations.

(2) The Company has not opted for the provision of section 115BAA or 115BAB.

Based on the above information, you are required to give the following answer :

(a) Compute the deduction under Section 10AA for the assessment year 2026-27.

(b) Determine the taxable income of Bhavyansh Industries Ltd. for the assessment year 2026-27.

(*5 marks*)

(iii) Omkar Finance Pvt. Ltd. is a company engaged primarily in the business of granting loans and advances and earns about 85% of its income from lending activities. During the Previous Year 2025-26, the company granted a loan of ₹ 40 lakh to Mr. Suresh, who holds 12% of the voting power in Omkar Finance Pvt. Ltd. The loan was granted at a commercial rate of interest and was approved on the same terms and conditions as those applicable to other customers of the company. The Assessing Officer contends that the loan is liable to be treated as deemed dividend under Section 2(22)(e) of the Income tax Act, 1961.

However, the company argues that the loan was granted in the ordinary course of its business, and that lending of money constitutes a substantial part of its business.

You are required to examine whether the loan granted to Mr. Suresh would be treated as deemed dividend under Section 2(22)(e). Give reason for your answer.

(5 marks)

Answer 6(a)

Consequences if a qualified assessee chooses Section 44AD

i. The deductions provided in sections 30 to 38 are deemed to be allowed: Any deduction covered under sections 30 to 38 shall not be allowed as a deduction if the assessee opts for section 44AD to compute the profit of the business.

ii. Written down value: The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

iii. Restriction on the utilization of section 44AD: If the assessee declares income under section 44AD and the assessee is eligible to declare income under section 44AD in the subsequent previous year but the assessee does not declare the income under section 44AD, he shall not be eligible to claim the benefit of the provisions under this section for 5 assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of section 44AD.

iv. Maintenance of Books of Account / Audit u/s 44AB: If the eligible assessee declares profits in accordance with the provisions of section 44AD, he is not required to maintain books of account under section 44AA or to get them audited under section 44AB.

v. Advance payment of tax: If an eligible assessee declared profit as per section 44AD, the assessee can pay the whole amount of advance tax during each financial year on or before 15th of March.

Answer 6(b)(i)

In the given case, Deepjyoti Pvt. Ltd. is engaged in a recognized start-up business and was incorporated between 1st April, 2016 and 31st March 2030. Company's turnover does not exceed ₹100 crore, which meets the prescribed threshold.

Accordingly, the company is eligible to claim deduction under Section 80IAC of the Income tax Act, 1961.

Section 80IAC provides for a 100% deduction of profits for a start-up for three consecutive assessment years out of ten years beginning from the eligible start-up is incorporated.

Therefore, Company can claim deduction of 100% of 75 lakhs for AY 2026/27

Answer 6(b)(ii)

Condition for claiming deduction u/s 80-IAC:

1. The assesses must be engaged in the eligible business.

2. Eligible business is not formed by splitting up, or the reconstruction, of a business already in existence provided that this condition shall not apply in respect of a start-up which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B, in the circumstances and within the period specified in that section;

3. It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

   Explanation 1 – Any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if all the following conditions are fulfilled, namely:

   (a) such machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;

   (b) such machinery or plant is imported into India;

   (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

   Explanation 2 – Where in the case of a start-up, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in the business, then, for the purposes of point 3, the condition specified therein shall be deemed to have been complied with.

4. The provisions of sub-section (5) and sub-section (7) to (11) of section 80-IA shall apply to the start-ups for the purpose of allowing deductions under sub-section (1) of section 80IAC.

Answer 6(c)

As per the second proviso to Section 80IA(4) of the Income tax Act, 1961, the deduction shall not be allowed to any enterprise which starts the development or operation and maintenance of the infrastructure facility on or after the 1st day of April, 2017.

Since, PVK Power and Infrastructure Limited was incorporated on 1st April, 2023 and is engaged in the business of developing and operating a road project under a public private partnership (PPP) agreement. The project was commenced on 1st August, 2025.

Therefore, the Company is not eligible for Deduction u/s 80IA of the Income Tax Act, 1961 for AY 2026-27

Alternate Answer 6(c)

Computation of deduction allowable under section 80IA for the Assessment Year 2026-27

Particulars	*Amount (₹ in lakh)*
Net Profit from road project business (35 lakhs – depreciation 4 lakhs)	31
Income from solid waste management system	15
Interest on bank deposits	-
Income from rental of office premises	-
Income from inland waterway	20
Total eligible deduction u/s 80IA	66

Working Note:

Section 80IA deduction is allowed only for profits derived from specified infrastructure businesses, such as:

(a) a road including a toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway, inland port or navigational channel in the sea.

OR (Alternate Question to Q.No. 6)

Answer 6A(i)

(a) *Tax Evasion:* Payment of ₹18,000 per month to house wife, who does not take part in the business, to reduce the profits of his business and also claiming separate exemption limit of ₹2,50,000 for wife's income is an act of tax evasion. The professional qualification of his wife is not relevant in this case.

(b) *Tax Planning*: Making a tax saver deposit of ₹ 1,20,000 in a nationalized bank for claiming deduction under section 80C by an individual taxpayer in the name of minor son is a permitted tax planning measure under the provisions of income-tax law.

(c) *Tax Management*: Remitting of own contribution to provident fund and employees' contribution to provident fund on a monthly basis before due date is proper compliance of the statutory obligations.

(d) *Tax Planning*: ABC Ltd. engaged in manufacturing business has opened a new 3-star hotel near its factory to claim deduction u/s 35AD. This is the case of tax planning. A company to take advantage of the provisions of Income tax laws, for set-off and carried forward of losses and tax holiday adapts such expansion / diversification.

(e) *Tax Management*: Obtaining Form 60 in lieu of PAN card (from whom PAN is not yet allotted) for the compliance of Income tax laws is an act of tax management. The company obtaining Form 60 in lieu of PAN cards to avoid any future compliance issues from tax authorities.

Answer 6A(ii)

(a) As per the provision of section 10AA(1) of the Income tax Act, 1961, the deduction u/s 10AA is available 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, 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 subject to fulfilment of certain conditions.

Since, Bhavyansh Industries Ltd. was incorporated in 1st July, 2023 and has established a unit in SEZ which commenced commercial production on 1st June, 2025. Therefore, the Company is not eligible for deduction u/s 10AA of the Income Tax Act, 1961 for AY 2026-27

(b) Computation of taxable income of Bhavyansh Industries Ltd. for the assessment year 2026–27

Particulars	*Amount (₹ in lakh)*
Profit before depreciation and other deductions from SEZ unit	250
Less: Depreciation allowable under the Income-tax Act for SEZ unit	(40)
Gross Total Income	210
Less: Deduction under section 10AA for SEZ unit (not eligible since incorporated and commenced operation on or after 1st April, 2021)	-
Less: Other deductions under Chapter VI-A for SEZ unit	(25)
Taxable Income	185

Alternate Answer 6A(ii)

(a)

Computation of deduction under Section 10AA for the assessment year 2026–27

Particulars	*Amount (₹ in lakh)*
Step 1: Compute profit after allowable deductions Profit before depreciation and other deductions from SEZ unit Less: Depreciation allowable under the Income-tax Act for SEZ unit Less: Other deductions under Chapter VI-A for SEZ unit Profit after deduction	 250 (40) (25) 185
Step 2: Compute Section 10AA deduction Section 10AA Deduction $= \text{Profit after deduction X } \frac{\text{Export Turnover}}{\text{Total Turnover of SEZ}}$ $= 185 \text{ X } \frac{240}{400} = 111 \text{ Lakh}$	111

(b)

Computation of taxable income of Bhavyansh Industries Ltd. for the assessment year 2026–27

Particulars	*Amount (₹ in lakh)*
Profit before depreciation and other deductions from SEZ unit	250
Less: Depreciation allowable under the Income-tax Act for SEZ unit	(40)
Gross Total Income	210
Less: Deduction under section 10AA for SEZ unit	(111)
Less: Other deductions under Chapter VI-A for SEZ unit	(25)
Taxable Income	74

Answer 6A(iii)

As per Section 2(22)(e) of the Income-tax Act, 1961, any loan or advance given by a closely held company to a shareholder who holds not less than 10% of the voting power is treated as deemed dividend to the extent of the company's accumulated profits.

However, the section provides an exception that such loan or advance shall not be treated as deemed dividend if:

1. The loan or advance is made in the ordinary course of the company's business, and
2. Lending of money constitutes a substantial part of the business of the company.

Application to the Given Facts:

- Mr. Suresh holds 12% of the voting power in Omkar Finance Pvt. Ltd. Hence, the basic condition for applicability of Section 2(22)(e) is satisfied.
- However, Omkar Finance Pvt. Ltd. is primarily engaged in the business of granting loans and advances. The company earns 85% of its income from lending activities, which indicates that lending of money is a substantial part of its business.
- The loan of ₹40 lakh was granted at a commercial rate of interest and on the same terms as applicable to other customers, indicating that it was given in the ordinary course of business.

Conclusion:

- Since the loan was granted in the ordinary course of business and lending of money constitutes a substantial part of the company's business, the exception provided under Section 2(22)(e) applies.
- Therefore, the loan of ₹40 lakh granted to Mr. Suresh will not be treated as deemed dividend under Section 2(22)(e) of the Income-tax Act, 1961.

***

LABOUR LAWS & PRACTICE

GROUP 2 ELECTIVE PAPER 7.3

Time allowed : 3 hours **Maximum marks : 100**

Total number of questions : 4

NOTE : *Answer* ***ALL*** *Questions.*

Question 1

Case Study :

The Sivika Tech. Ltd. is an IT-enabled services company established in 2012 at Gurgaon. The company employed 550 workers, including 350 software developers and technical staff (monthly salaries ₹ 30,000–₹ 80,000), 150 administrative and support staff (monthly salaries ₹ 8,000 – ₹ 18,000), 50 managerial and supervisory personnel (monthly salaries ₹ 60,000– ₹ 1,50,000). Due to global economic recession, Covid-19 outbreak and loss of major client contracts, the company faces severe financial distress in January 2021. The Board of Directors decides to implement cost cutting measures including workforce reduction, salary restructuring, and operational downsizing. The management identifies 120 permanent employees for retrenchment (employed since 2013), including : 50 junior developers (average service : 3 years, average monthly salary : ₹ 35,000), 40 administrative staff (average service : 5 years, average monthly salary : ₹ 12,000), 30 senior developers (average service : 7 years, average monthly salary : ₹ 55,000) without stating the reason in the termination letter. The company issued termination letters on 1st October, 2022 effective immediately, offering 15 days' salary for every completed year of service, one month's salary as notice pay, no prior consultation with workers or trade union. Affected permanent employees approach the Regional Labour Commissioner alleging illegal retrenchment.

During the retrenchment process, these 120 staff members went on strike immediately receiving the termination letter on 1st October, 2022 without informing to the management. These 120 staff members did not file their complaint to the Works Committee and the matter was also not referred to the Conciliation Officer. They directly filed the matter before the lndustrial Tribunal on 1st January, 2023, the Industrial Tribunal passed an Award on 25th August 2025 without holding a proper enquiry. While passing an Award it was also found that the Labour Audit is pending since last two years, the Labour Inspector have not audited the company regarding various statutory compliances, the company license was also due for renewal and found irregularities in labour compliances.

But during the pendency of proceedings, the management changed some service conditions which were unconnected with the dispute, without serving the notice to the workers. The management made the changes in their standing orders too without informing to the workers, and to the appropriate authority. The management made the alteration in the payment of subsistence allowance, the change was that if any workmen is suspended by the employer where the *investigation or inquiry and the matter is pending before the court only nominal charges i.e. only 30 percent, will be paid to the workmen during the pendency of the proceedings. When the workers got to know about the changes they threatened to the management and filed multiple cases against the management.*

Answer the following questions (a, b, c), keeping in view the above scenario :

(a) *Sivika Tech. Ltd. recently retrenched a group of employees with immediate effect, failing to serve prior notice to the affected workers or to the appropriate government. Based on the Industrial Relations Code, 2020 :*

(i) *Determine whether this act of retrenchment by the company is legal or illegal, why ?*

(ii) *Explain the statutory provisions and the conditions precedent that an employer must fulfil before executing a valid retrenchment.*

(2+3=5 marks)

(b) *Do employees have an absolute legal right to go on strike ? The employees of Sivika Tech. Ltd. went on strike without serving the requisite notice to the management or the appropriate government. Will this act be considered legal or illegal under The Industrial Relations Code, 2020 ? Substantiate your answer with relevant legal provisions.*

(5 marks)

(c) *Can management unilaterally modify standing orders without prior consultation with the workers ? Additionally, outline the statutory provisions for subsistence allowance, discuss under the Industrial Relations Code, 2020.*

(5 marks)

(d) *ST Technologies Pvt. Ltd., a digital platform company running an online food delivery application across several metropolitan cities, engages a large number of delivery partners to deliver orders placed through its platform. The company maintains that these delivery partners function as independent contractors associated with the platform and therefore are not eligible to receive statutory social security benefits. A group of delivery workers disputes this position and contends that, considering the nature of their work and their dependence on the platform, they should be treated as eligible beneficiaries under the statutory framework governing gig and platform workers.*

Accordingly, they submit a representation before the competent authority seeking coverage under the relevant social security schemes established under the Code on Social Security, 2020. Examine the legal issues involved and determine whether such delivery personnel can claim social security protection under the Code on Social Security, 2020.

(5 marks)

(e) *RCD Chemicals Ltd., a factory engaged in the manufacture of industrial chemicals, employs a large number of workers in processes that involve handling and exposure to*

hazardous and toxic material. The workers are required to perform their duties in areas where harmful chemical vapour and substances are frequently present. However, the management allegedly fails to provide proper safety gear such as protective clothing, masks and gloves and also neglects to arrange regular medical examination and health monitoring for workers engaged in these dangerous operations. Over a period, several workers develop serious health complications attributed to prolonged exposure to toxic substances in the workplace. Alarmed by these incidents, the remaining workers submit a complaint to the competent labour authority alleging that the employer has violated statutory safety and health obligations prescribed under the Occupational Safety, Health and Working Conditions Code, 2020.

What are the legal issues involved in the above case ? Also determine the action that may be taken by the labour authorities under the relevant provisions of the Code.

(5 marks)

Answer 1(a)

(i) The retrenchment carried out by Sivika Tech. Ltd. is illegal and invalid under the provisions of the Industrial Relations Code, 2020. In the given case, Sivika Ltd. employed 550 workers, therefore the special provisions under Section 79 of Chapter X relating to retrenchment will be applicable. As per Section 79 (1) (a) of the Industrial Relations Code, 2020, employer has not served the three months' notice in writing indicating the reasons for retrenchment or the worker has not been paid, in lieu of such notice, wages for the period of the notice.

Further as per Section 79(1) (b) of the Industrial Relations Code, 2020, prior permission of the appropriate government is required to be obtained for retrenchment through an application made in this behalf. The application for permission made by the employer stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workers concerned. This was also not done by the Sivika Tech. Ltd. Thus, this act of retrenchment by the company is illegal.

(ii) **Conditions Precedent to Retrenchment**

Section 79(1) of the Industrial Relations Code, 2020 states that no worker employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

(a) the worker has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the worker has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government has been obtained on an application made in this behalf.

Application for permission of retrenchment

Section 79(2) of the Industrial Relations Code, 2020 further states that an application for permission under sub-section (1) shall be made by the employer electronically or otherwise in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workers concerned in such manner as may be prescribed.

Illegal Retrenchment

As per Section 79 (7) of the Industrial Relations Code, 2020, where no application for permission under sub-section (1) is made or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the worker and the worker shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

Answer 1(b)

No, employees do not have an absolute legal right to go on strike. The right to strike is a statutory right regulated by the provisions of the Industrial Relations Code, 2020. Workers can resort to a strike only in accordance with the conditions prescribed under the Code. Any strike undertaken in violation of these statutory requirements becomes an illegal strike.

Section 62 of the Industrial Relations Code, 2020, prescribed that no person employed in an industrial establishment shall go on strike, in breach of contract—

(a) without giving to the employer notice of strike, within 60 days before striking; or

(b) within 14 days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice; or

(d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings; or

(e) during the pendency of proceedings before a Tribunal or a National Industrial Tribunal and sixty days, after the conclusion of such proceedings; or

(f) during the pendency of arbitration proceedings before an arbitrator and 60 days after the conclusion of such proceedings, where a notification has been issued under sub-section (5) of section 42; or

(g) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award.

The notice of strike under this section shall not be necessary where there is already in existence a strike, but the employer shall send intimation of such strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of services.

Section 63(1)(i) further states that, a strike shall be illegal if it is commenced or declared in contravention of section 62.

The employees of Sivika Tech. Ltd. failed to comply with the procedure prescribed under Sections 62 of the Industrial Relations Code, 2020. They went on strike immediately upon receiving their termination letters, without serving a valid notice period to the employer. Consequently, the strike is held to be illegal under the provisions of the Code.

Answer 1(c)

The management cannot unilaterally modify certified Standing Orders without following the statutory procedure prescribed under the Industrial Relations Code, 2020.

Section 35 of the Industrial Relations Code, 2020 provides that the certified standing orders shall not be liable to modification until the expiry of six (6) months from the date on which the standing orders or the last modifications thereof came into operation. However, same may be modified if there is an agreement between the employer and workers, or a negotiating union or a Trade Union or other representative body of workers.

Application for Modification

- An employer or worker or a Trade Union or other representative body of the workers may apply to the certifying officer to have the standing orders modified in such application as may be prescribed. Certifying officer means any officer appointed by the appropriate Government, by notification, to perform the functions of a certifying officer under the provisions of Chapter IV - Standing Orders;
- The application shall be accompanied by copies of the modifications proposed to be made.
- Where the modifications are proposed to be made by an agreement between the employer and the workers or a Trade Union or other representative body of the workers, a certified copy of that agreement shall be filed along with the application.

In the present case, the management of Sivika Tech. Ltd. altered the Standing Orders without informing to the workers and to the appropriate authority. In view of the above mentioned provisions, management unilaterally cannot modify the standing orders without prior consultation with the workers.

Provisions for Subsistence Allowance

The standing orders certified or modified under Industrial Relations Code, 2020 shall provide that where a worker is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer in relation to the industrial establishment or undertaking shall pay to such worker employed in such industrial establishment or undertaking a subsistence allowance at the rates specified in the Code for the period during which such worker is placed under suspension pending investigation or inquiry into complaints or charges of misconduct against such worker. {Section 38(2)}

Rates of Subsistence Allowance

The amount of subsistence allowance payable under Section 38(2) shall be—

(a) at the rate of fifty per cent. (50%) of the wages which the worker was entitled to immediately preceding the date of such suspension, for the first ninety (90) days of suspension; and

(b) at the rate of seventy five per cent. (75%) of such wages for the remaining period of suspension, if the delay in the completion of disciplinary proceedings against such worker is not directly attributable to the conduct of such worker. {Section 38(3)}

Answer 1(d)

The issue must be examined under the provisions of the Code on Social Security, 2020, which expressly recognizes gig workers and platform workers within the social security framework. Under Code on Social Security, 2020, a platform worker means a person engaged in or undertaking platform work. Whereas, platform work means a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment. Food delivery personnel engaged through an online food delivery application therefore fall within this statutory definition.

Further, Section 114 of the Code on Social Security, 2020 empowers the Central Government to frame social security schemes specifically for gig and platform workers, including benefits relating to life and disability cover, accident insurance, health protection, maternity benefits, crèche and old-age protection. The Code further provides for the registration of such workers on a designated portal in order to avail these benefits. The platform aggregator is also required to contribute a prescribed percentage of its annual turnover toward social security funds for gig workers and platform workers.

Hence, the company cannot deny coverage merely by labeling the workers as independent contractors. The delivery workers are entitled to seek registration and inclusion in social security schemes under the Code on Social Security, 2020.

Answer 1(e)

The matter is pertaining to the provisions of the Occupational Safety, Health and Working Conditions Code, 2020, which imposes a statutory duty on employers to ensure the health, safety, and welfare of workers in establishments, particularly where hazardous processes are involved. Under Section 6 of the Code, the employer:

- is obligated to provide a safe working environment, adequate protective equipment, and necessary safety measures to workers exposed to dangerous substances;
- ensures that workplace is free from hazards which cause or are likely to cause injury or occupational disease to the employees;
- comply with the occupational safety and health standards;

- provide such annual health examination or test free of costs to such employees of such age or such class of employees of establishments or such class of establishments, as may be prescribed by the appropriate Government;
- provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of the employees;
- ensure the disposal of hazardous and toxic waste including disposal of e-waste;
- ensure and be responsible for the safety and health of employees, workers and other persons who are on the work premises of the employer, with or without his knowledge, as the case may be.

Specific Duties of Employer:

The duties of an employer shall particularly in respect of factory include—

- the provision and maintenance of plant and systems of work in the workplace that are safe and without risk to health;
- the arrangements in the workplace for ensuring safety and absence of risk to health in connection with the use, handling, storage and transport of articles and substances;
- the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety of all employees at work;
- the maintenance of all places of work in the workplace in a condition that is safe and without risk to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risk;
- the provision, maintenance or monitoring of such working environment in the workplace for the employees that is safe, without risk to health as regards facilities and arrangements for their welfare at work.

Section 8 of the Occupational Safety, Health and Working Conditions Code, 2020 places a duty on manufacturers to ensure that every article used at work is safe, without risks to health of the workers when properly used. Additionally, Section 23(1) states that the employer shall be responsible to maintain in his establishment such health, safety and working conditions for the employees as may be prescribed by the Central Government.

The failure of RCD Chemicals Ltd. to provide protective gear and conduct health examinations therefore amounts to a serious violation of statutory safety obligations.

The complaint may be investigated by an Inspector-cum-Facilitator appointed under the Code. Upon receiving the complaint, the Inspector-cum-Facilitator may enter the factory premises, examine records and registers, and conduct inquiries. The Inspector-cum-Facilitator may also conduct an inspection of the establishment. If violations are established, the authority may direct the employer to implement immediate safety measures and provide protective equipment. The affected workers may also receive medical assistance and appropriate compensation for occupational illness. Additionally, the employer may be subjected to penalties for contravention of the Code. Thus, the labour authority can enforce compliance and initiate necessary legal action against the employer.

Question 2

Ivory Mica & Minerals Ltd. (IMM) is a mid-sized, publicly traded mining company that mostly works in the country's underdeveloped, mineral-rich eastern area. The company specializes in the extraction and processing of low-grade coal and mica, which are highly sought after by the worldwide electronics, energy, and cosmetics industries. IMM has a superb reputation in the stock market. Five years ago, IMM's management implemented an aggressive outsourcing strategy to reduce overhead expenses and increase operational efficiency. IMM reorganized its operations rather than hiring manpower directly. It delegated the actual extraction job to a network of outside labour contractors while keeping a small core staff of engineers and management. The unlicensed primary contractor, "Surya Extractor Contractor Ltd.", oversees the day-to-day mining operations and is compensated at a set fee for each ton of extracted mineral. Surya Extractor further subcontracts the work to unregistered local "gang leaders" (middlemen) in order to preserve their profit margin. These intermediaries hire labourers from underprivileged rural and tribal areas severely impacted by seasonal drought.

The middlemen encourage entire families to labour in the mines since they are paid piecemeal (depending on the weight of the harvested minerals). The working environment is appalling. Instead of being official contract labourers, the adult miners are categorized as "daily wage helpers". Mica mining frequently entails "rat-hole" mining, which entails excavating small, dangerous tunnels. The intermediaries highly value children's ability to crawl into these tight shafts because of their diminutive stature. Children under the age of 14 years make up about 30% of the informal workforce. They perform 10-hour shifts in dangerous, dusty surroundings, often even at night. During an unplanned site visit to one of the far-off mines, Stelva, the Manager of IMM, discovers children shifting mica and carrying big loads. He also disclosed the intricate network of subcontracts designed to shield IMM from labour law requirements. Through his interaction with the local workers, Stelva learns that they are trapped in a cycle of debt servitude to the intermediaries. The manager, Stelva, claims that there isn't a single youngster or underpaid employee at the IMM. Our payroll compliance is 100%. In our agreement with the independent business company Surya Extractors, child labour is categorically forbidden. If their contractor and subcontractor violate the law, it is their responsibility of law enforcement.

Based on the above scenario, answer following questions (a and b) :

(a) What is the legal validity where an unlicensed contractor recruits labour and sub-contracts work to third parties, and what are the requirements for license acquisition by contractors and sub-contractors. Mention the penal provisions that attach to such violations under The Occupational Safety, Health & Working Conditions Code, 2020 ?

(5 marks)

(b) Explain the general prohibition of employing contract labour in certain establishments under Section 57 of The Occupational Safety, Health and Working Conditions Code, 2020. Who can exempt such prohibition under special circumstances ?

(5 marks)

(c) *Aadish, a platform worker, has completed six years of continuous service with Swift Logistics (an aggregator). Is he legally entitled to claim gratuity from Swift Logistics ? Substantiate your reasoning with the appropriate provisions under the Code on Social Security, 2020.*

(5 marks)

(d) *A factory manager assigns a 17-year-old adolescent to work in a hazardous process without any safety gear. Is this legally permissible ? Outline the specific restrictions placed on an adolescent's daily working hours and night shifts under the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986.*

(5 marks)

(e) *RR Electronics Ltd., a multinational manufacturing company, undertakes a restructuring of its employee remuneration system. Under the revised structure, the management substantially reduces the basic pay component while increasing several allowances such as travel allowance, special allowance, and performance incentives. Consequently, the basic wage constitutes only about 39% of the total remuneration received by employees. The workers contend that this restructuring has been intentionally designed to minimize the employer's statutory liabilities relating to bonus and other wage-linked benefits. They argue that such a wage structure is inconsistent with the definition and principles governing wages under the Code on Wages, 2019. Accordingly, the employees raise a dispute before the Labour authorities alleging manipulation of wage components by the employer.*

Identify the legal issues arising from this situation and determine the action that the Labour authorities may take under the Code on Wages, 2019.

(5 marks)

Answer 2(a)

Section 2(1)(n) of the Occupational Safety, Health and Working Conditions Code, 2020 defines the term Contractor which, in relation to an establishment, means a person, who—

(i) undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour; or

(ii) supplies contract labour for any work of the establishment as mere human resource,

and includes a sub-contractor.

Licensing of Contractors (Section 47 of the Occupational Safety, Health and Working Conditions Code, 2020)

The section is a core compliance provision that regulates the licensing of contractors engaging contract labour. It ensures that contractors cannot operate without formal authorisation, and it introduces both general licences and work-specific licences.

General Rule: Except under and in accordance with a licence issued by the designated authority under Section 119(1), no contractor shall:

(a) Supply or engage contract labour in any establishment; or

(b) Undertake or execute work through contract labour,

Licence shall be issued after verifying that the contractor meets qualifications or criteria prescribed by the Central Government. Such licence shall specify:

- Number of contract labour permitted.
- Amount of security to be deposited.

Work-Specific Licence: If contractor does not meet prescribed qualifications or criteria, the authority may issue a work-specific licence. Such licence:

- is electronically renewable within prescribed period.
- applies only to the concerned work order.
- is subject to specified conditions.

Conditions of Licence: Subject to the provisions of this Part—

(a) Licence may include conditions relating to:

  - Hours of work.
  - Fixation of wages.
  - Essential amenities for contract labour.

(b) Licence shall be obtained from:

  - Central Government authority (if establishment falls under Central jurisdiction).
  - State Government authority (if establishment falls under State jurisdiction).

It may be noted that contractors seeking licences for multiple States or whole of India must obtain licence from the authority referred to in sub-section (1) of section 119 designated by the Central Government for such purpose. It is further provided that before issuing such licence the authority so designated shall consult the concerned State or States authorities designated under sub-section (1) of section 119, electronically before issuing licence for the establishments for which the Appropriate Government is the State Government.

Under Section 47 of the Occupational Safety, Health and Working Conditions Code, 2020, no contractor can undertake or execute work through contract labour without obtaining the prescribed licence. Therefore, where an unlicensed contractor recruits labour and further sub-contracts the work to another unlicensed sub-contractor, such engagement is unlawful and in violation of the Code.

Where any principal employer of an establishment is employing contract labour through a contractor who is required to obtain a licence, but he has not obtained such licence, then, such employment shall be deemed to be in contravention of the provision of the Occupational Safety, Health and Working Conditions Code, 2020. Therefore, they are liable to regulatory action and attracts the penal provisions contained in Chapter XII of the Code.

Answer 2(b)

Prohibition of Employment of Contract Labour (Section 57 of Occupational Safety, Health and Working Conditions Code, 2020)

The section establishes a general prohibition on employing contract labour in the core activities of an establishment, thereby protecting the integrity of essential operations and ensuring that permanent workers are not displaced. However, it also provides limited exceptions where contract labour may be engaged, and sets out a mechanism for determining whether an activity qualifies as "core."

General Prohibition

Notwithstanding anything contained in the Part - Contract Labour, employment of contract labour in core activities of any establishment is prohibited.

Exceptions

It is provided that the principal employer may engage contract labour through a contractor to any core activity, if—

(a) the normal functioning of the establishment is such that the activity is ordinarily done through contractor; or

(b) the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be;

(c) any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.

Determination of Core Activity

(a) The Appropriate Government may, by notification, appoint a designated authority to advise that Government on the question whether any activity of an establishment is a core activity or otherwise;

(b) if a question arises as to whether any activity of an establishment is a core activity or otherwise, the aggrieved party may make an application in such form and manner as may be prescribed, to the Appropriate Government for decision;

(c) the Appropriate Government may refer any such question suo motu or refer the application to the designated authority, which on the basis of relevant material in its possession, or after making such an enquiry as it deems fit, shall report to the Appropriate Government, within such period and thereafter the Appropriate Government shall decide the question within such period as may be prescribed.

Power to Exempt in Special Cases (Section 58 of Occupational Safety, Health and Working Conditions Code, 2020)

The Appropriate Government may, in the case of an emergency, direct, by notification, that subject to such conditions and restrictions, if any, and for such period, as may be specified in the notification, all or any of the provisions of this Code or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.

Answer 2(c)

The concept of platform workers is first time recognised in the code on social security. Section 2(60) of the Code on Social Security, 2020 defines the term platform work which means a work arrangement outside of a traditional employer-employee relationship in which organisations or individuals use an online platform to access other organisations or individuals to solve specific problems or to provide specific services or any such other activities which may be notified by the Central Government, in exchange for payment. Further Section 2(61) defines platform worker which means a person engaged in or undertaking platform work.

In terms of Section 53(1) of the Code on Social Security, 2020, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

(a) on his superannuation; or

(b) on his retirement or resignation; or

(c) on his death or disablement due to accident or disease; or

(d) on termination of his contract period under fixed term employment; or

(e) on happening of any such event as may be notified by the Central Government.

Further, Section 114 of the Code specified that the Central Government may frame and notify, from time to time, suitable social security schemes for platform workers on matters relating to—

(a) life and disability cover;

(b) accident insurance;

(c) health and maternity benefits;

(d) old age protection;

(e) crèche; and

(f) any other benefit as may be determined by the Central Government.

Therefore, the platform workers are not entitled to claim Gratuity from Swift Logistics, even though he has completed six years of services. However, if Aadish is classified as a fixed-term employee rather than a platform worker, he must be entitled for gratuity calculated on his 6 years of services.

Answer 2(d)

Section 3A of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. The hazardous occupations or processes are as under:

(1) Mines
(2) Inflammable substances or explosives.
(3) Hazardous process.

However, the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.

Section 7 the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 further provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments. The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of an adolescent shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that:

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

In the given case, and in light of the above mentioned provisions, a 17 years old adolescent is not permitted to work in any of the hazardous occupations or processes under the Child and Adolescent Labour (Prohibition & Regulation) Act, 1986.

Answer 2(e)

The dispute must be examined under the provisions of the Code on Wages, 2019, particularly Section 2(y) which defines the term wages. The term "wages" under the Code is defined broadly to encompass all monetary remuneration payable to an employee in respect of employment or work done, whether under express or implied terms of employment. This ensures that the statutory scope of wages is not confined merely to salary but extends to allowances and other forms of compensation expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment.

The definition explicitly includes—

(i) basic pay;

(ii) dearness allowance; and

(iii) retaining allowance, if any,

The Code provides that wages include all remuneration such as basic pay and dearness allowance but exclude certain specified allowances such as bonus, house rent allowance, overtime allowance, conveyance allowance, employer's contribution to provident fund, gratuity and other specified allowances.

The Code also stipulates that the excluded components of remuneration should not exceed one-half (50%) of the total remuneration. However, where the aggregate of such excluded components exceeds fifty per cent of the total remuneration, the amount exceeding fifty per cent shall be deemed to form part of wages and shall be taken into account for the purposes of calculating statutory benefits under the Code.

In the present case, the employer has reduced the basic salary to 39% of total remuneration and increased various allowances. Such structuring may amount to artificial splitting of wages to avoid statutory obligations like bonus and other wage-related benefits. The workers are therefore justified in challenging the arrangement.

The labour authority or Inspector-cum-Facilitator may examine the wage records and structure adopted by the employer. If it is found that the employer has violated the 50% wage rule, the authority may direct the employer to restructure wages in compliance with the Code. The excess allowances must be treated as part of wages for statutory calculations. The authority may also order payment of differential benefits due to workers. Additionally, the employer may face penalties for non-compliance with the wage provisions.

Question 3

Capital Motors Ltd. is a sizable manufacturing facility in Lucknow that produces a lot of automobile parts like OEMs and others. The Mukesh Manpower Solutions' headed by Mukesh, a Jharkhand based unregistered labour contractor, hired approximate 100 unskilled workers mostly from Jharkhand's underprivileged communities with the promise of high-paying moulding and refined raw material work at the Capital Motors factory in Lucknow, 10 months ago. He promised them a daily salary of ₹ 600, free lodging, and a round-trip train ticket.

After reaching Lucknow, the reality was starkly different. The workers were housed in makeshift, unventilated tin sheds lacking basic sanitation, clean drinking water, clean floor, etc. Their daily wage was reduced to ₹ 200 significantly lower than the local minimum wage of ₹ 500 paid to native automobile companies in Lucknow. Furthermore, the contractor confiscated their Aadhaar cards and voter IDs for safekeeping and restricted them from leaving the worksite.

When the workers demanded their promised wages and the statutory inter-state allowances to send money back to their families, Capital Motors denied any responsibility, claiming the workers were not their direct employees but rather "independent sub-contractees" of Mukesh Manpower

Solutions. Capital Motors Ltd. also claimed they had no legal obligation to register these workers since the contractor was unregistered.

An NGO, "Shramik Adhikar Seva," discovered the workers' living conditions and filed a Public Interest Litigation (PIL) under Article 32 of the Constitution of India directly before the Supreme Court, naming both Capital Motors Ltd. and the Contractor, as respondents.

Answer the following questions (a, b), keeping in view the above scenario :

(a) Does the lack of registration of labour contractor nullify the principal employer's statutory duties towards inter-state migrant workers ? Enumerate the facilities that must be provided by the employer to the inter-state migrant workers under Section 60 & 61 of The Occupational Safety, Health and Working Conditions Code, 2020 ?

(5 marks)

(b) Does the confiscation of identity documents, restriction of movement, and payment of sub-minimum wages amount to 'Forced Labour' under Article 23 and a violation of the Right to Life with Dignity under Article 21 of the Indian Constitution. Substantiate your answer with landmark Supreme Court judgment.

(5 marks)

(c) In the 'absence of strict domestic compliance', can the Supreme Court directly read the provisions of ILO Conventions (specifically regarding forced labour and discrimination) into the fundamental rights of the workers ?

(5 marks)

(d) Enumerate the various classes of employees and establishments to which the provisions of Chapter IV (Payment of Bonus) do not apply, as mandated by Section 41 of the Code on Wages, 2019.

(5 marks)

(e) RST Constructions Ltd., a company engaged in executing a major infrastructure project, recruits a number of labourers from Madhya Pradesh to work at its construction site located in another state. These workers are employed for the duration of the project and perform various manual and technical tasks at the site. After the completion of the project, the employer allegedly fails to provide suitable accommodation and does not arrange for travel allowance or return journey expenses for the workers to go back to their native place in Odisha. The workers contend that such treatment amounts to a denial of statutory protections guaranteed to inter-state migrant workers. They therefore approach the labour authorities alleging that the employer has violated the provisions relating to welfare and protection of migrant labour under the Occupational Safety, Health and Working Conditions Code, 2020.

Examine the legal issues arising in this situation and determine the appropriate action that may be taken by the labour authorities under the Occupational Safety, Health and Working Conditions Code, 2020.

(5 marks)

Answer 3(a)

No, the principal employer cannot evade statutory obligations towards the inter-state migrant labourers by citing the unregistered status of the intermediary labour contractor. If the contractor fails to provide the statutory obligation to the inter-state migrant workers even though they are on contract basis, it is the duty of the principal employer to provide those obligations to all inter-state migrant workers. Such as Canteen, Food, Shelter all basic amenities and wages.

Facilities to Inter-State Migrant Workers (Section 60 of the Occupational Safety, Health and Working Conditions Code, 2020)

It shall be the duty of every contractor or the employer, of an establishment employing inter-State migrant workers in connection with the work of that establishment—

(i) to ensure suitable conditions of work to such worker having regard to the fact that he is required to work in a State different from his own State;

(ii) in case of fatal accident or serious bodily injury to any such worker, to report to the specified authorities of both the States and also the next of kin of the worker;

(iii) to extend all benefits to such worker which are available to a worker of that establishment including benefits under the Employees' State Insurance Act, 1948 or the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or any other law for the time being in force and the facility of medical check-up as available to a worker under clause (c) of sub-section (1) of section 6.

Journey Allowance (Section 61 of the Occupational Safety, Health and Working Conditions Code, 2020)

The employer shall pay, to every inter-State migrant worker employed in his establishment, in a year a lump sum amount of fare for to and fro journey to his native place from the place of his employment, in the manner taking into account the minimum service for entitlement, periodicity and class of travel and such other matters as may be prescribed by the Appropriate Government.

Answer 3(b)

Yes, the confiscation of identity documents, restriction of movement, and payment of sub-minimum wages amount to "Forced Labour" under Article 23 and a violation of the Right to Life with Dignity under Article 21 of the Indian Constitution.

Article 21 assures every person right to life and personal liberty. The term ‘life’ has been given a very expansive meaning. The term ‘personal liberty’ has been given a very wide amplitude covering a variety of rights which go to constitute personal liberty of a citizen. Its deprivation shall only be as per the relevant procedure prescribed in the relevant law, but the procedure has to be fair, just and reasonable.

In the case of *D.K. Yadav* v. *J.M.A. Industries Ltd 1993 SCR (3) 930*, the court held: “Article 21 of the Constitution clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence."

In *CERC* v. *Union of India, AIR 1995 SC 922*, in which after taking note of the cases in which it has been held that the right to life in Article 21 includes "right to human dignity", the Court now held that: "right to health, medical aid to protect the health and vigour of a worker while in service or post-retirement is a Fundamental Right under Article 21, read with the Directive Principles in Articles 39(1), 41, 43, 48A and all related Articles and fundamental human rights to make the life of the workmen meaningful and purposeful with dignity of person."

The Supreme Court has given an expansive significance to the term "forced labour" used in Article 23(1) in a series of cases beginning with the Asiad case in 1982 (People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473). The Court has insisted that Article 23 is intended to abolish every form of forced labour even if it has origin in a contract. Article 23 strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to the basic human values.

In *Sanjit Roy* v. *State of Rajasthan, 1983, SCR (2) 271* case, it was held that when a person provides labour or service to another for remuneration which is less than the prescribed minimum wages, the labour so provided clearly falls within the ambit of the words 'forced labour' under Article 23. The rationale adopted was that when someone works for less than the minimum wages, the presumption is that he or she is working under some compulsion. Hence it was held that such a person would be entitled to approach the higher judiciary under writ jurisdiction (Article 226 or Article 32) for the enforcement of fundamental rights which include the payment of minimum wages.

Answer 3(c)

Yes, the Supreme Court may rely upon and read the principles contained in International Labour Organization (ILO) conventions as a tool to interpret the scope of constitutional rights, ensuring that the "absence of strict domestic compliance" does not deprive workers of their fundamental rights, provided that such international norms are not inconsistent with domestic law.

The Supreme Court of India has consistently held that international conventions and norms can be used as an interpretative tool to expand the scope of Fundamental Rights, particularly Articles 14, 21, 23 and 24 of the Constitution. ILO Conventions Ratified by India Convention No. 29 (Forced Labour Convention, 1930) & ILO Convention No. 105 (Abolition of Forced Labour Convention, 1957): Prohibits all forms of forced or compulsory labour. The Constitutional Rights are available to inter-state migrant workers as well. The restriction of movement and withholding of identity documents strips the workers of their autonomy, effectively turning them into bonded labourers in violation of Article 23. Paying them less than the local workers violate Article 14 and ILO Convention No. 111. The Supreme Court has given an expansive significance to the term "forced labour" used in Article 23(1) in a series of cases beginning with the Asiad case in 1982. (*People's Union for Democratic Rights* v. *Union of India, AIR 1982 SC 1473*).

Answer 3(d)

Section 41 of the Code on Wages, 2019 provides for non-applicability of bonus provisions to certain categories of employees and establishments. It is provided that, nothing in this Chapter (Chapter IV - Payment of Bonus) shall apply to--

(i) employees employed by the Life Insurance Corporation of India;

(ii) seamen as defined in clause (42) of section 3 of the Merchant Shipping Act, 1958 ;

(iii) employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;

(iv) employees employed by an establishment under the authority of any department of the Central Government or a State Government or a local authority;

(v) employees employed by--

  (i) the Indian Red Cross Society or any other institution of a like nature including its branches;

  (ii) universities and other educational institutions;

  (iii) institutions including hospitals, chamber of commerce and social welfare institutions established not for purposes of profit;

(vi) employees employed by the Reserve Bank of India;

(vii) employees employed by public sector financial institution other than a banking company, which the Central Government may, by notification, specify, having regard to--

  (i) its capital structure;

  (ii) its objectives and the nature of its activities;

  (iii) the nature and extent of financial assistance or any concession given to it by the Government; and

  (iv) any other relevant factor;

(viii) employees employed by inland water transport establishments operating on routes passing through any other country; and

(ix) employees of any other establishment which the appropriate Government may, by notification, exempt having regard to the overall benefits under any other scheme of profit sharing available in such establishments to the employees.

Answer 3(e)

The issue pertains to the provisions of the Occupational Safety, Health and Working Conditions Code, 2020 relating to Inter-State Migrant Workers. Inter-State Migrant Workers include persons who are recruited in one state and employed in another state for work.

Further, the Code provides certain welfare measures and protections for such workers. Under Section 60, the employer is required-

(i) to ensure suitable conditions of work to such worker having regard to the fact that he is required to work in a State different from his own State;

(ii) in case of fatal accident or serious bodily injury to any such worker, to report to the specified authorities of both the States and also the next of kin of the worker;

(iii) to extend all benefits to such worker which are available to a worker of that establishment including benefits under the Employees' State Insurance Act, 1948 or the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 or any other law for the time being in force and the facility of medical check-up as available to a worker.

Section 61 of the Code further mandates that the employer shall pay, to every inter-State migrant worker employed in his establishment, in a year a lump sum amount of fare for to and fro journey to his native place from the place of his employment.

In the present case, the workers recruited by RST Constructions Ltd. are Inter-State Migrant Workers within the meaning of the Occupational Safety, Health and Working Conditions Code, 2020. The failure of RST Construction Ltd. to provide proper accommodation and return travel allowance constitutes a violation of the statutory obligations under the Code. The aggrieved workers may approach the Inspector-cum-Facilitator or the competent labour authority for redressal. The authority may conduct an inspection and inquiry into the complaint. If the violation is established, the employer may be directed to provide the required facilities and travel allowance to the workers. Additionally, the employer may be subjected to penalties for contravention of the provisions of the Code.

Question 4

In the case concerning Manjeet Singh and Indraprastha Gas Limited in the Delhi High Court, the controversy emerged within Indraprastha Gas Limited, a public sector joint venture engaged in the distribution of natural gas. Complainant served as Senior Executive Secretary to the Vice President (HSE & JV). On 26 January 2016, following the Republic Day celebrations organized by the company, she visited her superior's office to attend to routine professional responsibilities. During this time, Mr. Singh, who occupied a senior managerial position, was also present. It was alleged that during the interaction he made remarks praising the attractiveness of foreign women while making disparaging comparisons with Indian women, comments that caused significant discomfort to the Complainant. The situation escalated when Mr. Singh insisted on capturing her photograph on his mobile phone despite her reluctance and, according to the allegations, attempted to embrace her without consent, an act she perceived as an intrusion upon her personal dignity and professional boundaries.

Initially, Complainant discussed the incident informally with certain colleagues and members of the Human Resources Department but refrained from immediately filing a formal grievance. However, the experience continued to cause emotional distress, prompting her upon encouragement from co-workers to submit a written complaint to the Managing Director of the company on 8 February 2016. Acting in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the organization constituted an Internal Complaints Committee (ICC) to examine the allegations. The Committee undertook a formal inquiry, recording the statements of the complainant, the accused officer, and certain individuals who were considered relevant witnesses in the matter.

Upon completion of its inquiry, the ICC concluded that although the conduct of Mr. Singh might not have been deliberately pre-planned, his behavior displayed a "flirtatious" character that exceeded the acceptable limits of workplace decorum. The Committee determined that the acts complained of constituted sexual harassment within the meaning of the POSH Act. Based on the findings of the ICC, the disciplinary authority imposed a major penalty by demoting Mr. Singh from the position of Vice President to that of Chief General Manager. His departmental appeal challenging the decision was subsequently rejected, thereby affirming the disciplinary sanction imposed by the employer.

Aggrieved by these outcomes, Mr. Singh approached the Delhi High Court, challenging both the procedural propriety of the ICC inquiry and the legality of the disciplinary measures. He argued that the inquiry process had violated the principles of natural justice because he was not permitted to cross-examine the complainant, and further contended that the allegations lacked independent corroborative evidence. The High Court scrutinized the procedural framework governing inquiries under the POSH Act and ultimately concluded that the proceedings were vitiated due to the denial of an opportunity to cross-examine the complainant. Such denial, the Court held, undermined the fairness of the inquiry and prevented effective testing of the allegations. Observing also the absence of sufficient corroborative material, the Court set aside the ICC report as well as the disciplinary and appellate orders arising from it, emphasizing that inquiries under the statute must strictly adhere to procedural fairness and safeguard the rights of all parties involved. Based on the facts of the case, answer the following (a, b & c) questions :

(a) Critically analyze the scope and limits of the powers of the Internal Complaints Committee (ICC) under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the context of the judicial review exercised by the Delhi High Court.

(5 marks)

(b) Discuss the evidentiary standards applied by the Delhi High Court while reviewing the findings of the Internal Complaints Committee in the case cited above.

(5 marks)

(c) What are the compliances to be made by the Employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013? Also state the disclosure requirements under the Annual Report of Companies.

(5 marks)

(d) Enumerate any 10 salient features of the Occupational, Safety, Health and Working Conditions Code, 2020.

(5 marks)

(e) MN Ltd., a logistics company conducting delivery operations across multiple states, employs nearly 500 delivery personnel in its workforce. The Central Government has notified a floor wage of ₹ 450 per day applicable across the country. However, the State Government in which the company operates has fixed the minimum wage at ₹ 380 per day for the concerned category of employment. Relying upon the State notification, the management of MN Ltd. continues to pay its delivery workers ₹ 380 per day. The workers' union contends that such payment is inconsistent with the statutory framework governing wage regulation and therefore amounts to a violation of the Code on Wages, 2019. Consequently, the union lodges a complaint before the Labour Authority alleging non-compliance with the provisions of the Code.

Under these circumstances, discuss the legal issues involved and determine the action that the Labour Authority should initiate under the Code on Wages 2019.

(5 marks)

Answer 4(a)

The Internal Complaints Committee (ICC) established under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 functions as a quasi-judicial body entrusted with the responsibility of investigating allegations of workplace sexual harassment. Its role includes examining complaints, recording statements, evaluating evidence, and recommending disciplinary measures to the employer. However, its powers are not absolute and must be exercised in accordance with the principles of procedural fairness and natural justice. In the case involving Manjeet Singh and Reena Mohanty, the Delhi High Court scrutinized whether the ICC had adhered to these procedural safeguards. The Court observed that although the ICC has autonomy in conducting inquiries, it must still ensure fairness to both parties. Denial of the opportunity to cross-examine the complainant undermines the credibility of the inquiry process. The Court further emphasized that ICC proceedings should maintain transparency, impartiality, and evidentiary reliability. Any deviation from these procedural standards may render the findings legally unsustainable. Consequently, the Court reaffirmed that ICC decisions are subject to judicial review where procedural irregularities occur. This ruling illustrates that while the ICC plays a vital role in protecting employees, its actions must remain consistent with established legal principles.

The ICC is a mechanism put in place to assist women who complain of sexually harassment at their place of work. Nevertheless, it is equally important that the goodwill, fair name and dignity of an innocent accused be dealt with the utmost care. An accused/ charged officer must be presumed to be innocent until there is evidence to show otherwise. The dignity of neither party can be trifled with in an inquiry proceedings.

Answer 4(b)

While reviewing the matter, the Delhi High Court assessed whether the conclusions reached by the Internal Complaints Committee (ICC) were supported by credible and sufficient evidence. The Court noted that the allegations primarily rested on the statement of the complainant without substantial corroboration from independent witnesses. Although workplace harassment inquiries do not require proof beyond reasonable doubt, there must still be a reasonable evidentiary basis supporting the conclusions. The Court examined the testimonies recorded by the ICC and observed certain inconsistencies in the narrative presented during the inquiry. It also considered whether the available evidence could reasonably establish misconduct by Mr. Manjeet Singh. The absence of corroborative testimony or supporting material weakened the evidentiary foundation of the Committee's findings. In administrative proceedings, conclusions must still be grounded in logical and credible material. The Court therefore found that the ICC's determination lacked adequate evidentiary support. This deficiency, combined with procedural irregularities, undermined the legitimacy of the inquiry. As a result, the disciplinary actions imposed by the employer were set aside. The judgment underscores the necessity of evidentiary reliability even in internal workplace investigations.

Answer 4(c)

Compliances to be made by the Employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act")

(i) **Constitution of the Internal Complaints Committee:** Every employer, with 10 or more employees, shall constitute an 'Internal Complaints Committee' at the workplace and wherein the offices or administrative units of workplace are located at different places or divisional or sub-divisional level, employer will, constitute the the Internal Committee at all such offices or administrative units.

(ii) **Preparation of an Annual Report by the employer:** The POSH Act casts a duty on employers to include information pertaining to the number of cases filed and disposed of by them in their Annual Report. Where no such report is required to be prepared, employer must intimate such number of cases, if any, to the District Officer.

(iii) **Drafting a Prevention of Sexual Harassment (POSH) policy:** The POSH Act requires every employer to formulate and widely disseminate a POSH Policy to prevent, prohibit, and redress sexual harassment at the workplace.

Disclosure Requirements under the Annual Report of Companies

The Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013 mandates that all companies need to make necessary disclosure about compliance with the said law in their Annual Report as follows:

- The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the Annual Report of his organization or where no such report is required to be prepared, intimate such number of cases if any, to the District Officer. [Section 22 of the POSH Act]

- The Board's Report shall contain a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 along with the following details: -

  (a) number of complaints of sexual harassment received in the year;

  (b) number of complaints disposed off during the year; and

  (c) number of cases pending for more than ninety days

  (d) number of workshops or awareness programme against sexual harassment carried out;

  (e) nature of action taken by the employer or District Officer.

Answer 4(d)

Salient Features of the Occupational Safety, Health and Working Conditions Code, 2020

1. Unified Registration : A uniform threshold of 10 employees is set for electronic registration. One registration for an establishment has been envisaged in place of 6 registrations in the Acts. This will create a centralised database and promote ease of doing business.
2. Extension to Hazardous Work: The Government can extend the Code's provisions to any establishment, even with one employee, engaged in hazardous or life-threatening occupations.
3. Simplified Compliance: Introduces one license, one registration, one return framework for the establishments, reducing redundancy and compliance burden.
4. Wider Definition of Migrant Workers : The definition of inter-state migrant workers (ISMW) now covers workers employed directly, through contractors, or migrate on their own. Establishments must declare the number of ISMW. Benefits include: a lump-sum annual travel allowance to native place once in 12 months and portability of public distribution system and social security benefits across states along with access to a toll-free helpline.
5. Health and Formalization: Free annual health check-ups for employees.
6. Formalization via appointment letters: Appointment letters specifying job details, wages, and social security will be given to enhance transparency and accountability.
7. Women's Employment: Women can work in all types of establishments and during night hours (before 6AM, beyond 7PM) with consent and safety measures, fostering equality and inclusion.

8. Expanded Media Worker Definition: “Working journalists” and “cine workers” now include employees in electronic media and all forms of audio-visual production.
9. National Database for Unorganised Workers: A national database to be developed for unorganized workers including migrants to help migrant workers get jobs, map their skills and provide other social security benefits.
10. Victim Compensation: Courts can direct at least 50% of fines imposed on offenders to be paid as compensation to victims or their legal heirs in case of injury or death.
11. Contract Labour Reform: Applicability threshold has been raised from 20 to 50 contract workers. All India license valid for 5 years against work-order based license to be provided to the contractor. For contract labour, beedi and cigar manufacturing and factory: a common license is envisaged and provision of deemed license after expiry of prescribe period is introduced. Moreover, the license shall be auto-generated. Provision of contract labour board has been done away with and provision for appointment of designated authority to advise matters on core and non-core activities is introduced.
12. Safety Committees: Establishments with 500 or more workers will form safety committees with employer-worker representation, enhancing workplace safety and shared accountability.
13. National Occupational Safety & Health Advisory Board: A single tripartite advisory board replaces six earlier boards to set national safety and health standards across sectors, ensuring uniformity and quality.
14. Decriminalisation & Compounding of Offences: Offences punishable by fine only to be compounded by paying 50% of the maximum fine; those involving imprisonment or fine or both by 75%. Criminal penalties (imprisonment) replaced by civil penalties like monetary fines, promoting compliance over punishment.
15. Revised Factory Thresholds: Applicability increased from 10 to 20 workers (with power) and 20 to 40 workers (without power), reducing compliance burden for small units.
16. Social Security Fund: Establishes a fund for unorganised workers, financed through penalties and compounding fees, for their welfare and benefit delivery.
17. Contract Labour- Welfare & Wages: Principal employers to provide welfare facilities like health and safety measures to contract workers. If the contractor fails to pay wages, the principal employer has to pay unpaid wages to the contract labour.
18. Working Hours & Overtime: Normal working hours capped at 8 hours/day and 48 hours/week. Overtime allowed only with worker consent and paid at twice the regular rate.
19. Inspector-cum-Facilitator System: Inspectors will now act as facilitators with an objective to help employers comply with law, rules and regulations rather than merely policing them.

Answer 4(e)

Section 6(1) of the Code on Wages, 2019 states that the appropriate Government shall fix the minimum rate of wages payable to employees. Further, section 9(1) of the Code on Wages, 2019 provides that the Central Government shall fix floor wage taking into account minimum living standards of a worker in such manner as may be prescribed. Provided that different floor wage may be fixed for different geographical areas. As per section 9(2) of the Code, the minimum rates of wages fixed by the appropriate Government under section 6 shall not be less than the floor wage.

Section 45 of the Code on Wages, 2019 stipulates that the appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted Officer, to hear and determine the claims which arises under the provisions of this Code. The authority while deciding the claim may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined, which may extend to ten times of the claim determined.

The Code on Wages, 2019 established a structured mechanism for wage determination in India by creating a hierarchy between the floor wage fixed by the Central Government and the minimum wage fixed by the appropriate Government. Under Section 9 of the Code, the Central Government is empowered to determine a national floor wage after considering the living standards of workers in different geographical regions. The law clearly provides that the minimum wages fixed by State Governments must not be lower than the floor wage determined by the Central Government. Hence, the floor wage functions as a mandatory statutory benchmark designed to prevent States from prescribing unduly low wage rates.

In the present case, while the Central Government has notified a floor wage of ₹450 per day, the State Government has fixed a minimum wage of ₹380 per day. MN Ltd., employing around 500 delivery workers, has been paying wages at the rate of ₹380 per day relying on the State notification. However, this action is legally unsustainable because Section 9(2) prohibits payment of wages below the national floor wage.

Upon receiving the complaint of the workers' union, the Labour Authority under Section 45 of the Code on Wages, 2019 may conduct an inquiry and direct the company to pay the differential amount of ₹70 per day to each affected worker along with compensation, which may extend to ten times of the claim having regard to the circumstances.

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BANKING AND INSURANCE - LAW & PRACTICE

GROUP 2 ELECTIVE PAPER 7.4

Time allowed : 3 hours **Maximum marks : 100**

Total number of questions : 6

NOTE : *Answer* ***ALL*** *Questions.*

PART–I

Question 1

Reserve Bank of India (Digital Lending) Directions 2025

Reserve Bank is statutorily mandated to operate the credit system of the country to its advantage. In this endeavour, Reserve Bank encourages innovation in the financial systems, products and credit delivery methods while ensuring orderly growth, financial stability and protection of depositors' and borrowers' interest. Certain concerns had emerged around the methods of designing, delivering and servicing digital credit products, which if not mitigated, may impact the borrower's confidence in the digital lending ecosystem. The concerns primarily relate to unbridled engagement of third parties, mis-selling, breach of data privacy, unfair business conduct, charging of exorbitant intercst rates, and unethical recovery practices. To address these concerns, pursuant to the recommendations made by the "Working Group on Digital Lending", the Reserve Bank has, from time to time, issued guidelines to its regulated entities on digital lending. These Directions consolidate the earlier instructions along with certain new measures for arrangements involving Lending Service Providers partnering with multiple regulated entities as mentioned under para 6, and for creation of a directory of digital lending apps as mentioned under para l7 of these Directions.

Accordingly, in exercise of powers conferred by Sections 21, 35A and 56 of the Banking Regulation Act, 1949, Sections 45JA, 45L and 45M of the Reserve Bank of India Act, 1934, Sections 30A and 32 of the National Housing Bank Act, 1987, Section 6 of the Factoring Regulation Act, 2011 and Scction 11 of the Credit Information Companies (Regulation) Act, 2005, the Reserve Bank of India being satisfied that it is necessary and expedient in the public interest to do so, hereby issues these Directions hereinafter specified.

These Directions shall be called the Reserve Bank of India (Digital Lending) Directions, 2025. These Directions shall be applicable to all digital lending activities of the following entities, hereinafter referred to as a Regulated Entity (RE) and collectively as Regulated Entities (REs), as the context may require :

(i) All Commercial Banks,

(ii) All Primary (Urban) Co-operative Banks, State Co-operative Banks, Central Co-operative Banks,

(iii) All Non-Banking Financial Companies (including Housing Finance Companies), and

(iv) All-India Financial Institutions.

For the purpose of these Directions, unless the context otherwise requires, the terms herein shall bear the meaning assigned to them below :

(i) Annual Percentage Rate (APR) : APR as defined under, as amended from time to time.

(ii) Default Loss Guarantee (DLG) : A contractual arrangement, called by whatever name, between the RE and another entity, under which the latter guarantees to compensate the RE, for the loss due to default up to a certain percentage of the loan portfolio of the RE, specified upfront. Any other implicit guarantee of similar nature, linked to the performance of the loan portfolio of the RE and specified upfront, shall also be covered the definition of DLG.

(iii) Digital Lending : A remote and automated lending process, largely by use of seamless digital technologies for customer acquisition, credit assessment, loan approval, disbursement, recovery, and associated customer service.

(iv) Digital Lending Apps/Platforms (DLAs) : Mobile and / or web-based applications, on a standalone basis or as a part of suite of functions of an application with user interface that facilitate digital lending services. DLAs shall include applications of the RE as well as those operated by Lending Service Provide (LSP) engaged by RE for extending any credit facilitation services in conformity with extant outsourcing guidelines issued by the Reserve Bank.

(v) Lending Service Provider (LSP) : An agent of a RE (including another RE) who carries out one or more of RE's digital lending functions, or part thereof, in customer acquisition, services incidental to underwriting and pricing, servicing, monitoring, recovery of specific loan or loan portfolio on behalf of RE in conformity with extant outsourcing guidelines issued by the Reserve Bank.

In view of the above, answer the following questions :

(a) What are the general requirements for Due diligence with respect to LSPs ?
(4 marks)

(b) How to assess the borrower's credit worthiness ?
(2 marks)

(c) What are the disclosure requirements for borrower ?
(5 marks)

(d) What is the process of loan disbursal, servicing and repayment ?
(5 marks)

(e) What is the system of collection, usage and sharing of data with third parties ?
(4 marks)

Answer 1(a)

The following are the general requirements for Due diligence with respect of Lending Service Providers (LSPs):

(1) Digital lending by a Regulated Entity (RE) involving a LSP, shall be carried out under a contractual agreement between the RE and the LSP, which clearly defines the respective roles, rights, and obligations of each party thereto.

(2) RE shall conduct enhanced due diligence before they enter into an agreement with a LSP for digital lending, taking into account LSP's technical capabilities, robustness of data privacy policies and storage systems, fairness in conduct with borrowers, past records of conduct and ability to comply with all applicable regulations and statutes.

(3) RE shall carry out periodic review of the conduct of the LSP vis-à-vis the terms of the contractual agreement and shall take appropriate action in the event of any deviation therefrom.

(4) RE shall lay down, as part of its policy, suitable monitoring mechanisms for the loan portfolios originated with the support of LSPs.

(5) RE shall impart necessary guidance to LSP acting as a recovery agent, to discharge their duties responsibly and ensure that LSP complies with the applicable instructions in this regard.

(6) RE shall continue to conform to the extant guidelines on outsourcing and shall ensure that the LSPs engaged by them and the Digital Lending Apps (DLAs) (either of the RE or of the LSPs engaged by the RE) comply with these Directions.

(7) As an overarching principle, any outsourcing agreement entered into by the RE with an LSP shall in no manner dilute or absolve the RE of its obligations under any statutory or regulatory provision, and the RE shall remain fully responsible and liable for all acts and omissions of the LSP.

Answer 1(b)

The following are the parameters to check credit worthiness of borrower:

(i) Regulated Entity (RE) shall obtain the necessary information relating to economic profile of the borrower with a view to assessing the borrower's creditworthiness before extending any loan, including, at a minimum, age, occupation and income details. The same shall be kept on record for audit purposes.

(ii) RE shall ensure that there is no automatic increase in credit limit unless an explicit request is received, evaluated and kept on record from the borrower for such increase.

(iii) Ensure Assessment is Fair, Non-Discriminatory and Compliant with RBI Norms: The credit assessment process should not discriminate based on gender, religion, caste, region, or other unrelated factors. All lending decisions must be based on objective financial criteria and comply with RBI regulations relating to responsible lending, customer protection, and fair practices.

Answer 1(c)

The following are the disclosures requirement for borrower:

(i) Regulated Entity (RE) shall provide a Key Fact Statement (KFS), as per instructions contained in circulars as amended from time to time.

(ii) As regards penal charges, RE shall be guided by circulars as amended from time to time.

(iii) RE shall ensure that digitally signed documents (on the letter head of the RE) viz., KFS, summary of loan product, sanction letter, terms and conditions, account statements, privacy policies of the RE / LSP with respect to storage and usage of borrowers' data, etc. shall automatically flow to the borrower on the registered and verified email/ SMS upon execution of the loan contract/ transactions.

(iv) RE shall maintain a website of their own in public domain, which shall be kept up to date, at a prominent single place on the website for ease of accessibility. RE shall ensure that DLAs / LSPs have links to the above website of the RE.

(v) In case of a loan default, when a recovery agent is assigned for recovery or there is a change in the recovery agent already assigned, the particulars of such recovery agent authorized to approach the borrower for recovery shall be communicated to the borrower through email/ SMS before the recovery agent contacts the borrower for recovery.

Answer 1(d)

The following is the process of Loan disbursal, servicing and repayment:

(i) Disbursement of loan by the Regulated Entity (RE) shall always be made into the bank account of the borrower except for disbursals covered exclusively under statutory or regulatory mandate (of RBI or of any other regulator), flow of money between REs for co-lending transactions6 and disbursals for specific end use, provided the loan is disbursed directly into the bank account of the end-beneficiary. RE shall ensure that in no case, disbursal is made to a third-party account, including the accounts of LSP, except as provided for in these Directions.

(ii) RE shall ensure that all loan servicing, repayment, etc. is executed by the borrower directly in the RE's bank account without any pass-through account/ pool account of any third party, including the accounts of LSP.

(iii) The flow of funds between the bank accounts of the borrower and the RE shall not be controlled either directly or indirectly by a third-party, including the LSP.

(iv) RE shall ensure that any fees, charges, reimbursements, etc. payable to LSP are paid directly by the RE and are not charged to or collected from the borrowers separately by LSP.

(v) In case of delinquent loans, RE may deploy physical interface to recover loans in cash, wherever necessary. In order to afford operational flexibility to RE, such transactions are exempted from the requirement of direct repayment of loan in the RE's bank account.

However, any recovery by cash shall be duly reflected in full in the borrower's account on the same day and RE shall ensure that any fees, charges, etc., payable to LSPs for such recovery are paid directly by the RE and are not charged by LSP to the borrower either directly or indirectly from the recovery proceeds.

Answer 1(e)

The following is the system of Collection, usage and sharing of data with third parties:

(i) Regulated Entity (RE)shall ensure that any collection of data by their DLA and DLA of their LSP is need-based and with prior and explicit consent of the borrower having audit trail. In any case, RE shall also ensure that DLA of RE/LSP desist from accessing mobile phone resources like file and media, contact list, call logs, telephony functions, etc. A one-time access can be taken for camera, microphone, location or any other facility necessary for the purpose of on-boarding/ KYC requirements only, with the explicit consent of the borrower.

(ii) The borrower shall be provided with an option to give or deny consent for use of specific data, restrict disclosure to third parties, data retention, revoke consent already granted to collect personal data and if required, make the RE/LSP delete/ forget the data.

(iii) The purpose of obtaining borrowers' consent needs to be disclosed at each stage of interface with the borrowers.

(iv) Explicit consent of the borrower shall be taken before sharing personal information with any third party, except for cases where such sharing is required as per statutory or regulatory requirement.

(v) Regulated Entities (REs) and Lending Service Providers (LSPs) cannot collect or store borrowers' biometric data, such as fingerprints or iris scans, for lending purposes unless specifically permitted by law. This provision protects customer privacy and prevents misuse of sensitive personal information.

Question 2

(a) With reference to Reserve Bank of India (Know Your Customer (KYC)) (Amendment) Directions, 2025, what do you know about the following concepts ?

(i) Use of Business Correspondents (BCs) by banks for updation/periodic updation of KYC.

(4 marks)

(ii) Due notices for periodic updation of KYC.

(4 marks)

(b) What categories of Risks are involved (Financial and Non-Financial aspects) in a Banking Industry ? Write any seven categories of risks.

(7 marks)

Answer 2(a)(i)

The following is the process of use Business Correspondent (BC) by banks for updation / periodic updation of KYC:

1. The bank shall obtain the self-declaration including the supporting documents, if required, in the electronic mode from the customer through the BC.

2. After successful biometric based e-KYC authentication. Until an option is made available in the electronic mode, such declaration may be submitted in physical form by the customer.
3. The BC shall authenticate the self-declaration and supporting documents submitted in person by the customer, and promptly forward the same to the concerned bank branch. The BC shall provide the customer an acknowledgment of receipt of such declaration /submission of documents.
4. The bank shall update the customer's KYC records and intimate the customer once the records get updated in the system, as required.

Answer 2(a)(ii)

The following is the process of periodic updation of KYC:

1. The Regulated Entity (RE) shall intimate its customers, in advance, to update their KYC.
2. Prior to the due date of periodic updation of KYC, the RE shall give at least three advance intimations, including at least one intimation by letter, at appropriate intervals to its customers through available communication options/ channels for complying with the requirement of periodic updation of KYC.
3. Subsequent to the due date, the RE shall give at least three reminders, including at least one reminder by letter, at appropriate intervals, to such customers who have still not complied with the requirements, despite advance intimations. The letter of intimation/ reminder may, inter alia, contain easy to understand instructions for updating KYC, escalation mechanism for seeking help, if required, and the consequences, if any, of failure to update their KYC in time.
4. Issue of such advance intimation/ reminder shall be duly recorded in the RE's system against each customer for audit trail.

Answer 2(b)

The following are the Risks (Financial and Non-Financial aspects) in a Banking Industry:

1. *Credit Risk*: The danger that borrowers or counterparties fail to meet their contractual obligations, resulting in losses.
2. *Market Risk*: Risk of losses due to adverse movements in market prices, including interest rates (interest rate risk), foreign exchange rates (currency risk), and equity prices (equity risk).
3. *Operational Risk*: Risk of loss from inadequate or failed internal processes, people, systems, or external events (e.g., fraud, legal risks, or cyberattacks).
4. *Liquidity Risk*: The risk that a bank cannot meet its short-term funding or cash withdrawal demands, often caused by the mismatch between short-term liabilities and long-term assets.

5. *Compliance/Legal Risk*: Potential for fines, penalties, or damages due to non-compliance with laws, regulations, or ethical standards.
6. *Reputational Risk*: The risk of losing customer confidence or suffering reduced business due to negative public perception, often stemming from misconduct or failed services.
7. *Strategic Risk*: Losses arising from improper business decisions, improper implementation of decisions, or lack of responsiveness to industry changes.
8. *Cyber Risk*: A specific type of operational risk involving data breaches, ransomware, or technological failures that compromise digital operations.
9. *Country / Sovereign Risk*: The possibility of losses due to economic, social, or political instability in a country where a bank has exposure.

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

Question 3

(a) M/s XYZ, a Partnership Firm sanctioned a Cash Credit Limit of ₹ 25.00 lakhs by a bank on 03.04.2025 on the Margins and other conditions as per Sanction letter issued by the Bank is as follows :

(i)	*On Stocks (Moving)*	*= 20%*
	On Stocks (Non-Moving)	*= 100%*
(ii)	*On Debtors (not more than 60 days)*	*= 30%*
	On Debtors (61 days to 90 days)	*= 60%*
	On Debtors (more than 90 days)	*= 100%*

The following are the data submitted by the firm on 31.3.2026.

Total Stock of ₹ 30.00 lakhs, out of which ₹ 2.00 Lacs for creditors and Non-Moving Stock of ₹ 2.00 lakhs.

Total Book Debts of ₹ 10.00 lakhs, out of which ₹ 2.00 lakhs ageing for than 61 days but less than 90 days and ₹ 2.00 lakhs ageing is more than 90 days and balance of ₹ 6.00 lakhs ageing is less than 60 days.

Required :

(i) As a consultant, you are required to calculate drawing power at the time of renewal of limit of the Firm. State whether sanction limit is up to the mark or not with regard to drawing power ? Also, state whether the drawing power is within the sanctioned level or not ?

(8 marks)

(ii) What is your opinion if the sanction limit is of ₹ 26.00 lakhs ?

(2 marks)

(b) *There was a theft of goods in the warehouse of ABC Pvt. Ltd. in the previous year 2022-23 amounting to ₹ 25 lakhs. At the time of physical verification of inventory, the same was detected in the current year 2023-24. How do you account for this theft and its discovery in the financial statements of 2023-24 with reference of Accounting Standard?*

(5 marks)

Or (Alternate Question to Q. No. 3)

Question 3A

(i) *The key provisions relating to Nomination under the Banking Laws (Amendment) Act, 2025 came into effect from 1st November 2025 through Sections 10, 11, 12 and 13 relate to nomination facilities in respect of deposit accounts, articles kept in safe custody, and the contents of safety lockers maintained with banks. What are the key features of the following ?*

- (a) *Multiple Nominations.*
- (b) *Nomination for Deposit Accounts.*
- (c) *Nomination for Articles in Safe Custody and Safety Lockers.*
- (d) *Simultaneous Nomination.*
- (e) *Successive Nomination.*

(2 marks each)

(ii) *The Government has revised the definition of MSME, thereby enhancing the investment and turnover limits for classification as MSMEs with effect from 01.04.25. What is the limits of Investment in Plant and Machinery and Turnover for :*

- (a) *Micro Enterprises.*
- (b) *Small Enterprises.*
- (c) *Medium Enterprises.*

(1 mark each)

(iii) *What is the difference between Pledge, Hypothecation and Mortgage ?*

(2 marks)

Answer 3(a)(i)

Calculation of Drawing Power: *(₹ in Lacs)*

A	Total Stock	30.00		
B	Less: Against Creditors	2.00		
C	Less: Non-Moving Stock	2.00		
D	Moving Stock Balance (A-B-C=D)		26.00	
E	Margin on Moving Stock 20%		5.20	
F	**Drawing Power against Stock (D-E=F)**			**20.80**

G	Total Books Debts	10.00		
H	Book Debts more than 90 days	2.00		
I	Book Debts 61 days to 90 days	2.00		
J	Book Debts Not more than 60 days	2.00		
K	Balance of Book Debts (G-H-I-J) = K		6.00	
L	Margin 30%		1.80	
M	**Drawing Power against Book Debts (On Book Debts Not more than 60 Days) (K-L=M)**			**4.20**
N	Book Debts 61 days to 90 days		2.00	
O	Margin 60%		1.20	
P	**Drawing Power against Book Debts (On Book Debts 61 - 90 Days) (N-O=P)**			**0.80**
Q	**Drawing Power (F+M+P=Q)**			**25.80**

The Drawing Power is borrower more than sanction limit hence nothing to be reduced from sanction limit. All the parameters of sanctioned limit fulfilled.

Answer 3(a)(ii)

If the sanctioned limit was of ₹ 26.00 Lacs, then the DP was of ₹ 25.80 Lacs and the borrower account is overdue by ₹ 0.20 Lacs hence limit to be reduced by ₹ 0.20 lacs. Therefore, sanction exceeds drawing power and should not be fully allowed.

Answer 3(b)

As per Accounting Standard-5, Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies, the standard describes the treatment of changes in accounting estimates and disclosures to be made on account of such changes. The standard doesn't deal with tax implication on account of such changes as mentioned above. The theft is not expected to take place on a frequent or regular basis and is not in a normal course of business of ABC Pvt. Ltd. Thus, the same qualifies to be an extraordinary item. Also, the theft took place in the financial year 2022-23 but was discovered in 2023-24. This suggests that although the loss related to 2022-23, it was not shown and the profit was overstated by such amount i.e., ₹ 25 Lakhs. While taking the effect of such loss in the current year (2023-24), this is a prior period item.

Thus, the disclosures for the same should be given in the financial statements that due to a theft in 2022-23, goods worth ₹ 25 Lakhs were lost and discovered only in the current year. The value of inventory should be adjusted for such loss (both opening and closing inventory).

Answer 3A(i)

(a) *Multiple Nominations* : Customers may nominate up to four persons, either simultaneously or successively, thereby simplifying claim settlement for depositors and their nominees.

(b) *Nomination for Deposit Accounts*: Depositors may opt for either simultaneous or successive nominations, as per their preference.

(c) *Nomination for Articles in Safe Custody and Safety Lockers*: For such facilities, only successive nominations are permitted.

(d) *Simultaneous Nomination*: Depositors may nominate up to four persons and specify the share or percentage of entitlement for each nominee, ensuring that the total equals 100 percent and enabling transparent distribution amongst all nominees.

(e) *Successive Nomination*: Individuals maintaining deposits, articles in safe custody, or lockers may specify up to four nominees, where the next nominee becomes operative only upon the death of the nominee placed higher, ensuring continuity in settlement and clarity of succession.

Answer 3A(ii)

The following are the Limits for Investments in Plant & Machinery and Turnover:

Particulars	*(a) Micro Enterprise*	*(b) Small Enterprises*	*(c) Medium Enterprises*
Investment in Plant & Machinery does not exceed	₹ 2.50 Cr.	₹ 25.00 Cr.	₹ 125.00 Cr
Turnover does not exceed	₹ 10.00 Cr	₹ 100.00 Cr.	₹ 500.00 Cr

Answer 3A(iii)

The following are the difference between Pledge, Hypothecation and Mortgage:

Aspect	**Pledge**	**Hypothecation**	**Mortgage**
Possession	Lender takes possession	Borrower retains possession	Borrower retains possession
Ownership	Borrower remains the legal owner	Borrower remains the legal owner	Borrower remains the legal owner
Type of asset	Gold, investment certificates, etc.	Vehicles, equipment, machinery, etc.	Real estate
Default consequence	The lender can sell the pledged asset	The lender can seize the asset	The lender can seize the property
Regulatory framework	Indian Contract Act, 1872	SARFAESI Act, 2022	Transfer of Property Act, 1882
Loan duration	Short Term	Short term to Mid Term	Long Term

PART–II

Question 4

India's Insurance Sector

India's Insurance Sector continues to demonstrate strong growth, driven by rising awareness, regulatory reforms, technological adoption, and private sector participation. In FY 25, the industry recorded a total premium income of approximately ₹ 7.05 Lakhs Crore (US$ 82.49 Billion), reflecting a 5.6% Year on Year (YoY) increase. New business premiums (NBP) grew by 5.1% YoY to ₹ 3.97 Lakhs Crore (US$ 46.5 Billion), with individual NBP rising 11% to ₹ 1.74 Lakhs Crore (US$ 20.36 Billion), supported by digitization and the addition of over 11 Lakhs new agents. Life insurers' New business premiums for April-January FY 25 reached ₹ 3,05,912 Crores (US$ 35.5 Billion), with LIC commanding a 57.05% share and other players such as SBI Life, HDFC Life, and ICICI Prudential Life leading collections among insurers. By June 2025, LIC held a 63.5% market share, reporting ₹ 27,395 Crores (US$ 3.2 Billion) in premiums, up 3.43% YoY, while Q1 FY 26 net premium income rose 5% YoY to ₹ 1,20,000 Crores (US$ 14 Billion).

Gross direct premiums written by non-life insurers Q1 FY 26 stood at ₹ 1,65,161 Crores (US$ 18.89 Billion), up 7.32% the corresponding period of the previous year. Motor Insurance grew 25.6%, fresh life policies rose over 60%, and SME insurance surged 112%, driven by digital adoption, Point-of-Sale Person (PoSP) networks, and regional outreach. In September 2025, standalone health insurers' premiums grew 3.09% YoY to ₹ 3,492 Crores (US$ 399.2 Million), reflecting rising demand and wider health coverage adoption.

India's Crop insurance market is projected to grow at a CAGR of 7.62% from FY 25 to FY 32, expanding from ₹ 39,020 Crore (US$ 4.57 Billion) in FY 24 to ₹ 70,253 Crore (US$ 8.22 Billion) by FY 32. The Motor Insurance market is expected to increase from ₹ 1,12,867 Crores (US$ 13.21 Billion) in 2025 to ₹ 1,83,204 Crores (US$ 21.44 Billion)

by 2030, at a CAGR of 10.25%. Additionally, the mobile phone insurance market, valued at ₹ 17,743 Crores (US$ 2.1 Billion) in 2024, is projected to grow at 12.1% CAGR to ₹ 57,680 Crores (US$ 6.7 Billion) by 2033, driven by increased smartphone adoption, bundled insurance offerings, and demand for comprehensive coverage.

Regulatory and structural reforms have also supported sector growth. The FDI limit in insurance companies has been raised from 74% to 100%, allowing full foreign ownership and facilitating capital inflows into the long-term, capital-intensive industry. Insurers now have the flexibility to launch new health and retail insurance products without IRDAI approval, further encouraging innovation. Public-private partnerships, such as Bajaj Allianz Life's tie-up with City Union Bank, and strategic joint ventures like Allianz Jio Reinsurance Limited, are expanding distribution reach and leveraging digital platforms. On September 17, 2025, IRDAI launched the 'Bima Sugam'.

Mergers and acquisitions are playing an increasing role in the sector, exemplified by Zurich Insurance acquiring a 70% stake in Kotak General Insurance, Bajaj Group acquiring Allianz SE's 26% stake, and the Mumbai NCLT approving the merger of Exide Life Insurance with HDFC Life. These moves reflect the sector's capital-intensive nature and the focus on consolidation and specialization.

The insurance industry's long-term outlook remains strong. Premiums from the life insurance sector are expected to reach ₹ 24 Lakhs Crore (US$ 318 Billion) by FY 31, and the domestic market is projected to expand to ₹ 19,30,290 Crore (US$ 222 Billion) by FY 26. Tier-III cities and smaller towns now contribute 62% of new premiums, highlighting the role of regional markets in driving growth. The BFSI sector is expected to add 2,50,000 jobs by 2030, supported by rising demand in insurance, mutual funds, and digital finance. Leading players such as SBI Life, HDFC Life, ICICI Prudential Life, Bajaj Allianz, and Tata AIA, along with LIC, continue to drive competition through product innovation, enhanced distribution, and digitization. Recent initiatives include AI-powered health insurance tools, mobile apps integrating wellness and policy management, and vehicle insurance platforms by PhonePe, reflecting the sector's dynamic and technology-driven evolution.

With rising demand, digital transformation, and growing private and foreign participation, the industry is well-positioned to enhance financial inclusion and emerge as a key pillar of India's expanding financial ecosystem.

In view of the above, answer the following :

(a) What reforms have been made for strong growth in Insurance Sector in India ?

(3 marks)

(b) Mention the features of 'Bima Sugam' Portal.

(2 marks)

(c) Who are the leading Private Players in Insurance Sector (Life & General) in India ?

(2 marks)

(d) Enumerate the steps to design an Insurance Product ?

(7 marks)

(e) What are the significant factors to be considered for a Life Insurance Product ?

(6 marks)

Answer 4(a)

India's insurance sector continues to demonstrate strong growth, driven by rising awareness, regulatory reforms, technological adoption, and private sector participation. In FY25, the industry recorded a total premium income of approximately ₹ 7.05 Lakhs Crore (US$ 82.49 Billion), reflecting a 5.6% YoY increase. New business premiums (NBP) grew by 5.1% YoY to ₹ 3.97 Lakhs Crore (US$ 46.5 Billion), with individual NBP rising 11% to ₹ 1.74 Lakhs Crores (US$ 20.36 Billion), supported by digitization and the addition of over 11 Lakhs new agents. Life insurers' new business premiums for April-January FY25 reached Rs. 3,05,912 crore (US$ 35.5 billion), with LIC commanding a 57.05% share and private players such as SBI Life, HDFC Life, and ICICI Prudential Life leading collections among private insurers. By June 2025, LIC held a 63.5% market share, reporting ₹ 27,395 Crores (US$ 3.2 Billion) in premiums, up 3.43% YoY, while Q1 FY26 net premium income rose 5% YoY to ₹ 1,20,000 Crore (US$ 14 Billion).

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Answer 4(b)

In 2025, IRDAI launched the Bima Sugam one-stop digital insurance marketplace portal to allow policyholders, insurers, intermediaries and agents to compare, buy, manage and potentially renew and settle claims for life, health, motor and other insurance products on a single platform, with phased rollout of full transaction capabilities planned by December 2025. This is paperless operation which enhance customer convenience.

Bima Sugam aspires to be part of India's Digital Public Infrastructure (DPI); envisioned to enable seamless, paperless and trusted access to insurance products and services for every Indian citizen. The Bima Sugam platform will empower customers, intermediaries and agents to seamlessly find the right coverage, buy, sell and manage multiple policies, offerings, insurance awareness, education and a frictionless experience, it shall enable both DIY (Do It Yourself) and assisted journeys, allowing efficient claim intimation, and service requests for multiple policies-all through a user-friendly digital interface.

Bima Sugam is being developed as a phased, scalable digital infrastructure that will ultimately serve as:

- A unified insurance marketplace
- A digital policy repository
- An e-KYC and consent utility
- A real-time claims servicing gateway

Answer 4(c)

Leading private players such as SBI Life, SBI General, HDFC Life, HDFC Ergo, ICICI Prudential Life, ICICI Lombard, Bajaj Allianz, and Tata AIA, Reliance General along with LIC, continue to drive competition through product innovation, enhanced distribution, and digitization. Recent initiatives include AI-powered health insurance tools, mobile apps integrating wellness and policy management, and vehicle insurance platforms by PhonePe, reflecting the sector's dynamic and technology-driven evolution.

Answer 4(d)

The following are the steps to be taken to design an Insurance Product:

Step 1-Brainstorming: A team must compile all the preliminary needs and generate creative ideas at the first step. Senior team members with substantial experience in developing comparable goods in a certain industry carry out this analysis. The team can start working on the plan and feasibility analysis once all the information has been gathered.

Step 2- Feasibility analysis: Every stakeholder should do a feasibility analysis at the second stage. An in-depth analysis can show how profitable a project might be. It also takes into account every element that influences development. Risqué in the economy and technology are among these factors. All team members should provide their estimates of the time, money, and resources required to complete the project as a result of the feasibility analysis.

Step 3- Design: The group creates thorough SRS documentation based on the original requirements (software requirements and specifications). It forms the foundation for the product architecture and is frequently closely related to the Design Document Specification (DDS). The optimum design strategy for the product is chosen based on a number of factors, including risk assessment, product robustness, design modularity, budget, and time restrictions. The product's architectural modules, as well as the communication and data flow representation with external and third-party modules, are all explicitly defined by the design methodology.

Step 4-Programming: During this stage, developers write code according to DDS. The team follows the coding guidelines defined beforehand. The tools and programming languages, which actually make up the technology stack, are also selected in advance.

Step 5-Integration: Doing system integration testing during this step is meant to make sure that the developed systems adhere to all specifications with the components and subsystems integrated. Depending on the size and complexity of the requirements, the system test may need any number of additional tests; examples include security, compliance, accessibility, performance, stress, compatibility, and regression testing.

Step 6 - Quality assurance and testing: This stage is usually a subset of all the stages. However, it refers to the testing-only stage of the product where product defects are reported, tracked, fixed, and retested until the product reaches the quality standards defined in the SRS.

Step 7 - Release: It all revolves around introducing a new product to a target market. It may occasionally be an MVP or a beta version of the product. Key features going live can help developers assess performance and gather useful input from the product's initial consumers.

Answer 4(e)

The following are the significant factors to be considered for an Insurance Product:

1. Age: The primary factor affecting the cost of life insurance premiums is age. Life insurance policies are less expensive for younger people, who have longer life expectancies and are less likely to get ill. In some cases, they may not even qualify for life insurance if they are over a certain age. Typically, the cost of a life insurance

premium increases from 8% to 10% on average for every year of age. Essentially, the longer to wait to buy life insurance, the more they will have to pay for premiums. With term life insurance, premium remains the same every year. However, after term life insurance expires, should they buy insurance again, then premium will likely be higher because they are older and their health status may have changed. The premiums for whole life insurance should stay the same. Qualifying medical exams are likely to get more stringent as their age.

2. Gender: Gender is also a significant factor in the price of life insurance. Insurance carriers use statistical models to approximate how long someone with a specific profile will be around. Women, on average, live nearly five years longer than men, so they have lower rates as a result.

3. Health: The insurer may ask for medical examinations and reports, wherever necessary, wherever necessary, based on declarations, the amount of insurance coverage. However, nowadays, tailor-made coverage is updated on a needed basis.

4. Smoking: Smoking puts you at a higher risk for many health problems. So, life insurance companies charge more to insure smokers. In fact, smokers may pay more than twice as much as non-smokers for comparable coverage. An insurance company may classify you as a smoker even if they occasionally smoke cigarettes, cigars, or vapes. If they lie to the insurance company about smoking habits and get caught, policy could be canceled.

5. Life Style: If they lead a risky lifestyle with hobbies such as racing cars, scuba diving, or rock climbing, they will probably have to pay substantially more for insurance. Some companies also charge more if you have a relatively dangerous profession such as a police officer or a miner.

6. Family Medical History: Having a family history of stroke, cancer, or other serious medical conditions may predispose to these ailments and result in life insurance higher rates. Carriers are usually interested in any conditions of parents or siblings have experienced, especially if they have contributed to a premature death. Some life insurance companies factor in their family's health history more than others.

Question 5

(a) Explain the role of insurance in Indian Economic Development.

(5 marks)

(b) (i) What is meant by Available Solvency Margin ?

(2 marks)

(ii) Calculate the Solvency Ratio and Available Solvency Margin in the following situation :

- *Net Income of the Insurance Company was of ₹ 1,00,000*
- *Depreciation of ₹ 35,000*
- *Capital & Reserve Fund was of ₹ 6,00,000*

- *Short Term Liabilities of ₹ 5,00,000*
- *Long Term Liabilities of ₹ 2,00,000*
- *Total Assets of ₹ 13,00,000*

(4 marks)

(iii) How many types of solvency ratios are used in Insurance Sector ?

(4 marks)

Answer 5(a)

Key roles of insurance in economic development:

1. *Risk Mitigation and Management*: By transferring risk from individuals or entities to insurers, insurance enables businesses to take risks, innovate, and expand, which stimulates economic activity.
2. *Capital Formation*: Insurance companies mobilize savings from the public (e.g., life insurance premiums) and channel them into long-term investments, such as corporate bonds and infrastructure projects.
3. *Financial Stability and Growth*: It provides a safety net that protects against financial ruin from disasters, illness, or business loss, promoting economic resilience and preventing households from falling into poverty.
4. *Trade and Commerce Facilitation*: Marine and cargo insurance facilitate domestic and international trade, ensuring that goods and services can move safely and that businesses are protected against losses during transport or transaction.
5. *Promotion of Savings*: Insurance products encourage individuals to save systematically, creating a pool of capital that can be invested in the economy.
6. *Employment Generation*: The insurance sector itself generates employment, and its growth supports other sectors by providing stability.
7. *Reduced Public Sector Burden*: Private insurance (life, health, property) relieves pressure on governments by providing coverage for social security, pension, and disaster-related losses.

Answer 5(b)(i)

Solvency Ratio is a measure of capital adequacy. It is expressed as a ratio of Available Solvency Margin to Required Solvency Margin. The excess of assets over liabilities and other liabilities of policyholders' funds and shareholders' funds maintained by the insurer is referred to as Available Solvency Margin (ASM). IRDAI requires all insurers to maintain a minimum excess asset over liabilities, which is referred to as Required Solvency Margin (RSM).

In Insurance, a solvency ratio is a metric used to determine a company's capacity to fulfil its long-term debt obligations. Potential business lenders often use solvency ratios to determine a company's capacity to pay back its long-term debts. A company's financial health can also be assessed by its solvency ratio. An unfavorable ratio might suggest a high likelihood that the company will fail to pay its long-term debts.

The Available Solvency Margin (ASM) is the real-world capital cushion an insurance company holds to cover unexpected losses. It is calculated as the total value of the company's admitted assets minus all of its liabilities.

Answer 5(b)(ii)

Solvency Ratio:

= (Capital & Reserves + Net Income + Depreciation) / Total Liabilities (Short-term + Long-term Liabilities).

Solvency Ratio

= (₹ 6,00,000+ 1,00,000 + ₹ 35,000) / ₹ 7,00,000 = 1.05:1

Available Solvency Margin:

Total of Assets-Outside Liabilities i.e., ₹ 13,00,000-₹ 7,00,000 = ₹ 6,00,000

Answer 5(b)(iii)

Following are the types of solvency ratios:

1. Debt-to-Equity Ratio (D/E Ratio) : This is a widely used ratio that measures the proportion of a company's debt financing compared to its equity financing. It's calculated by dividing total debt by total equity. A lower D/E ratio indicates a more significant ownership stake by shareholders (financial stability) and vice versa.

   D/E Ratio = Total Debt / Total Equity

2. Debt Ratio: This ratio goes a step further by considering all the company's liabilities, not just debt. It's calculated by dividing total liabilities by total assets. This ratio provides a broader view of how much of the company's financing comes from creditors.

   Debt Ratio = Total Liabilities / Total Assets

3. Equity Ratio (Proprietary Ratio): This ratio flips the D/E ratio, focusing on the ownership side. It's calculated by dividing total equity by total assets. A higher equity ratio suggests a stronger financial position as the company is relying less on debt financing.

   Equity Ratio = Total Equity / Total Assets

4. Interest Coverage Ratio: This ratio assesses a company's ability to cover its interest expenses on outstanding debt. It's calculated by dividing earnings before interest and taxes (EBIT) by interest expense. A higher ratio indicates a greater capacity to service debt obligations.

   Interest Coverage Ratio = EBIT / Interest Expense

5. The Insurance Solvency Margin

While not a traditional corporate finance ratio, this is the most critical metric specific to the insurance industry. It measures the relationship between an insurer's actual available assets and its ultimate liabilities. The cushion an insurer has to pay out claims in worst-case scenarios.

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

Question 6

(a) Explain the key documents required to start an Insurance Marketing Firm in India ?

(5 marks)

(b) (i) 'A' insured his house against fire with "X" Company for ₹ 60,000 and with "Y" Company for ₹ 1,00,000. Fire broke out in the building and a loss a loss of ₹ 50,000 occurs. Whether 'A' file a suit against both the insurers or against one only.

What is the liability of each insurer in this regard ?

(2 marks)

(ii) An industry that is insured for ₹ 1,000 Crores with a Premium of ₹ 50 Crores, that is shared by A, B and C Insurance Companies, the detail is as follows :

Insurer	***Share***	***Sum Insured***	***Premium***
A	*35%*	*₹ 350 Crores*	*₹ 17.50 Crores.*
B	*25%*	*₹ 250 Crores*	*₹ 12.50 Crores.*
C	*40%*	*₹ 400 Crores*	*₹ 20.00 Crores.*

The loss occurred of ₹ 200 Crores. Calculate the claim payable by each company to insured.

(3 marks)

(c) Distinguish between Insurance Broker and Insurance Marketing Firm.

(5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

Explain the following terms of principles of Insurance :

(i) Principle of Contribution.

(ii) Principle of Mitigation of loss.

(iii) Principle of Uberrimae fide.

(5 marks each)

Answer 6(a)

The following are the key documents required to start an Insurance Marketing Firm in India:

1. Entity Registration: Certificate of Incorporation (Company/LLP), Memorandum of Association (MoA), and Articles of Association (AoA).
2. Individual/Personnel Docs: Qualification/Experience Certificates of the Principal Officer (PO) and Insurance Sales Persons (ISP).
3. Examination Certificates/License: Passed Certificate of the Insurance Marketing Firm Examination for the PO and ISPs.
4. Financial Documents: Net Worth Certificate from a Chartered Accountant (minimum ₹5-10 lakhs) and recent bank account statements.
5. Operational Documents: A 3-year business plan with projected activities/income, organization chart, and proof of office infrastructure (rent agreement/sale deed).
6. Declarations/Undertakings: Undertaking by the PO regarding compliance and fit-and-proper declarations.
7. No Objection Certificate (NOC): NOC from IRDAI for the proposed name.

Answer 6(b)(i)

Sharing of the Liability:

Formulae:

The sum insured with an Insurer × Loss / The total sum insured with all insurers.

Liability of X = ₹ 60,000 x (₹ 50,000 / ₹ 1,60,000) = ₹ 18,750

Liability of Y = ₹ 1,00,000 x (₹ 50,000 / ₹ 1,60,000) = ₹ 31,250

The insured may claim from one insurer, who can recover contribution from the other insurer

Answer 6(b)(ii)

The formula to bear the loss is: (Total Loss x Share of Sum Insured) / Total Sum Insured

Claim Payable by A = (₹ 200 / ₹ 1,000) x ₹ 350 = ₹ 70 Crores.

Claim Payable by B = (₹ 200/ ₹1,000) x ₹ 250 = ₹ 50 Crores.

Claim Payable by C = (₹ 200/₹ 1,000) x ₹ 400 = ₹ 80 Crores.

Total Claim = Rs 200 crores

Answer 6(c)

The following are the key difference between Insurance Broker and Insurance Marketing Firm:

Aspect	**Insurance Broker**	**Insurance Marketing Firm**
Representation	Brokers represent the client.	IMFs primarily act as a distribution channel for insurance companies.
Product Scope	Brokers can offer products from all insurance companies.	IMFs have an open architecture limited to a maximum of two insurers per category (life, health, general)
Service Scope	Brokers provide comprehensive risk management and claims services.	IMFs are designed to be "one-stop shops" for insurance and other financial products (e.g., Pension, Mutual Funds, Bank products).
Capital Requirements	Brokers have higher capital requirements (₹75 lakhs to ₹5 crores)	IMFs capital requirements (₹5 lakhs to ₹10 Lacs
Area of Operation	Brokers can operate more broadly.	IMFs are restricted to operating in a maximum of three districts within a state.

Answer 6A(i)

Principle of Contribution: Doctrine of subrogation is incidence of rule of indemnity and contribution is incidence of doctrine of subrogation. This is also a corollary of the doctrine of indemnity. This rule is of ancient origin and was recognised by the Chancery Courts in North British and Mercantile vs. Liverpool and London Glob. It was held that the contribution exists where the thing is done by the same person against the same loss, and to prevent a man first of all. (1) recovering more than the whole loss; or (2) if he recovers the whole loss from one which he could have recovered from the other, then to make the parties contribute ratably. Principle of contribution has application where there is the person insuring the same interests with more than one office. The genesis of contribution lies in liberty of the assured to insure the same property with more than one insurer which is called 'double insurance'. Contribution in relation is insurance has been defined as: "Contribution is the right of an insurer who has paid a loss under a policy, to recover a proportionate amount from other insurer who are liable for the loss."

Answer 6A(ii)

Principle of Mitigation of Loss: In all kinds of insurances, it is the duty of the insured not to do anything which will accelerate the happening of the risk. He should not only refrain from accelerating the risk but there is a positive duty on the assured to prevent the happening of the risk if possible and where the risk takes place, it is the duty of the assured to minimize the loss or damage. The principle of mitigation of loss literally means "to make less severe, violent or painful. This principle places a duty on the insured to make every effort and to take all such steps, in the event of some mishap to the insured property, to mitigate or minimize the loss, as would have been taken by an uninsured person. This is obviously included in order to check the insured to become careless and inactive in the event of the mishap merely because the property which is getting damaged is already insured. He is not expected to be a silent spectator and must take such steps as he considers prudent and he must do everything in his power to minimize the loss and to save whatever is left.

The duty to mitigate loss is a general principle applicable to all branches of law and it is also applied to the law of insurance especially having in view of the fact that insurance is a contract of indemnity. Insurance company generally provides such clause in the policy to take all due care and steps to minimize the loss and save the property from being damaged. No person is entitled to look on and let his property be lost just because it is insured. Therefore, one who has insured his house cannot himself set fire to it and claim indemnity under the policy or aggravate the loss in order to claim heavy damages. Thus, the assured is bound to take all reasonable steps to prevent damage as well minimize damages.

Answer 6A(iii)

Principle of utmost good faith (Uberrimae fide): Principle of uberrimae fide is the very basic and primary principle of insurance. A contract of insurance is a contract of uberrimae fide, i.e., a contract of utmost good faith, and if the utmost good faith is not observed by either party, the contract may be avoided by the other party. It is now well settled principle that an insurance contract is a contract of utmost good faith and therefore, the contracting parties are placed under a special duty towards each other, not only to refrain from active misrepresentation but to make full disclosure of all material facts within their knowledge. It has been said that there is no class of documents to which the strictest good faith is more rightly required in courts of law than policies of insurance. The principle of uberrimae fide applies to all types of insurance contract

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INSOLVENCY AND BANKRUPTCY – LAW & PRACTICE

GROUP 2 ELECTIVE PAPER 7.5

Time allowed : 3 hours **Maximum marks : 100**

Total number of questions : 4

NOTE : *Answer* ***ALL*** *Questions.*

Question 1

Read the following case study and answer the questions that follow:

***(I) Background**:*

Phoenix Asset Management Ltd. (Phoenix) is an asset reconstruction company registered under the applicable laws of India. It acquired, by way of an assignment agreement, the outstanding receivables owed by Meridian Hospitality Ltd. (Meridian), a company engaged in the hotel and hospitality business from a consortium of four public sector banks. The assignment took place in January 2009.

Meridian had originally borrowed ₹ 180 crores from the consortium in March 2003 under a term loan agreement. The funds were used for the renovation and expansion of its flagship hotel property. Repayments were irregular from the outset, and by November 2008, the consortium banks collectively classified Meridian's loan account as a Non-Performing Asset (NPA). Shortly thereafter, the consortium assigned all outstanding receivables to Phoenix.

The shareholding of Meridian was held equally by two promoter entities, Crestwood Hotels Pvt. Ltd. and Pinnacle Resorts Ltd. each holding a 50% stake. Mr. Rajiv Bhatia served as the Chairman and Managing Director of Meridian as well as of both promoter companies.

(II) Settlement attempts and acknowledgments:

In March 2010, well within three years of the NPA declaration, Meridian wrote to Phoenix proposing a one-time settlement of the outstanding dues. In this letter, Meridian acknowledged that the aggregate outstanding liability, inclusive of principal and interest, stood at ₹ 195 crore as on 31 December 2009. It offered an upfront payment of ₹ 15 crores and committed to clearing the balance in instalments over 18 months.

A formal Settlement Agreement was executed between the parties on 15 April 2010. Under this agreement, Meridian acknowledged its total liability of ₹ 195 crores, agreed to pay interest at 20% per annum compounded monthly, made an upfront payment of ₹ 15 crores, and committed to clearing the balance by 30 September 2011. Between 2010 and 2013, Meridian made further part payments totalling approximately ₹ 48 crores through various demand drafts and cheques.

However, Meridian repeatedly sought extensions of time to pay the balance. In June 2012, it acknowledged an outstanding liability of ₹ 241 crore (principal and interest combined) and sought extension until March 2013. In September 2013, Phoenix revoked the Settlement Agreement after Meridian defaulted once again.

From the financial year 2009-10 onwards, Meridian's audited annual financial statements consistently reflected the amounts owed to Phoenix as a liability. However, beginning from the financial statements for the year 2014-15, the notes to the accounts contained a qualification. While the principal amount owed to Phoenix was shown as a liability in the balance sheet, the notes stated that the Settlement Agreement had been revoked by Phoenix and that Meridian had been legally advised the applicable interest rate could not exceed 13% per annum, not the 20% claimed by Phoenix. The notes further stated that the question of the correct rate of interest was pending adjudication before the Debt Recovery Tribunal (DRT).

Phoenix issued a notice under the SARFAESI Act in October 2013 and took symbolic possession of the hotel property in February 2014. Phoenix also invoked the personal guarantee of Mr. Rajiv Bhatia in May 2015.

(III) The IBC, 2016 application and proceedings:

On 10 April 2018, Phoenix filed an application under Section 7(2) of the Insolvency and Bankruptcy Code, 2016 (IBC) before the National Company Law Tribunal (NCLT), seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against Meridian. In its application, Phoenix claimed a principal amount of ₹42 crore and interest of ₹ 178 crores calculated at 20% per annum, bringing the total claim to approximately ₹ 220 crores.

Meridian filed a miscellaneous application before the NCLT seeking dismissal of the petition on the ground that it was barred by limitation. Meridian argued that the NPA was declared in November 2008, that the limitation period of three years expired in November 2011, and that the IBC application filed in April 2018 was hopelessly late by nearly seven years. Meridian further contended that the financial statements contained a clear dispute as to the rate of interest and could not, therefore, be read as an unequivocal acknowledgment of liability sufficient to extend limitation.

Phoenix countered that its application was well within time. It relied on the audited balance sheet of Meridian for the financial year 2014-15, signed by Meridian's directors on 12 September 2015, which reflected Phoenix as a creditor and acknowledged Meridian's outstanding financial liability. Phoenix argued that this acknowledgment, made before the original limitation period had expired, created a fresh three-year limitation period running from 12 September 2015 to 12 September 2018. Since the application was filed on 10 April 2018, it was within this extended period.

Phoenix also argued that regardless of the caveats in the notes to accounts concerning the interest rate, the balance sheet clearly showed the jural relationship of debtor and creditor between Meridian and Phoenix, and the existence of financial liability. A dispute about the rate of interest was a dispute about quantum, not about the existence of the debt itself. Moreover, even if the parts payments made by Meridian were to be *considered, they would first be appropriated towards interest and then towards principal, meaning a substantial principal remained outstanding.*

The promoter companies, Crestwood Hotels Pvt. Ltd. and Pinnacle Resorts Ltd., separately filed an appeal challenging the admission of the CIRP, arguing there was no subsisting financial debt and that the application was time-barred.

The NCLT rejected Meridian's limitation objection and admitted the application, appointing an Interim Resolution Professional. The matter was then appealed to the NCLAT, which set aside the NCLT's order, holding that the financial statements with caveated notes could not amount to an unequivocal acknowledgment under Section 18 of the Limitation Act and that the application was therefore barred by limitation.

Phoenix has now filed an appeal before the Supreme Court of India challenging the NCLAT's order.

Required:

(a) Meridian argues that the IBC application is barred by limitation because the NPA was declared in November 2008 and the application was filed only in April 2018, nearly ten years later. Is this argument correct? What is the prescribed period of limitation for a Section 7 IBC application, and from which date does it begin to run?

(5 marks)

(b) Phoenix relies on Meridian's audited balance sheet for 2014-15 as an acknowledgment of liability under Section 18 of the Limitation Act. According to Meridian, there is a variation of Rate of Interest charged by the bank. Can a balance sheet with a caveat about the rate of interest still qualify as an acknowledgment of debt? What does the law require?

(5 marks)

(c) Meridian contended that it has paid over ₹ 48 crores to Phoenix and that this exceeds the original principal amount. It argued that no principal remains outstanding and therefore there is no financial debt. How did the court reacted with this argument?

(5 marks)

(d) The NCLAT set aside the NCLT's order admitting the CIRP on the ground that the application was time-barred. Phoenix argued that the IBC is a beneficial legislation and must be construed liberally. Does the IBC as a beneficial statute have any bearing on how the law of limitation is applied to it?

(5 marks)

(e) The promoter companies, Crestwood Hotels and Pinnacle Resorts have also filed an appeal challenging the admission of CIRP against Meridian. They argued that since there was a dispute on existence of financial debt, the NCLT should not have

admitted the application. Is this a valid ground to challenge the admission of a Section 7 application?

(5 marks)

Answer 1(a)

The given argument is not correct. In the matter *of Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr.*, Supreme Court held an application under Section 7 of the IBC would not be barred by limitation on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as Non-Performing Asset, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

The period of limitation for an application under Section 7 of the IBC is three years from the date of default. This is governed by Article 137 of the Limitation Act, 1963 read with Section 238A of the IBC. The right to apply accrues on the date the debt became due and was not paid. However, limitation is not calculated in isolation. If the Corporate Debtor makes a written acknowledgment of liability within the original three-year period, Section 18 of the Limitation Act creates a fresh period of three years from the date of that acknowledgment. Further, in *Asset Reconstruction Company (India) Ltd. vs. Bishal Jaiswal,* the Supreme Court held that entries in duly signed balance sheets may constitute acknowledgment of debt under Section 18, depending upon the facts and accompanying notes. In this case, Meridian's audited balance sheet for financial year 2014-15 was signed by the Meridian's Director on 12 September 2015. This qualifies as an acknowledgment, the limitation period would run from that date, making the April 2018 application timely. Meridian's blanket reliance on the NPA date alone oversimplifies the law.

Answer 1(b)

Yes, it can. For an acknowledgment under Section 18 of the Limitation Act to be valid, it must in writing and signed by the party concerned against whom such property or right is claimed. It reflects a present, subsisting liability and indicate the jural relationship of debtor and creditor. Further, explanation to Section 18 of the Limitation Act clarifies that an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right.

In this case, Meridian's balance sheet for the financial year 2014-15, signed by its directors on 12 September 2015, showed Phoenix as a creditor and reflected an outstanding financial liability. Though caveat in the notes disputed only the rate of interest, the existence of the debt and the debtor-creditor relationship were never denied. Courts have consistently held that a liberal construction must be given to acknowledgments. Hence, the balance sheet, read as a whole, qualifies as a valid acknowledgment of financial debt in the given case.

Answer 1(c)

This argument is unlikely to succeed. Under a well-established rule of appropriation, when a debtor makes a payment that is not specifically designated by either party, it is first applied towards the outstanding interest and only thereafter towards the principal. Such a principle is, however, subject to one exception, i.e., that the parties may agree to the adjustment of the payment in any other manner. This rule, affirmed by the Supreme Court *in Industrial Credit & Development Syndicate vs. Smithaben H. Patel*, means that Meridian's payments of ₹ 48 crores would first go toward discharging the accumulated interest, which, at 20% per annum compounded monthly over several years, would be substantial.

After appropriating payments towards interest, a significant principal balance would still remain. Furthermore, under Section 7 of the IBC, the Adjudicating Authority is only required to be satisfied that a debt exists and default has occurred.

Answer 1(d)

The IBC is a beneficial legislation intended to ensure resolution of insolvency and revival of the Corporate Debtor as a going concern, not being a mere recovery legislation for creditors. The Supreme Court in *Swiss Ribbons Pvt. Ltd. vs. Union of India* recognized that the primary objective of the IBC is revival and continuation of the Corporate Debtor and not mere recovery of debts.

Though it does not override the law of limitation, its provisions must be construed in a purposive and liberal manner to advance the object of the statute. Relegating creditors to coercive recovery proceedings in multiple forums can actually harm the Corporate Debtor by depleting its resources and precipitating its financial collapse.

However, this does not mean limitation is irrelevant. The Insolvency Committee of the Ministry of Corporate Affairs specifically noted that the IBC was not intended to revive time-barred debts. In IBC, Section 238A was added precisely to make the Limitation Act applicable.

In *B.K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates*, the Supreme Court held that the Limitation Act applies to applications under Sections 7 and 9 of the IBC from the inception of the Code and that a time-barred debt cannot be revived through insolvency proceedings. The liberal construction of the IBC means that its provisions, including those on acknowledgment of debt are read broadly and not with pedantic rigidity, but limitation cannot be ignored altogether.

Answer 1(e)

No, this is not a valid ground for refusing admission under Section 7 of the IBC, which provides that the Adjudicating Authority does not need to examine whether the debt is disputed, it only needs to be satisfied that a debt exists and that a default has occurred. The moment these two conditions are met and the application is complete, the NCLT may admit it.

The Supreme Court in the case of *M/s. Innoventive Industries Ltd vs. ICICI Bank* observed that in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

The promoters' appeal, therefore, does not raise any tenable ground.

Question 2

(a) Please map the correct case references alongside the decision of the court(s) based on the judicial pronouncements indicated under choice(s).

Sl. No.	***Decision***	***Choice No.***	***Case Reference***
1.	*NCLT and NCLAT cannot judicially innovate beyond the framework of the Insolvency and Bankruptcy Code while dealing with schemes of compromise and arrangement.*	*(a)*	*Laxmi Pat Surana Vs. Union Bank of India & Anr.*
2.	*Timelines for submission of claims are directory, not mandatory. Delay alone cannot justify rejection of statutory dues; RP must verify and include them.*	*(b)*	*Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss ARC & Ors.*
3.	*Development rights are valuable commercial rights falling within the wide definition of "property" under Section 3(27) and are assets of the Corporate Debtor and are to be included in the Information Memorandum as long as they subsist.*	*(c)*	*Sunil Kumar Jain & Ors. Vs. Sundaresh Bhatt & Ors.*
4.	*Section 327(7) of the Companies Act excluding application of Sections 326 & 327 are not arbitrary.*	*(d)*	*Abhishek Singh v. Huhtamaki PPL Ltd., & Anr.*
5.	*Section 7 application beyond three years from NPA is barred by limitation.*	*(e)*	*State Tax Officer vs. Rainbow Papers Ltd.*

6.	The Corporate debtor is a statutory corporation and not Government. The dues are not payable into consolidated fund and hence cannot be treated as "Government dues" and as such they rank as secured creditor claims in liquidation.	(f)	Moser Baer Karamchari Union vs. Union of India.
7.	All creditors (including Central and State Government or local authorities are bound by a resolution plan once approved under Section 31(1).	(g)	Victory Iron Works Ltd vs. Jitendra Lohia & Anr.
8.	RERA decrees do not affect creditor classification. Claims of decree-holding homebuyers remain financial debts under IBC, entitled to parity in resolution plans.	(h)	Arun Kumar Jagatramka V. Jindal Steel and Power Ltd.
9.	The Liquidator is bound to adjudicate and verify each and every claim based on evidence of work performed during CIRP and entitlement is not automatic.	(i)	Vidarbha Industries Power Ltd. vs. Axis Bank Ltd.
10.	Payment of settlement amount during moratorium is not a violation of Section 14. It extinguishes liability and preserves value as Section 14 is meant to prevent dissipation of assets and does not bar genuine settlements.	(j)	Bank of Baroda & Anr. Vs. MBLInfrastructure Ltd., & Ors.
		(k)	Swiss Ribbons Pvt. Ltd. vs. Union of India.
		(l)	Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Pvt. Ltd.
		(m)	Vishal Chelani & Ors. Vs. Debashis Nanda.

(1 mark each Sub-Question = Total 10 Marks)

(b) *How did the Supreme Court perceive Article 142 of the Constitution to order liquidation and what were the broader systemic reforms it suggested in the case of State Bank of India & Ors. v. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr?*

(5 marks)

(c) *Mr. Bikram Kumar applied to the Insolvency and Bankruptcy Board of India (IBBI) for registration as an Insolvency Professional. During scrutiny, the Board discovered that Mr. Bikram Kumar had a prior criminal conviction for financial fraud and was subject to an existing restraint order issued by a regulatory authority. Additionally, concerns were raised regarding his negative net worth and questionable financial solvency.*

What would have been the criteria for the decision and for such rejection?

(3 marks)

(d) ***Caselet:***

Aarna Ltd. (Company) is engaged in the manufacturing of Sponge Iron, IMT bars and Galvanized wires. It has availed various credit facilities from a total of 9 secured creditors with an outstanding debt of ₹ 100 crores.

Due to adverse market conditions, its financial position took a downturn and hence it filed a reference with the Board for Industrial and Financial Reconstruction (BIFR). The reference was duly registered. During the proceedings before BIFR, one of the secured creditors, after taking consent of the other creditors of the company, filed an application for abatement of the reference before BIFR.

Meanwhile, one of the unsecured creditors filed an application before BIFR for the impleadment in the proceedings. The BIFR dismissed the said application due to non-prosecution.

Subsequently, upon coming into force of the Insolvency and Bankruptcy Code (IBC), 2016, the company filed an application for initiation of Corporate Insolvency Resolution Process (CIRP) before National Company Law Tribunal (NCLT) on 09.12.2016. However, in the first meeting of the Committee of Creditors held on 05.01.2017, the financial creditors of the company decided to liquidate the company. Immediately after this decision, but before intimating the decision to the NCLT, one of the financial creditors of the company applied to Resolution Professional (RP) giving proof of his claim and seeking his inclusion in the Committee of Creditors.

Based on the above situation, answer the following questions:

(i) *Can the creditors initiate SARFAESI action against the company?*

(a) *Yes, if they constitute more than 75% of the total financial debt.*

(b) *Yes, with the consent of the Liquidator.*

(c) *Yes, with the consent of the National Company Law Tribunal (NCLT).*

(d) *No, they cannot.*

(ii) In case one of the secured creditors realizes its security interest and such realization is not sufficient to pay its outstanding debts, can he recover the balance amount?

(a) The balance amount will be ignored.

(b) The balance amount will be paid at par with dues to the Central Government and the State Government.

(c) The balance amount will be paid at with other secured creditors.

(d) The balance amount will be paid at par with unsecured creditors.

(iii) In case the liquidation process is initiated, the unsecured creditor who filed an application before BIFR for impleadment shall be paid ....

(a) as per claim accepted by the liquidator in accordance with priorities specified in the Insolvency and Bankruptcy Code, 2016.
(b) as per the amount of its claim before BIFR.
(c) as per the amount of its claim made before the liquidator.
(d) as per the order of Debt Recovery Tribunal.

(iv) In case the secured creditor faces resistance from company for enforcement of security interest, such secured creditor may apply to:

(a) Adjudicating Authority

(b) Debt Recovery Tribunal

(c) Liquidator

(d) High Court

(v) What is the priority of payment to workmen dues in case of liquidation?

(a) Pari passu with secured creditors and employees

(b) Pari passu with secured creditors and insolvency costs

(c) Pari passu with secured creditors

(d) Pari passu with financial creditors

(1 Mark Each = Total 5 Marks)

(e) ANC Bank Ltd. filed a claim before the Liquidator of XYZ Pvt. Ltd., asserting itself as a secured creditor with a charge over the company's immovable property. The Liquidator questioned the validity of the security interest, as no records were available in any information utility.

ABC Bank thereafter produced a Certificate of Registration of Charge along with the original mortgage deed and sanction letter as supporting documents.

How can the existence of security interest be proved under IBBI (Voluntary Liquidation Process) Regulations, 2017?

(2 marks)

Answer 2(a)

Sl. No.	Decision	Choice No.	Case Reference
1.	NCLT and NCLAT cannot judicially innovate beyond the framework of the Insolvency and Bankruptcy Code while dealing with schemes of compromise and arrangement	**(h)**	*Arun Kumar Jagatramka V. Jindal Steel and Power Ltd.*
2.	Timelines for submission of claims are directory, not mandatory. Delay alone cannot justify rejection of statutory dues; RP must verify and include them.	**(e)**	*State Tax Officer vs. Rainbow Papers Ltd.*
3.	Development rights are valuable commercial rights falling within the wide definition of "property" under Section 3(27) and are assets of the Corporate Debtor and are to be included in the Information Memorandum as long as they subsist.	**(g)**	*Victory Iron Works Ltd vs. Jitendra Lohia & Anr.*
4.	Section 327(7) of the Companies Act excluding application of Sections 326 & 327 are not arbitrary.	**(f)**	*Moser Baer Karamchari Union vs. Union of India.*
5.	Section 7 application beyond three years from NPA is barred by limitation.	**(a)**	*Laxmi Pat Surana vs. Union Bank of India & Anr.*
6.	The Corporate debtor is a statutory corporation and not Government. The dues are not payable into consolidated fund and hence cannot be treated as "Government dues" and as such they rank as secured creditor claims in liquidation.	**(l)**	*Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Pvt. Ltd.*
7.	All creditors (including Central and State Government or local authorities are bound by a resolution plan once approved under Section 31(1)	**(b)**	*Ghanashyam Mishra and Sons Pvt Ltd vs. Edelweiss ARC & Ors.*

8.	RERA decrees do not affect creditor classification. Claims of decree-holding homebuyers remain financial debts under IBC, entitled to parity in resolution plans.	**(m)**	*Vishal Chelani & Ors. Vs. Debashis Nanda.*
9.	The Liquidator is bound to adjudicate and verify each and every claim based on evidence of work performed during CIRP and entitlement is not automatic.	**(c)**	*Sunil Kumar Jain & Ors. Vs. Sundaresh Bhatt & Ors.*
10.	Payment of settlement amount during moratorium is not a violation of Section 14. It extinguishes liability and preserves value as Section 14 is meant to prevent dissipation of assets and does not bar genuine settlements.	**(d)**	*Abhishek Singh v. Huhtamaki PPL Ltd., & Anr*

Answer 2(b)

Article 142 of the Constitution gives the Supreme Court extraordinary power to pass any order necessary to do complete justice in any matter before it. Normally, liquidation under the IBC follows a specific procedure, an application before the NCLT, etc. But the Court found that the facts here were so alarming, and so many years had been wasted, that waiting for the regular process would cause further injustice to creditors, workers, and the public.

In the case of *State Bank of India & Ors. v. The Consortium of Murari Lal Jalan and Florian Fritsch & Anr. (Jet Airways Case),* the Supreme Court inter alia observed that despite several years of CIRP, the approved resolution plan had failed, implementation had stalled, and the interests of creditors, employees and other stakeholders were seriously prejudiced. Considering the exceptional circumstances, the Supreme Court invoked its powers under Article 142 of the constitution and ordered Jet Airways into liquidation, terming the case as an “eye opener”.

Supreme Court recognized the systemic issues in the functioning of the IBC and made some suggestions/observations, including the following:

(i) Inadequate infrastructure to support functioning of NCLT/NCLAT

(ii) Tribunals need better-qualified members and must sit for full working hours;

(iii) Persons with high ideals & impeccable integrity should be appointed as Members in the NCLT as well as NCLAT. There should not be any political appointment;

(iv) The Committee of Creditors (CoC) should give reasoned decisions. Need of a Code of Conduct for CoC;

(v) The IBC should mandate a statutory Monitoring Committee after plan approval;

Answer 2(c)

The IBBI would have rejected his application, holding that Mr. Bikram Kumar was not fit and proper to be registered as an Insolvency Professional in view of the circumstances explained.

As per explanation to Regulation 4(1)(g), of IBBI (Insolvency Professionals) Regulations, 2016 for determining whether an individual is fit and proper, the IBBI may take into account any consideration as it deems fit, including but not limited to the following criteria, namely:

(i) integrity, reputation and character,

(ii) absence of convictions and restraint orders, and

(iii) competence, including financial solvency and net worth.

Answer 2(d)

Caselet:

(i) Can the creditors initiate SARFAESI action against the company?

(a) Yes, if they constitute more than 75% of the total financial debt.

(b) Yes, with the consent of the Liquidator.

(c) Yes, with the consent of the National Company Law Tribunal (NCLT).

(d) No, they cannot.

Ans. (d)

(ii) In case one of the secured creditors realizes its security interest and such realization is not sufficient to pay its outstanding debts, can he recover the balance amount?

(a) The balance amount will be ignored.

(b) The balance amount will be paid at par with dues to the Central Government and the State Government.

(c) The balance amount will be paid at par with other secured creditors.

(d) The Balance amount will be paid at par with unsecured creditors.

Ans. (b)

(iii) In case the liquidation process is initiated, the unsecured creditor who filed an application before BIFR for impleadment shall be paid…..

(a) as per claim accepted by the liquidator in accordance with priorities specified in the Insolvency and Bankruptcy Code, 2016.

(b) as per the amount of its claim before BIFR.

(c) as per the amount of its claim made before the liquidator.

(d) as per the order of Debt Recovery Tribunal.

Ans. (a)

(iv) In case the secured creditor faces resistance from company for enforcement of security interest, such secured creditor may apply to:

(a) Adjudicating Authority

(b) Debt Recovery Tribunal

(c) Liquidator

(d) High Court

Ans. (a)

(v) What is the priority of payment to workmen dues in case of liquidation?

(a) Pari passu with secured creditors and employees

(b) Pari passu with secured creditors and insolvency costs

(c) Pari passu with secured creditors

(d) Pari passu with financial creditors

Ans. (c)

Answer 2(e)

As per Regulation 20 of the IBBI (Voluntary Liquidation Process) Regulations, 2017, the existence of a security interest may be proved by a secured creditor on the basis of:

(a) the records available in an information utility;

(b) certificate of registration of charge issued by the Registrar of Companies;

(c) proof of registration of charge with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India; or

(d) other relevant documents which adequately establish the security interest.

Question 3

(a) From the following, indicate the assets of the corporate debtor which (i) can/cannot be used in liquidation. Substantiate your answer.

(i) An IT services company has outstanding invoices worth ₹ 8 crores from various clients for software development services already delivered.

(ii) A pharmaceutical company owns several patents for drug formulations, registered trademarks for its brand names, and proprietary manufacturing processes developed in-house and registered in company's name.

(iii) A stockbroking firm has deposited shares as collateral margin with a clearing corporation (like NSE Clearing Ltd.) to settle trades on behalf of multiple clients.

(iv) A steel manufacturing company owns blast furnaces, rolling mills, and heavy machinery worth ₹ 50 crores, all of which are registered in the company's name and fully paid for.

(v) *Sharma is a 30% shareholder of an insolvent private limited company. He owns a personal apartment and a car registered in his own name, purchased from his personal savings.*

(vi) *A diversified conglomerate holds a 25% stake in an associate company, PQR Ltd., which is neither a subsidiary nor controlled by it. It also holds mutual fund units and fixed deposits in its own name worth ₹ l5 crores.*

(vii) *A logistics firm has taken 20 trucks on a long-term lease from a vehicle rental company with usage rights being conferred on the lessee.*

(viii) *ABC Ltd., a holding company in India, is undergoing liquidation. It owns 80% of the shares of XYZ Pvt. Ltd. Bengaluru and also 60% of Global Tech Inc., San Jose, USA.*

(ix) *A construction company owes ₹ l crore to a cement supplier. However, the cement supplier also owes ₹ 40 lakhs to the construction company for a separate warehousing contract.*

(x) *A hospitality company owns a five-star hotel building and the land on which it stands, both registered in the company's name.*

(1 Mark Each = Total 10 Marks)

(b) *Guardian Insolvency Professional Agency ("Guardian") obtained its certificate of registration from the Insolvency and Bankruptcy Board of India ("Board") by submitting falsified compliance documents. Subsequently, Guardian repeatedly failed to adhere to Board regulations and contravened several provisions of the Insolvency and Bankruptcy Code, 2016. Upon receiving complaints, the Board initiated proceedings against Guardian. Before passing an order, the Board issued a show-cause notice, affording Guardian a reasonable opportunity of being heard, as mandated under the IBC.*

Following due deliberation by whole-time members exclusively, the Board concluded that there were contraventions by Guardian which needs to be dealt punitively. What are the grounds on which the Board can take cognizance of? Also, what action can the Board initiate.

(3 marks)

(c) *What are the punitive measures that can be administered by the Adjudicating Authority under the Code?*

(2 marks)

(d) *Define the term 'Control' in the context of insolvency proceedings.*

(2 marks)

(e) *Rajesh Kumar, a textile merchant, was adjudicated bankrupt following insolvency proceedings. Anand was appointed Bankruptcy Trustee to administer the estate.*

Upon assuming office, Anand identified several urgent matters: the business required temporary continuation to maximise asset recovery; outstanding debts owed to Rajesh needed arbitration; certain creditors sought compromise arrangements; and a mortgageable property existed suitable for raising funds towards debt settlement. Additionally, a contractual option over a warehouse formed part of the estate apart from other issues.

Before proceeding further, Anand wants to convene a meeting of the creditors.

In such a situation, elucidate which are the acts of the Bankruptcy Trustee that require prior approval from creditors?

(5 marks)

(f) *Explain briefly on "Actions to avoid acts detrimental to creditors."*

(3 marks)

Answer 3(a)

(i) These unpaid receivables are money legitimately payable by clients to the corporate debtor. The liquidator can pursue collection of these dues, file suits for recovery if necessary, and once collected, use the amounts to repay the company's creditors as part of the liquidation process. Book debts and receivables of the corporate debtor form part of the liquidation estate [Section 36(3) of IBC].

(ii) The liquidator can sell or license these intellectual property rights to other pharmaceutical companies or investors, and the proceeds form part of the liquidation estate available for distribution to creditors. The liquidation estate shall comprise assets over which the corporate debtor has ownership rights including intangible assets, intellectual property [Section 36(3)(d) of IBC].

(iii) When the broker goes into liquidation, these collateral assets cannot be used for liquidation. Assets in security collateral held by financial services providers are subject to netting and set-off in multi-lateral trading or clearing transactions and hence these shall not be used for recovery in the liquidation [Section 36(4)(b) of IBC].

(iv) When the company goes into liquidation, the liquidator can sell all such plant and machinery owned by the corporate debtor. The liquidation estate shall comprise all assets over which the corporate debtor has ownership rights, including assets that may or may not be in possession of the corporate debtor [Section 36(3) of IBC].

(v) When the company goes into liquidation, the liquidator cannot attach or sell Mr. Sharma's personal apartment or car registered in his name and purchased from his personal savings, to recover the company's debts as they are not owned by the corporate debtor unless it is proven that those assets were transferred to him through a fraudulent avoidance transaction. The liquidation estate comprises assets over which the corporate debtor has ownership rights [Section 36(3) of IBC].

(vi) Since these are investments owned directly by the corporate debtor the liquidator can liquidate these investments and shareholdings being financial assets and use the proceeds towards repayment of the company's outstanding debts. Financial assets, including shares and financial instruments owned by the corporate debtor, form part of the liquidation estate [Section 36(3)(d) of IBC].

(vii) The logistic firm has only usage rights of trucks taken on long-term lease. The liquidator cannot sell those trucks to recover dues, as ownership lies with the vehicle renting company. Assets owned by a third party and in possession of the corporate debtor under contractual arrangements cannot be used for recovery in the liquidation [Section 36(4) of IBC].

(viii) Since the shares in XYZ Pvt. Ltd. and Global Tech Inc. are owned by the corporate debtor, they constitute financial assets and form part of the liquidation estate and may be realized by the liquidator for distribution among stakeholders. Financial assets, including shares and financial instruments owned by the corporate debtor, form part of the liquidation estate [Section 36(3)(d) of IBC]. However, the underlying assets of these subsidiaries cannot be included in liquidation, as the same is excluded being assets of separate legal entities [Section 36(4)(d) of IBC].

(ix) ₹ 40 lakhs receivables by the construction company from cement supplier can be used in liquidation subject to set off against ₹1 crore owes by the construction company to same cement supplier. Regulation 29 of IBBI (Liquidation Process) Regulations, 2016 provides that where there are mutual dealings between the corporate debtor and another party, the sums due from one party shall be set off against the sums due from the other to arrive at the net amount payable to the corporate debtor or to the other party.

(x) Since the title of the property vests in the corporate debtor, it forms part of the liquidation estate and is fully available for recovery. The liquidation estate shall comprise assets over which the corporate debtor has ownership rights, including assets that may or may not be in possession of the corporate debtor [Section 36(3) of IBC].

Answer 3(b)

Section 201(5) of the IBC provides that the Board may, by order, suspend or cancel the certificate of registration granted to an insolvency professional agency on any of the following grounds, namely:

(a) that it has obtained registration by making a false statement or misrepresentation or by any other unlawful means;

(b) that it has failed to comply with the requirements of the regulations made by the Board or bye-laws made by the insolvency professional agency;

(c) that it has contravened any of the provisions of the Act or the rules or the regulations made thereunder;

(d) on any other ground as may be specified by regulations

No order shall be made under Section 201(5) unless the insolvency professional agency concerned has been given a reasonable opportunity of being heard and no such order shall be passed by any member except whole-time members of the Board.

Answer 3(c)

The Adjudicating Authority is empowered to take effective measures to ensure compliance with the provisions of the Code. Its powers are not restricted to issuing directions alone. In *Vikram Puri (Suspended Directors) & Anr. v. Universal Buildwell Private Limited & Anr.,* the NCLAT held that:

- The Adjudicating Authority can issue non-bailable warrants against persons who fail to comply with its directions.
- It may also recommend initiation of prosecution proceedings against the suspended directors of the Corporate Debtor.

It can impose penalty under various provisions of the Code like under Section 65 of IBC if, any person initiates the insolvency resolution process or liquidation/ voluntary liquidation proceedings or pre-packaged insolvency resolution process fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty from one lakh to one crore rupees Other provisions where punitive powers can be exercised by the Adjudicating Authority are:

- Chapter VII of Part II (Sections 68–77A) – Offences and penalties relating to corporate insolvency.
- Chapter VII of Part III (Sections 184–187) – Offences and penalties relating to individual insolvency and bankruptcy.

Answer 3(d)

IBC has not explicitly defined the term “Control”. Pursuant to section 3(37) of IBC, it will have same meaning as defined in Section 2(27) of the Companies Act, 2013 as under:

"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;

Answer 3(e)

The Bankruptcy Trustee shall require prior approval of the Committee of Creditors in respect of the following acts in terms of Section 153 of the IBC:

(a) carry on any business of the bankrupt as far as may be necessary for winding it up beneficially.

(b) bring, institute or defend any legal action or proceedings relating to the property comprised in the estate of the bankrupt.

(c) accept as consideration for the sale of any property a sum of money due at a future time subject to certain stipulations such as security.

(d) mortgage or pledge any property for the purpose of raising money for the payment of the debts of the bankrupt.

(e) Where any right, option or other power forms part of the estate of the bankrupt, make payments or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of such right, option or power.

(f) refer to arbitration or compromise on such terms as may be agreed, any debts subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

(g) make compromise or other arrangement as may be considered expedient, with the creditors.

(h) make compromise or other arrangement as he may deem expedient with respect to any claim arising out of or incidental to the bankrupt's estate.

(i) appoint the bankrupt to supervise the management of the estate of the bankrupt or any part of it, carry on his business for the benefit of his creditors and to assist the Bankruptcy Trustee in administering the estate of the bankrupt.

Answer 3(f)

Actions to Avoid Acts Detrimental to Creditors (Article 23 of UNCITRAL Model Law on Cross-Border Insolvency)

Under many national laws both individual creditors and insolvency administrators have a right to bring action to avoid or otherwise render ineffective acts detrimental to creditors. Such a right, in so far as it pertains to individual creditors, is often not governed by insolvency law but by general provisions of law (such as the civil code); the right is not necessarily tied to the existence of an insolvency proceeding against the debtor to that the action may be instituted prior to the commencement of such a proceeding the person having such a right is typically only an affected creditor and not another person such as the insolvency administrator. Furthermore, the conditions for these individual-creditor actions are different from the conditions applicable to similar actions that might be initiated by an insolvency administrator.

The procedural standing conferred by Article 23 extends only to actions that are available to the local insolvency administrator in the context of an insolvency proceeding, and the article does not equate the foreign representative with individual creditors who may have similar rights under different set of conditions. Such actions of individual creditors fall outside the scope of Article 23.

The Model law expressly provides that a foreign representative has “Standing” to initiate actions to avoid or otherwise render ineffective legal acts detrimental to creditors. The provision is drafted narrowly in that it does not create any substantive right regarding such actions and also does not provide any solution involving conflict of laws. The effect of the provision is that a foreign representative is not prevented from initiating such actions by sole fact that the foreign representative is not the insolvency administrator appointed in the enacting State.

Question 4

(a) *PQR Manufacturing Limited, a company engaged in the production of industrial equipment, defaulted on its financial obligations and insolvency proceedings were initiated against it before the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016. A Resolution Professional was subsequently appointed to manage the affairs of the company and examine its financial records.*

While reviewing past transactions, the Resolution Professional discovered that approximately one year before the commencement of insolvency proceedings, the company had transferred a valuable warehouse property to another company closely connected with its promoters. The property, which had a significantly higher market value, was transferred for a consideration for below its estimated worth.

The Resolution Professional also observed that such transfer was not part of the ordinary course of business of the company and that the transaction had the effect of substantially reducing the asset base available to creditors during the insolvency process.

The transferee company, however, argued that the transaction was a valid commercial arrangement entered into with the consent of the management of the corporate debtor.

In light of these facts, examine whether the Resolution Professional can challenge such a transaction before the National Company Law Tribunal. Also explain the possible powers of the tribunal if it finds that the transaction was detrimental to the interests of the creditors.

(5 marks)

(b) *A public sector bank, acting as a financial creditor, filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against a corporate debtor due to default in repayment of financial debt.*

Along with the application, the bank proposed the name of Mr. Rajiv Sharma, a registered Insolvency Professional, to be appointed as the Interim Resolution Professional (IRP).

The corporate debtor objected to this proposal and contended that Mr. Sharma had earlier served as a senior employee of the same bank for nearly four decades before his retirement and continued to receive pensionary benefits from it. According to the debtor, such long association with the financial creditor could create a reasonable apprehension of bias, and therefore the IRP might not act independently while conducting the insolvency resolution process.

The financial creditor, however, argued that Mr. Rajiv Sharma was a duly registered Insolvency Professional under the Insolvency and Bankruptcy Code and that mere past *employment with the creditor cannot automatically disqualify him from being appointed as IRP.*

Assuming that the adjudicating authority accepted the objection and directed substitution of the proposed IRP, and the matter subsequently travelled in appeal up to the National Company Law Appellate Tribunal and later to the Supreme Court of India, analyse how the issue regarding independence and eligibility of the Interim Resolution Professional would be decided at each stage of the proceedings.

(8 marks)

(c) Omega Infotech Private Limited, a corporate debtor, filed an application under Section 10 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of the Corporate Insolvency Resolution Process (CIRP). The company submitted all required documents, including financial statements and evidence of default.

However, certain creditors opposed the application, alleging that:

- *Investigations were pending against the promoters for financial irregularities.*
- *There were allegations of fraud and mismanagement, and*
- *The application was filed to escape liability.*

The Adjudicating Authority, taking note of these allegations, refused to admit the application, stating that the conduct of the promoters and pending investigations made the case unsuitable for initiation of CIRP.

Omega Infotech Private Limited challenged this decision before the appellate authority, arguing that the application met all statutory requirements and that such external factors should not influence admission under the Code. Examine the case study and provide your expert view and quote the relevant case laws in support of your answer.

(6 marks)

(d) ''A resolution application may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum. The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan.''

Explain the important requirements of the 'Resolution Plan' that are submitted by the Prospective Resolution Applicants.

(6 marks)

Answer 4(a)

Yes, the resolution professional can challenge such a transaction before the NCLT as an undervalued transaction under Sections 45 to 49 of IBC. From the given case, it can be understood that the transfer of warehouse property to a promoter connected entity at a price substantially lower than its market value was made to divert the assets from corporate debtor prior to insolvency.

Section 45(1) of the IBC provides that if the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction.

Section 45(2) of the IBC provides that a transaction shall be considered undervalued where the corporate debtor (a) makes a gift to a person; or (b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor.

As specified in Section 46 of the IBC, in an application to NCLT for avoiding undervalue transaction, the resolution professional, shall demonstrate that –

(i) such transaction was made with any person within the period of one year preceding the insolvency commencement date; or

(ii) such transaction was made with a related party within the period of two years preceding the insolvency commencement date;

Since the transferee is a promoter-connected entity (related party), the Resolution Professional can challenge the transaction if it was entered into within two years prior to the insolvency commencement date.

The Adjudicating Authority may require an independent expert to assess evidence relating to the value of the said transactions. Section 48 of IBC empowers the adjudicating authority to issue order in case of undervalued transactions as under-

(a) require any property transferred as part of the transaction, to be vested in the corporate debtor;

(b) release or discharge (in whole or in part) any security interest granted by the corporate debtor;

(c) require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional as the case may be, as the Adjudicating Authority may direct; or

(d) require the payment of such consideration for the transaction as may be determined by an independent expert.

Section 49 of the IBC further provides where the corporate debtor has entered into an undervalued transaction as referred to in section 45(2) and the Adjudicating Authority is satisfied that such transaction was deliberately entered into by such corporate debtor for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or in order to adversely affect the interests of such a person in relation to the claim, the Adjudicating Authority shall make an order-

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions:

However, an order under this section –

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

Answer 4(b)

The issue in the present problem relates to the independence and eligibility of an Interim Resolution Professional (IRP) when the proposed professional had previously been employed by the financial creditor. A similar issue arose in the case of *State Bank of India v. Metenere Limited.,* where the courts examined whether past employment with a creditor creates bias or conflict of interest for an Insolvency Professional.

(i) Decision of NCLT

When the application for initiation of CIRP was filed before the National Company Law Tribunal, the corporate debtor objected to the appointment of the proposed IRP on the ground that he had earlier served as a senior employee of the same bank for many years. The tribunal considered that the IRP plays a crucial and neutral role in the insolvency process. The IRP is required to take control of the corporate debtor's management, verify claims, and conduct the process in a fair and impartial manner. Therefore, the authority emphasized that the professional must not only be independent but must also appear to be independent.

Since the proposed IRP had a long association with the financial creditor and continued to receive pensionary benefits, the tribunal held that there could be a reasonable apprehension of bias. To maintain confidence in the insolvency process, the tribunal directed the financial creditor to propose another independent Insolvency Professional.

(ii) Decision of NCLAT

The order of the tribunal was challenged before the National Company Law Appellate Tribunal. The appellate tribunal upheld the decision of the NCLT. It agreed that the IRP functions as an independent facilitator of the insolvency process, and therefore even the possibility of bias should be avoided. Accordingly, the appellate tribunal affirmed the direction to substitute the IRP to ensure fairness and transparency in the Corporate Insolvency Resolution Process.

(iii) Decision of the Supreme Court

The matter was further appealed before the Supreme Court of India. The Supreme Court observed that under the Insolvency and Bankruptcy Code, there is no statutory provision which automatically disqualifies a person from acting as IRP merely because he was previously employed by the financial creditor. Past employment by itself cannot be treated as a legal ground for disqualification.

However, during the proceedings both parties agreed that another Insolvency Professional could be appointed so that the insolvency process could proceed without controversy.

In view of this consensus, the Supreme Court allowed the substitution of the IRP, while clarifying that mere past employment with a creditor does not automatically establish bias or ineligibility.

Thus, the present situation closely resembles with the above highlighting the importance of independence of Insolvency Professionals as well as established that Past employment by itself cannot be treated as a legal ground for disqualification.

Answer 4(c)

This case is similar to *M/s Unigreen Global Private Limited Vs. Punjab National Bank and other*s, where a corporate debtor filed an application under section 10 of the Code for initiation of CIRP on the ground that it had failed to pay debt due to financial creditors and other creditors. Bank alleged suppression of facts on the ground that the corporate debtor had not disclosed full facts and had not furnished full particulars in relation to assets mortgaged or securities furnished to the financial creditors. Therefore, Adjudicating Authority rejected the application and imposed penalty on the corporate debtor. Corporate debtor filed an appeal with NCLAT against the order.

NCLAT held that section 10 of the Code does not empower the Adjudicating Authority to go beyond the records as prescribed under section 10 and the information as required to be submitted by a corporate debtor in Form 6 of the NCLT Rules, 2016 subject to ineligibility, if any, as prescribed under section 11 of the Code. Section 11 of the Code prescribes conditions which make an applicant ineligible /disqualified to make an application under the code to initiate corporate insolvency resolution process. As per the judgment of NCLAT an applicant does not require to disclose or plead any fact which is unrelated or beyond the requirements of the Code or forms prescribed under the NCLT Rules,2016 and thus non-disclosure of such facts cannot be termed as suppression of facts by a corporate debtor.

As per Unigreen Global case, allegations of fraud or pending investigations cannot be grounds for rejection if statutory requirements are met. Hence, in the given case if the statutory requirements under the IBC are met and the application is complete, the adjudicating authority should admit the case.

Answer 4(d)

Section 30 (2) of IBC provides that the resolution professional shall examine each resolution plan received by him to confirm that each resolution plan-

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-

  (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

  (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(d) 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) confirms to such other requirements as may be specified by the Board.

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Motto

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