

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

Syllabus 2017

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MODULE 3



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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

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

CS Examinations

December Session

June Session

Applicability of Amendments to Laws

upto 31 May of that Calendar year

upto 30 November of previous Calendar Year

CONTENTS

MODULE 3

	<i>Page No.</i>
7. Corporate Funding & Listing in Stock Exchanges	1
8. Multidisciplinary Case Studies	21
9.1 Banking - Law & Practice (Elective Paper 9.1)	42
9.2 Insurance - Law & Practice (Elective Paper 9.2)	59
9.3 Intellectual Property Rights - Laws and Practices (Elective Paper 9.3)	73
9.4 Labour Laws & Practice (Elective Paper 9.4)	87
9.5 Insolvency - Law and Practice (Elective Paper 9.5)	104

CORPORATE FUNDING & LISTINGS IN STOCK EXCHANGES

MODULE 3 PAPER 7

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Part- A

Question 1

- (a) PAKS Ltd., a listed company was incorporated in 2015. The company is booming and favouring the younger generation to work. The Capital Structure of the company as on March 31, 2025 is as follows :

Particulars	₹ (Crore)
Authorised Share Capital 2,00,00,000 Equity Shares of ₹ 10 each	20.00
Issued, Subscribed and Paid-up Share Capital 100,00,000 Equity Shares of ₹ 10 each	10.00
Securities Premium	2.00
General Reserve	7.04
Profit & Loss Account	3.16

In the Board Meeting, an agenda for formulation of policy for Sweat Equity Shares has been discussed. As an Independent director of the company, Mr. Puru objected on a clause, which made him ineligible for availing Sweat Equity Shares. He also suggested that either the company should go for Employee Stock Option Scheme or sweat equity shares can be issued in the form of preferential issue.

The company decided to issue 30% sweat equity shares to eligible employee to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a special resolution was passed in the General meeting of the company. The Resolution specifies that 30 lakh sweat equity shares, Current Market price ₹ 50 per share with a consideration of ₹ 10 per share to be issued to eligible employee.

As a Company Secretary, advice on the issuance of sweat equity shares in accordance with the provisions of the Companies Act, 2013, and the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.

- Is the issuance of sweat equity shares at a discount appropriate ?
- Is the size of the sweat equity share issue appropriate, and is the lock-in period justifiable ?
- Is Puru eligible to receive sweat equity shares ?
- Is Puru eligible for the Employee Stock Option Scheme ?
- Can sweat equity shares be issued through a preferential issue, as suggested by Puru ?

(5 marks)

- (b) Factor Limited is a trading company. Its annual turnover is ₹ 6,000 lakh out of which ₹ 4,200 lakh is on credit. Its average collection period is 90 days and presently its receivable collection cost is ₹ 60 lakh p.a. The company needs immediate funds to finance its growth projects and it has an option to take short-term loans at interest rate of 15% p.a. Recently, one of the factoring companies visited the Chief Executive of Factor Limited and offered him to provide the factoring services on recourse basis. As per terms of factoring arrangement, factoring company will provide for an advance payment of 85% of the value of factored receivable, maintaining factor reserve of 15%. The advance will carry a rate of interest of 12% per annum. In addition to interest, factoring company will charge factoring commission @ 2.5% of the value of factored receivables. Both the interest and commission shall be collected by factoring company on upfront basis.

As the Company Secretary of Factor Limited, you have been requested to prepare a report that calculates the net annual cost of funding through the factoring of receivables, assuming 360 days in a year.

- (c) XYZ Ltd., a mid-sized corporation, frequently raises funds through corporate bond issuances. While these bonds provide a stable investment avenue, investors often face liquidity concerns, especially in times of market volatility. To enhance investor participation and ensure greater transparency in the corporate bond market, SEBI has introduced a Liquidity Window facility through the Stock Exchange mechanism.

What are the key features and conditions governing the Liquidity Window facility introduced by SEBI to enhance liquidity in the corporate bond market ?

(5 marks)

Answer 1(a)

- (i) SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 states that the price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Since, PAKS Ltd. is a listed company, issuing sweat equity shares at a discount is not appropriate in terms of Pricing of frequently traded shares given for preferential issue in SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

- (ii) Regulation 31 of SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 provides that a company shall not issue sweat equity shares exceeding 15% of existing paid-up equity share capital in a year or shall not exceed 25% of the paid-up equity share capital at any time. The proposed 30% issuance by a public company to a class of directors and employees exceeded the prescribed limit and therefore size of the sweat equity share issue is not appropriate.

As per law, lock-in period will be of 18 months from the date of allotment. Here, it states five years which is not justifiable.

- (iii) According to the provisions pertaining to Sweat Equity Shares under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, term 'employee' means,

- An employee of the company working in India or abroad; or
- A director of the company whether a whole-time director or not.

In the given question, Puru is an independent director on the Board, he is eligible under scheme for Sweat Equity shares. However, issuing such shares beyond a threshold may compromise the Independence of Mr. Puru.

- (iv) As per SEBI (Share Based Employee Benefits and Sweat Equity) Regulations 2021, "Employee", except in relation to issue of sweat equity shares, inter-alia includes a director of the company, whether a whole-time director or not, including a non-executive director who is not a promoter or member of the promoter group, but excluding an independent director

In view of above, Puru will not be eligible under scheme for the Employees Stock Option Scheme.

- (v) Issue of Sweat Equity Shares is not a 'preferential issue'. As per regulation 2(1)(nn) of SEBI (ICDR) Regulations, 2018 which gives the meaning of a preferential issue excludes an issue of sweat equity shares there from, which means issue of sweat equity shares is not a preferential issue within the meaning of preferential issue. Further, Rule 8 (13) of the Companies (Share Capital and Debentures) Rules, 2014, clearly excludes issue of sweat equity shares from the definition of preferential offer.

Hence, sweat equity shares cannot be issued through a preferential issue as suggested by Puru.

Answer 1(b)

Net Annual Cost of Funding through the Factoring of receivables

Particulars	₹ In Lakh
Average level of Receivables= ₹ 4200 lakh x 90/360	1050.00
Less: Factoring commission= ₹ 1050 lakh x 2.5%	26.25
Less: Factoring reserve (15%) = ₹ 1050 lakh x 15/100	157.50
Net Amount available for advance	866.25
Less: Interest on advance @ 12% = ₹ 866.25 Lakhs x 12 x 90 / 100 x 360	25.99
Amount of advance received from the factoring company after deducting commission and interest	840.26
Total cost of factoring for 90 days = ₹ 26.25 Lakhs + ₹ 25.99 Lakhs	52.24
Annual Cost of factoring = ₹ 52.24 x 360/90	208.96
Less: saving in cost of receivable collection cost	60.00
Net Cost of factoring of receivables on annual basis	148.96

Answer 1(c)

Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism

SEBI has introduced Liquidity Window facility for investors in debt securities through Stock which allows investors holding listed debt securities to sell them back to the issuer using a put option on specific dates, ensuring liquidity. It is felt that establishing a framework of providing a Liquidity Window facility by the issuers through use of put options exercisable on pre-specified dates or intervals will provide uniform norms for such issuer(s) to consider Liquidity Window facility in the

manner specified. The provisions of this circular has become applicable on and from November 01, 2024.

The circular inter-alia covers the following features and the conditions governing the Liquidity Window facility:

1. **Issuer Discretion and Prospective Applicability:** The Liquidity Window can only be provided at the discretion of the Issuer. Further, this option is only available for prospective issuances either by way of public issue or private placement.
2. **Eligible securities:** All listed debt securities governed by the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 are eligible for the Liquidity Window Facility.
3. **Prior approval of the Board of Directors** of the issuer is required to provide the Liquidity Window.
4. **Stakeholders Relationship Committee (SRC):** For entities which have listed their specified securities, the implementation and outcome of the Liquidity Window shall be monitored by the SRC. However, for entities which only have listed debt securities (for whom constitution of SRC is not mandatory), the monitoring of the implementation and outcome of the Liquidity Window shall be under the aegis of the board of directors, or such board-level committee as determined by the board of directors.
5. **Eligible Investors:** The issuers have the option to specify the classes of investors for whom the Liquidity Window shall be provided.
6. **Minimum Holding Period:** The Liquidity Window can only be offered to investors after the expiry of one year from the date of issuance of the debt securities.
7. **Period of Liquidity Window:** The issuers offering the Liquidity Window shall keep it open for a minimum of three working days. The Liquidity Window facility can be provided on a monthly or quarterly basis, but the schedule of such facility shall be provided upfront in the offer documents.
8. **Reporting and Disclosure Requirements:** After closure of a Liquidity Window, the issuer is required to submit a report to the stock exchanges on which such debt securities are listed. However, the form and manner of such disclosures are yet to be specified by the stock exchanges in consultation with SEBI.

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

Question 2

- (a) UrbanInfra InvIT, a listed Infrastructure Investment Trust (InvIT), had issued subordinate units to its sponsor during the initial offer to ensure alignment of interests. After five years of successful operations and achieving stable cash flows, the sponsor proposes to re-classify these subordinate units into ordinary units.

As a Company Secretary, outline the process that UrbanInfra InvIT must follow for the re-classification of subordinate units in accordance with the SEBI (Infrastructure Investment Trusts) (Amendment) Regulations, 2024.

(5 marks)

- (b) ABC Realty, a real estate investment firm, is preparing to launch an initial offer of units under a newly established Real Estate Investment Trust (REIT) in India. To ensure regulatory compliance, the firm's legal team is examining the latest Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024, particularly Chapter VIB, which outlines the framework for Small and Medium Real Estate Investment Trusts (SM REITs).

During their review, it was discovered that SM REITs are not permitted to make an initial offer of units under a scheme.

As a Company Secretary, advise on the eligibility conditions for making an initial offer of units by SM REITs in accordance with Chapter VIB of the Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2024.

(5 marks)

- (c) Explain the applicability and compliance requirements for investments from countries sharing land borders with India through Alternative Investment Funds (AIFs) as per the SEBI Circular dated October 08, 2024 ?

(5 marks)

Answer 2(a)

UrbanInfra InvIT must adhere to the following process for re-classifying subordinate units in accordance with the SEBI (Infrastructure Investment Trusts) Regulations, 2014:

- (1) The status of achievement of performance benchmark shall be certified by the statutory auditor of the InvIT for reclassification of subordinate units to ordinary units and shall be reviewed by the trustee and the audit committee of the investment manager.
- (2) If the performance benchmark is achieved at the end of the entitlement date, including extended period, if any; the subordinate units shall be reclassified into equal number of ordinary units on a *pari passu* basis in accordance with the terms and conditions of subordinate units mentioned in the Term Sheet.

Explanation 1 - The reclassification can happen for all subordinate units either together or on a piecemeal basis in accordance with the terms and conditions and on the achievement of performance benchmarks as disclosed in the Term Sheet.

Explanation 2 - The subordinate units may be reclassified into ordinary units, in part or in full in accordance with the terms and conditions and on the achievement of performance benchmarks as disclosed in the Term Sheet.

- (3) If the performance benchmark is not achieved at the end of the entitlement date, including extended period, if any, the subordinate units shall be extinguished without any payment to the holder of subordinate units.
- (4) The board of directors of the investment manager shall consider reclassification of subordinate units into ordinary units or extinguishment of the subordinate units depending on the achievement of the performance benchmark and pass a resolution making the necessary recommendation to this effect to the trustee.
- (5) The recommendation for reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units, as the case may be, shall be considered by the trustee and after ensuring compliance with the provisions of these regulations, the trustee may approve reclassification of the subordinate units into ordinary units or extinguishment of the subordinate units, as the case may be, and intimate the same to the investment manager.
- (6) Pursuant to the approval of the trustee, the investment manager shall make the necessary intimation to the recognised stock exchange, depositories and the Registrar and Transfer Agent.
- (7) The investment manager shall ensure that the record date is disclosed as part of the intimation

made under this regulation, at least two working days prior to the record date, excluding the date of intimation and the record date.

Explanation – For the purpose of this chapter, record date shall mean the date from when subordinate units shall be reclassified as ordinary units.

- (8) The subordinate units upon being reclassified as ordinary units shall be listed on the recognised stock exchange(s) upon receipt of final listing and trading approval from such stock exchange(s).

Answer 2(b)

The eligible issuers for making an initial offer of units by SM REITs in accordance with Chapter VIB of the SEBI (Real Estate Investment Trusts) Regulations, 2024 are as under:

- a) the SM REIT or the parties to the SM REIT are debarred from accessing the securities market or dealing in securities by the SEBI;
- b) any of the promoters, promoter group or directors of the parties to the SM REIT are debarred from accessing the securities market or dealing in securities by the SEBI;
- c) any of the promoters or directors of the parties to the SM REIT is a promoter or director of another company which is debarred from accessing the securities market by the SEBI; (This is not applicable to a person who was appointed as a director only by virtue of nomination by a debenture trustee in other company.)
- d) the SM REIT or the parties to the SM REIT or any of the promoters or directors of the parties to the SM REIT are wilful defaulters;
- e) any of the promoters or whole-time directors of the parties to the SM REIT is a promoter or whole-time director of another company which is a wilful defaulter;
- f) any of the promoters or directors of the parties to the SM REIT is a fugitive economic offender; or
- g) any fine or penalties levied by the SEBI or stock exchanges is pending to be paid by the SM REIT at the time of filing the scheme offer document.

However, the clauses (a), (b) and (c) shall not be applicable if the period of debarment is over as on the date of filing of the scheme offer document with the SEBI and the designated stock exchange.

Further, no offer of units by a scheme of the SM REIT shall be made unless,–

- a) the size of the asset proposed to be acquired in a scheme of the SM REIT is at least rupees fifty crores and less than rupees five hundred crores; and
- b) the minimum number of unitholders of the scheme of the SM REIT other than the investment manager, its related parties and associates of the SM REIT are not less than two hundred investors: This shall not be applicable to the migration of existing persons, entities or structures as on the date of this chapter coming into force which are included as part of the migration plan in case the applicant is applying for a certificate of registration.

Answer 2(c)

To ascertain whether investors from countries sharing land border with India are investing in Indian companies through AIFs, the following is specified –

Applicability: For every scheme of AIFs where 50 % or more of the corpus of the scheme is contributed by investors –

- i) who are citizens of/are from/are situated in a country which shares land border with India, or,
- ii) whose beneficial owners, as determined in terms of sub-rule (3) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, are citizens of/are from/are situated in a country which shares land border with India.

Compliance:

- (i) Necessary due diligence as per the implementation standards formulated by Standard Setting Forum for AIFs (SFA), shall be carried out prior to making any investment.
- (ii) Upon carrying out the necessary due diligence, such scheme shall report details of its investment, which would result in the scheme holding 10 percent or more of equity/equity-linked securities issued by an investee company (on a fully-diluted basis), to its custodian within 30 days of investment, in the format as may be specified by SFA. Custodians shall compile such information received from AIFs on a monthly basis and report to SEBI within 10 working days from the end of the month.

For schemes of AIFs covered above, shall also report to their custodians on or before April 07, 2025 in the format specified by SFA, details of their existing investments where the scheme holds 10% or more of equity/equity-linked securities issued by an investee company (on a fully-diluted basis). The custodians shall compile and share the information with SEBI on or before May 07, 2025.

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

- (i) From the following information, calculate working capital cycle of Navin Motors. Also, work out number of operating cycles in a year for the company :

Raw materials consumed during the year = ₹ 48,00,000

Average stock of raw material = ₹ 4,00,000

Average cost of production = ₹ 40,00,000

Average work in progress inventory = ₹ 2,40,000

Cost of goods sold during the year = ₹ 64,00,000

Average finished goods stock held = ₹ 3,20,000

Average collection period from debtors = 45 days

Average credit period allowed = 30 days

One year may be taken as 360 days.

- (ii) Sunrise Ltd. issued bonds with following terms :

- Issue price per bond ₹ 1,000
- Coupon rate 2% and maturity period 2 years
- The investor will have option to convert the bonds into equity shares at ₹ 100 per share on maturity date, or alternatively claim full redemption.
- The market price per share on maturity date is ₹ 250.

Mr. Sharma who subscribed 10 bonds desires to convert into equity :

- (a) How many shares will he get on maturity date ?

- (b) What will be the position, if he opts for redemption ?
 (c) Which option will be more beneficial to him ? Why ?

(5 marks)

- (iii) Neel Ltd. proposes to make a public issue of 800 crore equity shares of ₹ 10 each through book building mechanism, where 50% of the issue size is required to be allotted to Qualified Institutional Buyers.

Determine :

- (a) The number of shares available for allocation to anchor investors;
 (b) Quantum of shares reserved for domestic mutual funds in the anchor investor portion;
 (c) The amount, if any, to be brought in by anchor investors, if the price at which allocation is made to anchor investors is ₹ 435 per share and the price in the book building process is ₹ 440 per share.

(5 marks)

Answer 2A(i)**Calculation of working capital cycle**

$$\text{Raw material storage period (RM)} = \frac{\text{Average stock of RM}}{\text{Average cost of RM consumption}} \times 360$$

$$= \frac{\text{₹ 400000}}{\text{₹ 4800000}} \times 360 = 30 \text{ days}$$

$$\text{WIP holding period (WIP)} = \frac{\text{Average WIP}}{\text{Average cost of Production}} \times 360$$

$$= \frac{\text{₹ 240000}}{\text{₹ 4000000}} \times 360 = 21.6 \text{ days, say } 22 \text{ days}$$

$$\text{Finished goods holding period (F)} = \frac{\text{Average stock of finished goods}}{\text{Average cost of goods sold}} \times 360$$

$$\frac{\text{₹ 320000}}{\text{₹ 6400000}} \times 360 = 18 \text{ days}$$

$$\text{Debtors' collection period (D)} = 45 \text{ days (given)}$$

$$\text{Credit period enjoyed (C)} = 30 \text{ days (given)}$$

$$\text{Hence working capital cycle (Net)} = \text{RM} + \text{WIP} + \text{F} + \text{D} - \text{C}$$

$$= 30 + 22 + 18 + 45 - 30 = 85 \text{ Days}$$

$$\text{Number of Operating Cycles in a year} = 360 / 85 \text{ days} = 4.23 = 4 \text{ nos. (Approx.)}$$

Answer 2A(ii)

- (a) Issue price per bond is ₹ 1000 and 10 bonds were subscribed. Total investment ₹10000
 Coupon rate 2%

Maturity date 2 years

Option I: Conversion of Bonds into shares

Interest earned $10000 \times 2\% \times 2 \text{ years} = ₹ 400$

Total amount received if redeemed $= ₹ 10000 + ₹ 400 = ₹ 10400$

Number of Equity Shares Mr. Sharma will get @ ₹100 per shares at Maturity
 $= ₹ 10400 / ₹100 = 104 \text{ equity shares}$

(b) Option II: Redemption

Interest earned $= 10000 \times 2\% \times 2 \text{ years} = ₹ 400$

Total amount earned if redeemed $= ₹ 10000 + ₹ 400 = ₹ 10400$

- (c) Therefore, if market price of equity shares is ₹ 250 per share, he will get an amount of ₹ 26000 (104 shares $\times$ ₹ 250 per share) in Option I; is higher than ₹ 10400 which he is getting in option II. So, conversion option is better than redemption as he would get higher amount.

Answer 2A(iii)

a) Computation of quantum of shares available for allocation to Anchor Investors

Up to 60% of the portion available for allocation to qualified institutional buyers shall be available for allocation/allotment to the anchor investor(s).

Issue size 800 crore equity shares of Neel Ltd.

Portion available to QIBs = 50% of total issue size i.e 400 crore equity shares

Anchor Investor portion up to 60% of portion available to QIBs, i.e 240 crore equity shares

b) Quantum of Shares reserved for domestic Mutual Funds in the portion of Anchor Investors

One-third of the anchor investor portion shall be reserved for domestic mutual funds. One third of Anchor Investor portion, i.e $1/3 \times 240$ crore equity shares = 80 crore equity shares

c) Computation of amount required to be brought in by Anchor Investors, when Book building price is ₹ 440 and Anchor Investor price is ₹ 435

If the price fixed as a result of book building is higher than the price at which the allocation is made to the anchor investors, the anchor investors shall pay the additional amount. Since the Book Building price is higher than Anchor Investor price, the Anchor investor has to bring the additional amount of ₹ 5 per share. That is, the Anchor Investors have to pay Rs.440 per share.

Question 3

- (a) What is Social Stock Exchange ? How does it differ from other Stock Exchanges ? Who is a Social Impact Assessor and Social Impact Assessment Firm ? State the recent amendments made by SEBI in this regard.

(5 marks)

- (b) As of 31st March 2025, the balance sheet of Supreme Limited shows the following :

Particulars	Amount (₹ in crore)
Paid up capital	30
Reserves & Surplus	40

Debenture Redemption Reserve	20
Capital Reserve	10

The company made loans/stood guarantor for loans to the other companies as below :

Loan to DEF Ltd.	₹ 15 crore
Guarantee given on behalf of GHK Ltd	₹ 15 crore

LKP Limited approached Supreme Limited for a loan of an amount of ₹ 20 crore. Assuming that the above companies are not inter-related, advise the management of Supreme Limited as to whether the company can give a loan of ₹ 20 crore to LKP Limited.

(5 marks)

(c) On the basis of the following information, calculate the limit for Letter of Credit (LC) for the financial year 2025-26 for Kansara (India) Ltd., Kochi.

- Estimated raw materials (procured from Faridabad) to be purchased in 2025-26 = ₹ 180 crore
- Estimated purchase of raw materials under LC during the year = ₹ 60 crore
- Lead time = 10 days
- Transit period = 20 days
- Credit (usage) period available = 2 months.

(5 marks)

Answer 3(a)

Social Stock Exchange means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and / or list the securities issued by Not-for-Profit Organizations in accordance with Chapter X-A of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

A Social Stock Exchange differs from other stock exchanges in its purpose and objective. The aim of Social Stock Exchange is to raise capital for Social Enterprise and measure their social impact.

SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2023-Notification dated December 21, 2023 has made the following changes, which has come into force. SEBI vide this amendment substituted the words "Social Auditor" and "Social Audit Firm" with the words "Social Impact Assessor" and "Social Impact Assessment Firm" respectively which are defined here under: **[Regulation 292A(f) and 292(g)]**

- "Social Impact Assessor" means an individual registered with a self-regulatory organization under the Institute of Chartered Accountants of India or such other agency, as may be specified by the SEBI, who has qualified a certification program conducted by National Institute of Securities Market and holds a valid certificate;
- "Social Impact Assessment Firm" means any entity which has employed Social Impact Assessor(s) and has a track record of minimum three years for conducting social impact assessment;

Answer 3(b)

Paid up capital of Supreme Limited = ₹ 30 crores

Free Reserves of Supreme Limited = ₹ 40 crores

Securities premium of Supreme Limited = Nil

As per Section 186 of the Companies Act, 2013, no company shall directly or indirectly (a) give any loan to any person or other body corporate; (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more. Accordingly, the calculation of overall limit

(i) $(₹ 30 \text{ crore} + ₹ 40 \text{ crore}) \times 60\% = ₹ 42 \text{ crores}$

(ii) $₹ 40 \text{ crores} \times 100\% = ₹ 40 \text{ crores}$

Therefore, limit is ₹42 crores. Supreme Limited can give loan upto ₹ 42 crores

Loan and Investment already made:

Loan to DEF Ltd. = ₹ 15 crore

Guarantee given on behalf of GHK Ltd. = ₹ 15 crore
₹ 30 crore

Proposed loan of ₹ 20 crore to LKP Ltd

Since the investment/loan/guarantee already made or given ₹ 30 crore along with the proposed loan ₹ 20 crore exceeds the prescribed limit of ₹42 crore, the proposed loan can be given by taking prior approval by means of a special resolution passed at a general meeting under Section 186(3) of the Companies Act, 2013 and after complying with other requirements under Section 186 of the Companies Act, 2013.

Answer 3(c)

Total raw materials (procured from Faridabad) purchased during 2025-26 = ₹ 180 crore

Annual consumption of raw materials purchased under LC = ₹ 60 crore

Average monthly purchase of raw materials under LC = $60/12 = ₹ 5 \text{ crore}$

Lead time = 10 days

Transit time = 20 days

Credit (Usance) period available = 2 months

Total period = 10 days + 20 days + 2 months = 3 months (Assuming 30 days in a month)

Hence requirement of LC for the year = ₹ 5 crore x 3 months = ₹15 crore

Question 4

- (a) As per SEBI's Master Circular on the application process for public issues of securities, individual investors can use UPI as a payment mechanism when applying through intermediaries. What is the role of UPI in the public issue application process ?

(3 marks)

- (b) Explain the provisions governing the External Commercial Borrowing (ECB) facility available to Public Sector Oil Marketing Companies (OMCs).

(3 marks)

- (c) Enumerate the conditions under which banks can grant non-funded facilities, including partial credit enhancement to customers who are not availing fund-based facility from any bank in India.

(3 marks)

- (d) What are the conditions related to differential pricing in the public issue of specified securities under Regulations 30 and 128 of the SEBI (ICDR) Regulations, 2018 ?

(3 marks)

- (e) Securitisation is used by financial entities to raise funds through channels which are other than traditional. Give examples of assets that can be securitised.

(3 marks)

Answer 4(a)

In order to streamline and align the process of applying in the public issue of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments with that of public issue of equity shares and convertibles, it has been decided that all individual investors applying in public issues of such securities through intermediaries (viz. syndicate members, registered stock brokers, registrar to an issue and transfer agent and depository participants), where the application amount is upto ₹ 5 Lakh, shall only use UPI for the purpose of blocking of funds and provide his/ her bank account linked UPI ID in the bid-cum-application form submitted with intermediaries.

Further, individual investors shall continue to have the choice of availing other modes (viz. through SCSBs and Stock Exchange Platform) for making an application in the public issue.

These provisions are applicable to public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments opening w.e.f. November 01, 2024.

Answer 4(b)

ECB Facility for Oil Marketing Companies

Public Sector Oil Marketing Companies (OMCs) can raise ECB for working capital purposes with minimum average maturity period of 3 years from all recognized lenders under the automatic route without mandatory hedging and individual limit requirements. The overall ceiling for such ECBs shall be USD 10 billion or equivalent. However, OMCs should have a Board approved forex mark to market procedure and prudent risk management policy, for such ECBs. All other provisions under the ECB framework will be applicable to such ECBs.

Answer 4(c)

Banks can grant non-funded facilities including partial credit enhancement to customers, not availing fund-based facility from any bank in India under following conditions:

1. Banks are to ensure that the borrower has not availed any fund-based facility from any bank operating in India. At the time of granting non-funded facilities, bank to obtain declaration from the customer about the non-funded credit facilities already enjoyed by them from other banks.

2. Banks are to undertake similar credit appraisal as for fund-based facilities.
3. Credit information relating to such facility shall be mandatorily be furnished to the Credit Information Companies.

Answer 4(d)**Differential Pricing [Regulations 30 & 128 of SEBI (ICDR) Regulations, 2018]**

An issuer may offer specified securities at different prices, subject to the following:

- i. retail individual investors or retail individual shareholders or employees entitled for reservation made under regulation 33 & 130 of the ICDR Regulations, may be offered specified securities at a price not lower than by more than 10% of the price at which net offer is made to other categories of applicants, other than anchor investors;
- ii. in case of a book-built issue, the price of the specified securities offered to an anchor investor shall not be lower than the price offered to other applicants;
- iii. In case the issuer opts for the alternate method of book building as specified under ICDR Regulations, 2018, the issuer may offer specified securities to its employees at a price not lower by more than 10% of the floor price.
- iv. In case of FPO, an additional condition is that in case of a composite issue, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document.
- v. Discount, if any, shall be expressed in rupee terms in the offer document.

Answer 4(e)

Securitization is the transformation of financial assets into securities. Securitization is used by financial entities to raise funding other than what is available via the traditional methods of on-balance-sheet funding.

Few examples of assets that can be securitized are as under:

1. Mortgage loans- Residential and Commercial
2. Bank loans to businesses
3. Commercial debt
4. Educational/Student loans (Generally in US)
5. Credit-card debt
6. Automobile loans etc.

PART - B**Question 5**

- (a) Surya Pharma Ltd. is a listed company having 10 directors, 3 Executive Directors and promoters of the Company.

One of the executive directors, Mr. P is also the Chairman of the Company.

The company has 2 Non-Executive Women Directors who are related to Executive Directors and 5 Independent Directors.

Mr. A an Independent Director wants to resign from the Company due to personal reasons.

In the above context :

- (i) Is it mandatory for the Company to appoint another Independent Director ?
- (ii) Since Mr. A was also a member of Nomination and Remuneration Committee, can the Company appoint Mr. P in place of Mr. A in the Committee.

(5 marks)

- (b) What is Professional Securities Market (PSM) ? Highlight its key features, including the types of securities it supports, the advantages it provides to issuers, and how it differs from traditional retail or equity markets regarding listing and reporting requirements.

(5 marks)

- (c) SGX's Main Board listing requirements are benchmarked against international standards and are in line with best practices from developed jurisdictions. Explain.

(5 marks)

- (d) SEBI vide notification dated 25th January, 2024 extended timeline for verification of market rumours by listed entities.

How does this notification apply to listed entities ? What is SEBI's control on market rumours ?

(5 marks)

Answer 5(a)

As per Regulation 17 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, the Board of Directors is required to have an optimum combination of executive and non-executive directors with at least one-woman director and not less than fifty per cent of the Board of Directors shall comprise of non-executive directors.

Further, it requires that the Board of directors of the top 1000 listed entities shall have at least one independent woman director.

Furthermore, in case the Company does not have a regular non-executive chairperson, at least half of the board of directors shall comprise of independent directors.

Hence, in the given question Mr. P being the Chairman, who is also an Executive Director, the half of the board of directors shall comprise of independent directors. Thus, upon resignation of Mr. A, the constitution of the Board's will have less than half of Independent Directors. Hence, the company will have to appoint another Independent Director.

It is to be noted that in terms of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015, such vacancy shall be filled by listed entity at the earliest but not later than three months from the date of such vacancy.

Regulation 19 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 provides that all directors of the Nomination and Remuneration Committees shall be non-executive directors. However, the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee. Therefore, Mr. P being the executive chairperson may be appointed as a member of Nomination and Remuneration Committee; however Mr. P shall not chair the Committee.

Answer 5(b)

The Professional Securities Market (PSM) is an innovative, specialized market designed to suit the specific needs of issuers in London Stock Exchange. The key features of PSM market includes:

- a) It facilitates the raising of capital through the issue of specialist debt securities or depositary receipts (DRs) to professional investors.
- b) Companies wishing to raise capital may do so without the additional cost of following a retail or equity regime.
- c) As a listed, exchange-regulated market, the Professional Securities Market enables issuers to enjoy the benefits of a flexible and pragmatic approach to regulatory requirements.
- d) Issuers of debt or DRs are not required to report historical financial information to IFRS or an equivalent standard, either in listing documents or as a continuing obligation. Instead, issuers can use their domestic accounting standards.

Answer 5(c)

SGX is Asia's key risk management centre with a wide a range of innovative products and fast-to-market services. Singapore is one of the few Asian countries with an "AAA" rating. As a listing destination for global companies, SGX listing rules provide flexibility for companies with diverse backgrounds to source for public financing in Singapore. While SGX continues to attract more global companies, its listing standards and the quality of listed companies are never compromised.

Singapore operates a predominantly disclosure-based regime for capital markets.

SGX's Listing Rules augment the disclosure-based regime with high baseline admission standards and continuing requirements for issuers. A cornerstone of the regime is to require listed issuers to make timely disclosure of all material information to the marketplace.

SGX's regulatory team reviews listing applications to ensure that issuers meet the minimum requirements prescribed. In reviewing listing applications, SGX's regulatory team relies on due diligence carried out by issue managers and their representations to determine the applicant's suitability to list.

Offering a full suite of derivatives products across Asian equity indices, commodities and currencies, SGX is the world's most liquid international market for the benchmark equity indices of China, India, Japan and ASEAN.

Answer 5(d)

Extension of timeline for verification of market rumours by listed entities (SEBI circular dated January 25, 2024)

SEBI has a framework through surveillance mechanism to verify market rumours or event reported in the mainstream media on the performance of listed entities. This requires the listed company to confirm, deny or clarify, upon the material price movement as may be specified by the stock exchanges, any reported event or information in the mainstream media which is not general in nature and which indicates that rumour of an impending specific event or information is circulating amongst the investing public, as soon as reasonably possible but in any case not later than twenty four hours from the trigger of material price movement.. The purpose of this rule is to prevent investors from making decisions based on rumours.

The proviso to Regulation 30 (11) of the SEBI (LODR) Regulations 2015, *inter alia*, requires top 100 listed entities by market capitalisation and thereafter the top 250 listed entities by market capitalisation to mandatorily verify and confirm, deny or clarify market rumours from the date as may be specified by SEBI.

SEBI vide its circular dated September 30, 2023 has made the said provision applicable to top 100 listed entities by market capitalisation from February 1, 2024 and to top 250 listed entities by market capitalisation from August 1, 2024.

SEBI has extended this timeline for effective date of implementation of the proviso to regulation 30 (11) of the SEBI (LODR) Regulations for top 100 listed entities by market capitalisation, to June 1, 2024 and for top 250 listed entities by market capitalisation, to December 1, 2024.

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

Question 6

- (a) You are the Company Secretary of M/s Horizons Limited, a public unlisted company undergoing high growth phase and seeking funds for expansion. The company is considering a public issue of shares to raise capital. The Managing Director of M/s Horizons Ltd. has asked you to list the material contracts required for the public issue. In view of the above, mention the key contracts necessary for proceeding with the public issue.

(5 marks)

- (b) List out the documents to be submitted to stock exchanges before T + 5 days of closure of a public issue.

(5 marks)

- (c) Road show is an important phase during the preparation for an IPO. What are road shows ? How is it relevant during an IPO ?

(5 marks)

- (d) Bright Future Infra Ltd. has secured credit facilities from banks, financial institutions, and issued bonds. One of the conditions of the bond issuance required obtaining a credit rating from any two credit rating agencies. However, the company has refused to cooperate with the credit rating agencies and has not provided the necessary information for rating the credit facilities. Explain this situation in light of SEBI's guidelines on "Norms for rating agencies regarding non-cooperative firms".

(5 marks)

Answer 6(a)

Material Contracts Documents which would be required for the public issue for raising capital:

- (i) Offer/Issue Agreement between Company, the Merchant Banker and Selling Shareholders (if any).
- (ii) Memorandum of Understanding or Agreement between Company and the Registrar to the Issue.
- (iii) Bankers to the Issue Agreement between Company, Merchant Banker and the Banker to the Issue.
- (iv) Underwriting Agreement between Company, Merchant Banker & other Underwriters (if any).
- (v) Market Making agreement between Company, the Lead Managers and the Marker Maker to the Issue (If applicable).
- (vi) Syndicate Agreement between Company, Merchant Banker & Syndicate Members.
- (vii) Copy of Tripartite agreement entered into between Company, CDSL and the Registrar to the Issue.
- (viii) Copy of Tripartite agreement entered into between Company, NSDL and the Registrar to the Issue.

Answer 6(b)

Documents to be submitted before T+5 days to S/E (i.e. within 5 working days from the closure of the issue)

- (i) Certified true copy of the letter from Registrars and lead manager regarding dispatch of share/debenture/warrant certificates, allotment advice, refund orders, underwriting commission, uploading of electronic credit of Securities, uploading of ECS/NEFT/RTGS credits and brokerage warrants.
- (ii) Confirmation from the depositories regarding the credit of beneficiary accounts of the security holders.
- (iii) Certificate from the Registrar reconciling the total securities allotted with the total securities credited, and securities that have failed to be credited.
- (iv) Basis of allotment advertisement.

Answer 6(c)**Roadshows during IPO**

Roadshows represent meetings of issuers, analysts and potential investors. Details about the company are presented in the roadshows in which prospective investors are invited lead manager by sending invitation.

Management needs to prepare for proposed Road shows and Investor Meets in advance. Adequate representation of promoters & key managerial person should be available for various meets, Road shows etc. Often there is a need to undergo training for the representatives of the Company about their conduct & behaviour during these road shows. IPO bound Companies prepare a 'Corporate Film' which includes brief about the Company, its past and also take investors through the present set up, practices followed by the Company, overview of proposed expansion, brief information of management, financials of the Company including various financial ratios & parameters and basis of IPO price. Besides this a short and concise 'Press Note' about the Company and its IPO is required to be released for publications. The Road show generally comprises of a press meet and meeting with Brokers and Investors/Analysts. 'Press Conference' is aimed at giving information to the press for publication in their papers/newspapers for dissemination of information to the investors whereas 'Brokers, Investors/Analysts Meet' aims at giving detailed information to the market participants about the Company enabling them to understand the details and take it further to the ultimate investors. Many a time, IPO bound Companies also organize 'site/plant visit' for the market participants enabling them to take a view of manufacturing facilities and other administrative set up of the Company. Managements are required to take into consideration all the above factors while preparing for marketing of an IPO.

Answer 6(d)

As per directive of SEBI credit rating agencies (CRAs) are required to downgrade an instrument to 'non-investment grade with issuer not cooperating (INC) status, if all outstanding ratings of the issuer remain non-cooperative for more than six months.

If non-cooperation by the issuer continues for a further six months from the date of downgrade to non-investment grade, no CRA should assign any new ratings to such issuer, until the company resumes cooperation or the rating is withdrawn.

If the company stops cooperating with the CRA and does not provide information, the CRA must continue to publish a rating accompanied with the statement, 'issuer did not cooperate, based on best available information.

OR (Alternate question to Q. No. 6)

Question 6A

- (i) Explain the reasons for wide range of businesses joining Alternative Investment Market (AIM) of London Stock Exchange.

(5 marks)

- (ii) Rajesh, the promoter of the company had acquired 10000 equity shares of the company on 5th April, 2025, for a market price of ₹ 555/- and disposed off 5000 equity shares on 25th April, 2025 at a price of ₹ 605/-. He further acquired 15000 shares on 10th May, 2025 at a price of ₹ 585/-.

Explain in brief the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 with respect to continual disclosure and the timelines. Further, advise with regard to disclosure by Rajesh to the company and the company to the stock exchange such that they are in compliance with the relevant provisions.

(5 marks)

- (iii) One of the measures of the principles of the corporate governance and protection of minority shareholder is "Equitable treatment to all shareholders".

Explain the manner in which a listed company shall ensure equitable treatment to all shareholders.

(5 marks)

- (iv) What is the difference between the BdL market, which is an EU-regulated market, and the Euro MTF market, which is an exchange-regulated market ?

(5 marks)

Answer 6A(i)

Alternative Investment Market (AIM) is the London Stock Exchange's international market for smaller growing companies. A wide range of businesses including early stage, venture capital backed as well as more established companies join AIM seeking access to growth capital. Reasons for wide range of businesses joining AIM of London Stock Exchange are as under:

- i. A diverse and highly knowledgeable investor base keen to provide capital to support growing companies. AIM companies have access to a range of institutional investors, a vibrant cohort of retail investors and, thanks to London's unique status, an unparalleled pool of international capital.
- ii. Promotion of the company's image and brand on an international scale.
- iii. A network of advisors and liquidity providers who understand the needs of growing companies and are able to support them throughout their journey as a public company.
- iv. A regulatory approach that is specifically tailored to the needs of growing companies.
- v. A market where companies can use shares as currency, to make acquisitions and grow the business.
- vi. The opportunity for companies to improve employee commitment by using shares as an incentive to encourage their long-term motivation.
- vii. A market where founders and management can run their business with the support of a wide range of investors.

Answer 6A(ii)**Provision related to continual disclosure and timeline under the SEBI (Prohibition of Insider Trading) Regulations, 2015**

Pursuant to Regulation 7(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015

- a) Every promoter, member of promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;
- b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information. (Transaction type include buy/sales/pledge/revoke/Invoke)

It is also clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in Regulation 7 (2) (a).

The above disclosures shall be made in such form and such manner as specified by SEBI from time to time.

Further SEBI vide its circular dated September 9, 2020 has prescribed Automation of Continual Disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 - System driven disclosures and discontinuation of disclosures by listed entities after phase-wise implementation of circular.

Acquisition of share by Rajesh, the promoter of the company is as under:

- 1) Acquisition date 5th April, 2025: $10000 \times 555 = ₹55,50,000$
- 2) Disposal Date 25th April 2025: $5000 \times 605 = ₹30,25,000$
- 3) Acquisition date 10th May, 2025: $15000 \times 585 = ₹87,75,000$

In the instant case, since the aggregate traded value of the securities has exceeded to ₹10 Lakh Rupees in each of the case, Rajesh is required to make disclosure within 2 trading days from each of the transaction date.

The company is required to disclose within two trading days of receipt of the disclosure or from becoming aware of such information. Further, each of the transactions are contra-trade to each other i.e. opposite transaction within a period of six months, hence this will also be construed as violation of the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

Answer 6A (iii)

Equitable treatment to all shareholders: The listed entity shall ensure equitable treatment of all shareholders, including minority and foreign shareholders, in the following manner:

- (i) All shareholders of the same series of a class shall be treated equally.
- (ii) Effective shareholder participation in key corporate governance decisions, such as the nomination and election of members of board of directors, shall be facilitated.
- (iii) Exercise of voting rights by foreign shareholders shall be facilitated.
- (iv) The listed entity shall devise a framework to avoid insider trading and abusive self-dealing.
- (v) Processes and procedures for general shareholder meetings shall allow for equitable treatment of all shareholders.

- (vi) Procedures of listed entity shall not make it unduly difficult or expensive to cast votes.

Answer 6A(iv)

BdL market / EU-regulated market

- a) The Commission de Surveillance du Secteur Financier (CSSF), Luxembourg's supervisory authority, is in charge of prospectus approval.
- b) Eligible for a European passport.
- c) Entry for issuers is subject to the Prospectus and Transparency Obligation Directives.
- d) Issuers subject to International Financial Reporting Standards (IFRS), or an equivalent, for non-EU issuers.

Euro MTF market / Exchange-regulated market

- a) The Luxembourg Stock Exchange is in charge of prospectus approval.
- b) No European passport provided.
- c) Outside the scope of the Prospectus and Transparency Obligation Directives .
- d) Financial reporting is in line with IFRS. However, other accounting standards, such as Generally Accepted Accounting Principles (GAAP), are accepted.

MULTIDISCIPLINARY CASE STUDIES

MODULE 3 PAPER 8

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Questions 1

Read the following case study and answer the questions given at the end :

Zenta Communications Ltd, more commonly known as "Zenta", stands as India's foremost digital ecosystem, serving both consumers and merchants. It holds the distinction of being India's largest payment platform, with a remarkable Gross merchandise value. "Zenta", has solidified its position as India's most valuable payment brand, with huge brand value. Zenta has over 300 million active users and is one of the top platforms for digital payment methods and captures a large audience across all economic strata in the nation. Anandit was the start-up founder and he spearheads the Company's strategy and vision. A strong believer in emerging technologies, Anandit has played a major role in the evolution of mobile payments in India.

Founded in 2014, Zenta started as a simple mobile recharge platform and has evolved into one of India's leading digital payment companies. At the forefront of India's fintech revolution, Zenta has facilitated a shift toward cashless transactions, showcasing resilience and strategic pivots in response to changing consumer needs. In this era of cashless transactions and digital wallets, Zenta has taken centre stage as one of India's most prominent fintech companies. Its journey from inception to becoming a household name is nothing short of remarkable.

Since its establishment, Zenta has transformed into a "mobile-first" digital payments platform, empowering Indians to make cashless transactions conveniently from their mobile devices. Starting from humble beginnings with bill payments and mobile top-ups, Zenta has emerged as India's leading payments platform, driven by its extensive consumer base, merchant network, transaction volume, and revenue.

With a focus on providing a seamless transaction experience across various methods, Zenta offers user-friendly digital products and services, along with inclusive access to financial services. Its robust two-sided ecosystem facilitates commerce and provides access to financial services, with the goal of improving consumer lives and fostering business growth among merchants through technological innovation. Revenue from payment and financial services has consistently been significant, contributing substantial portions to its overall revenue over the years. Due to increasing penetration of affordable smart mobile device in the country, shoppers are adopting digital wallets at an incredibly rapid pace, largely due to convenience and ease of use. In today's world, Smartphone has become essential part of daily life. India will exceed 600 million Smartphone users very soon.

In the past five years, Zenta has diversified its product offerings to enhance user engagement and revenue generation. This includes providing devices and additional services to merchants, introducing various payment instruments like Zenta FASTag and Zenta Postpaid, and launching financial services such as wealth management, lending, and insurance in collaboration with financial institutions. The pace of product launches has accelerated in recent years as Zenta expanded its distribution channels. Early age seed investors were enthusiastic. Venture funds,

Cat Group, Seed banks, and Werkman invested, pushing Zenta's valuation. These investments supported further growth and diversification of services.

Company's mission was clear—"We will bring Half-a-Billion Indians to the Mainstream Economy." and Vision was to become "India's leading payments App." Zenta introduced Zenta Mall as part of a calculated effort to break into the e-commerce space. Investors provided an initial \$500 million capital infusion to Zenta Mall, which was then able to maintain steady backing from Epee Financial and Crux Global in order to strengthen the Zenta wallet.

In an attempt to counter the "Application Store's" hegemony in the digital space, Zenta launched a micro app store to assist Indian app developers and entrepreneurs. Zenta started generating revenue through a diversified set of streams, some of the prominent ones are widely-used Unified Payments Interface (UPI), Zenta makes money on its platform through selling of loans and payment devices, as well as from subscription revenue, payment processing fees and marketing services it offers to other companies via its commerce and cloud business. Co- branded credit card partnerships with banks such as DBI and DDFC generate income from upfront distribution and lifetime usage fees. Zenta serves many customers that is the reason why it is so cost driven. Company plans to reach internationally and collaborated with Tuff Bank Group and Lolu Japan to launch its e-wallet service in Japan. It also announced as the official partner of the sports league, partnered with famous coffee chain which is a PAN- India partnership for a contactless dining solution.

Most of its expenses are related to its platform and customer acquisition. It is a common expense shared by many businesses across the world, where customer acquisition cost is substantial. The money used in this process is higher than the revenue it makes in its initial purchases. The majority of its budget is invested in ramping up of its security and avoid the risk of fraud especially when it has to handle millions of customers in its platform. It includes a system that enables customers to prevent any money laundering risk.

Zenta's business model includes commissions from financial partners, convenience fees, and Merchant Discount Rates (MDR). It sponsors events using cricket as a tool for brand recognition. The promotion activities include social media advertisements and tactics like campus ambassador programs. Collaborations with businesses, has helped Zenta achieve its objectives of maintaining growth and extending its payment options. Diverse Revenue Streams and Company's strong business strategy guarantees profits from non-UPI and UPI transactions, have resulted in a steady and stable flow of income. During this growth story, Board of Zenta approved an ESOP scheme for its former and current workers. This action is a component of Zenta's continuous dedication to appreciating and thanking its employees. Employee incentives were further enhanced by granting of stock options under the ESOP scheme. Board of Directors of the Company also announced plan for Initial Public Offering (IPO) indicating its plans to become a publicly traded company. The IPO was anticipated to be one of India's largest, aiming to raise approximately \$3billion. Company's IPO proposal garnered significant interest from investors due to its prominent position in India's burgeoning digital payments market. Speculation surrounding the Company's valuation ranged from \$10-15 billion, potentially making it one of India's most valuable startups.

Finally, after navigating regulatory approvals and assessing market conditions, the Company proceeded with its IPO, which received overwhelming demand from investors. Company's stock witnessed fluctuations during its initial trading phase, reflecting uncertainties among investors and market dynamics. It also faced many challenges which includes data breach incident, Zenta Mall faced a significant data breach, compromising sensitive data of around 5 million customers, delisted from famous Application Store due to alleged violations of rules related to unlicensed gambling apps.

Despite its market dominance, Company faced several challenges leading up to its initial offering, the evolving regulatory environment for fintech firms in India posed potential implications for Zenta's

operations and growth trajectory. Zenta's strategic missteps to diversify into various financial services, such as credit, insurance, wealth management, and FASTag, did not yield the expected results. The Indian stock market and public shareholders found it challenging to understand and value this business model, further complicating Zenta's post-IPO journey. The Company was up against fierce competition from other online payment services. These competitors offered similar services, often with fewer regulatory hurdles and more straightforward business models. This increased competition further eroded Zenta's market share and profitability. Company encountered competition from both domestic and international players across its business segments, including digital payments, e-commerce, and banking. Similar to many tech startups, Company had yet to achieve profitability, raising concerns about its long-term viability and ability to deliver returns to investors.

Companies' employees allegedly burning other competitor QR codes in bulk, prompting a response from them and involving law enforcement. Zenta faced significant regulatory challenges for multiple violations, including non-compliance with KYC (Know Your Customer) norms. Regulator halted the opening of new accounts due to compliance issues. The Company was fined ₹ 5 crore for submitting false information. Despite an external audit, further lapses were found in technology and cybersecurity.

The Regulator's final crackdown on Zenta Payment Bank was severe, the bank was instructed to cease accepting deposits, top-ups, and offering certain banking services. The directive to halt new deposits and top-ups in Zenta Payment Bank disrupted its core operations. This forced the Company to shift its banking activities to other financial institutions, significantly impacting its business model and revenue streams. These persistent operational shortcomings resulted in repeated regulatory interventions, including bans on onboarding new customers and other banking activities. This constant pressure hindered Zenta's ability to function smoothly and grow. As a result of that, Company decided to implement cost-cutting measures, including a workforce reduction program resulting in the layoff of at least 1,000 employees across various departments.

RBI's decision to impose restrictions on Zenta Payments Bank was primarily due to persistent non-compliance and continued material supervisory concerns found during an audit. These non-compliances could include issues related to regulatory guidelines, governance structure, and adherence to banking regulations. Additionally, concerns about related party transactions, potential influence from the parent company, and compliance with KYC norms may have contributed to the regulatory action. Company barred from doing banking business in all manner and impacted its customer base, and was forced to work with other banks instead of shifting customers to other fintech platform. During this time, Company faced very stiff competition from fintech industry Start-ups providing digital payment platform, they offer a range of services, including UPI-based payments, bill payments, and mobile recharges, etc.

Company's concerns raised about potential impact on margins due to higher costs as well as regulator licensing, raised red flags about related party transactions. Regulator mentioned "effective action" for non-compliance, indicating escalating regulatory pressure. Penalties imposed for flouting KYC norms, concerns about money laundering allegations. It also struggled with technological and operational issues. The Regulator identified lapses in cybersecurity and IT infrastructure, which posed significant risks to customer data and transaction security. These deficiencies undermined user trust and added to the Company's operational challenges. The broader political and economic environment also played a role.

The cumulative effect of regulatory fines, bans, and operational challenges led to a significant loss of trust among users and partners. This erosion of trust, coupled with negative media coverage and ongoing regulatory scrutiny, weakened Zenta's market position. Company faced regulatory hurdles impacting its stock value, though recent partnerships and regulatory extensions have spurred a recovery. Financial Regulator also plans to engage with fintech industry representatives

to address concerns and aiming to foster better communication and address ownership structure issues. Efforts to simplify KYC norms are also underway, potentially easing operational challenges in the fintech sector. The Regulator has introduced a comprehensive framework for creating and managing self-regulatory organizations (SROs) in the Fintech sector (SRO-FT). This framework aims to encourage innovation while ensuring that Fintech companies comply with regulatory standards. Regulator enforces strict KYC (Know Your Customer) and AML (Anti-Money Laundering) guidelines. These measures ensure customer identities are verified, minimizing fraud and enhancing digital finance.

In response to regulatory pressure and better corporate compliance, Company has taken steps to sever ties with its payments bank unit, as mandated by the Regulator. This includes terminating various inter-company agreements and to simplify the shareholders' agreement to enhance governance independently of their shareholders. The Chief Executive Officer of the Company, Rahan's departure from the Board of Zenta Payments Bank and the appointment of independent directors, is described as a strategic move to facilitate a smooth transition and bolster governance structures. This move aims to separate Zenta from its payments bank unit and establish it as an autonomous entity.

Despite Regulator directive to wind down operations due to compliance issues, the Board of Zenta remains open to future financial services endeavours. This strategic shift has positively impacted Company's stock performance, with shares rebounding. The Board of the Company has unveiled Company's plans for international expansion and AI integration. The Company aims to become an AI technology leader within the financial services sector and plans to invest over ₹ 100 crore in the state-of-the-art global payment development centre.

Zenta will surely regain its position despite the competitions and hurdles. No doubt, it has been one of the successful start-ups in the fintech industry of India and scaled great heights.

Company has renewed its efforts to become a global leader in the payment ecosystem as it aims to integrate with Artificial Intelligence.

In the background of the above facts, prepare a detailed report on the following :

- (a) Outline the challenges faced by Zenta payment bank in current fintech industry scenario. Also highlight the role of Regulator in persistent non-compliances of regulations by companies.

(10 marks)

- (b) Suggest the points which the management of Zenta shall evaluate, with the help of SWOT analysis.

(10 marks)

- (c) Discuss the business and revenue model of the Zenta in detail and also share your views what goes into starting a fintech Start-up.

(10 marks)

- (d) 'Zenta is a testament to India's fintech revolution. It's journey from inception to becoming a digital finance giant is a remarkable story of vision, innovation, and commitment to financial inclusion'. Comment.

(10 marks)

Answer 1(a)**Challenges faced by the Zenta payment bank**

Zenta has faced many challenges, including regulatory non-compliance, data privacy issues, and customer concerns, competition in the market

- **Data breach incident:** Company faced a significant data breach, compromising sensitive data of around 5 million customers.
- **Removal from App Store:** Company app got delisted from the App Store due to alleged violations of rules related to unlicensed gambling apps.
- **Employee misconduct:** Reports surfaced that company employees allegedly burning other competitors QR codes in bulk, prompting a response from competitors and involving law enforcement.
- **Regulatory hurdles:** Financial Regulator directed Payments Bank to halt new client onboarding within specified time due to regulatory concerns, highlighting ongoing regulatory challenges. The Reserve Bank of India (RBI) flagged Zenta for non-compliance with Know Your Customer (KYC) norms
- **Cost optimization measures:** Company implemented cost-cutting measures, including a workforce reduction program resulting in the layoff of at least 1,000 employees across various departments.
- **Persistent regulatory issues:** The Regulator continued actions against Payments Bank, such as prohibiting fresh deposits, emphasize the significance of adhering to regulatory standards in the fintech sector.
- **Competition:** Major fintech companies are ramping up their workforce and inducting new faces in their leadership teams, in the backdrop of the crisis brewing at the Zenta Payments Bank.

Role of Regulator as supervisory role on persistent non-compliances of regulations.

The Regulator has played a firm and escalating role in addressing Zenta's persistent non-compliances:

- **Imposition of Restrictions and Penalties:** The Regulator halted the opening of new accounts, imposed fines, and eventually issued severe directives to cease accepting deposits, top-ups, and certain banking services for Zenta Payment Bank.
- **Focus on Core Issues:** The RBI's decision to impose restrictions was primarily due to persistent non-compliance and continued material supervisory concerns found during audits, including issues related to regulatory guidelines, governance structure, and adherence to banking regulations.
- **Addressing Related Party Transactions:** The Regulator also raised concerns about related party transactions and potential influence from the parent company.
- **Emphasis on Cybersecurity and IT Infrastructure:** The Regulator identified and highlighted lapses in cybersecurity and IT infrastructure as significant risks to customer data and transaction security.
- **Escalating Pressure:** The Regulator's mention of "effective action" for non-compliance indicates an escalating regulatory pressure.
- **Fostering a Compliant Ecosystem:** The Financial Regulator plans to engage with fintech

industry representatives to address concerns, foster better communication, and address ownership structure issues. Efforts to simplify KYC norms are also underway.

- **Establishing Self-Regulatory Organizations (SROs):** The Regulator has introduced a comprehensive framework for creating and managing SROs in the Fintech sector (SRO-FT) to encourage innovation while ensuring compliance with regulatory standards.
- **Enforcement of Strict Guidelines:** The Regulator enforces strict KYC and AML (Anti-Money Laundering) guidelines to ensure customer identities are verified, minimizing fraud and enhancing digital finance.
- **Mandating Separation of Entities:** In response to regulatory pressure, Zenta has taken steps to sever ties with its payments bank unit, as mandated by the Regulator, to enhance governance independently.

Answer 1(b)

Strengths of Zenta

Strengths are an organization's unique qualities that give it an advantage in acquiring greater market share, attracting more customers, and boosting profitability. Company's advantages are as follows:

- **First in the Market:** Zenta was first established in the Indian market which brought the revolution of online payments and wallets. The founder played a wise game and he innovated and introduced **Zenta** at a time when smartphone sales started booming in the market.
- **Ease of Payments:** Zenta brought life to ease with round-the-clock payment facilities or transfer of funds anytime, anywhere at 0% charge. This made it increasingly popular and accepted by both urban and rural populations fulfilling the daily needs of everyone.
- **Big initial Investors:** Zenta gets huge funding and financial support from some of the big companies and investors in the world. These businesses have a huge stake in Zenta and this helps Zenta to increase its market valuation and become India's top leading payments platform (e.g. DBI, DDFC, Tuft Bank, Lolu Japan).
- **User-friendly Service Application:** Zenta consists of almost everything from online reservation facility to online retail and recharge etc. This application also user-friendly and security shield protected where one can do transactions without any fuss and worry.
- **Bucket of Offers:** Zenta is always ahead to grab the attention of its customers using never-ending offers designed with the Indian market mindset and thus it works as a bonus to booming sales.
- **Investment & Acquisition:** Company also focused on various acquisitions and big investment and acquired Pluspay, and it also invested in logistics startups Always-First and PressCees, etc. Such acquisitions and investments have made Zenta strong in the market.
- **Sponsorship:** Zenta acquired the title sponsorship rights for India's domestic and international sports league. The rights include sponsor branding of the series with the title sponsor logo, designation as the title sponsor of the series, visibility at the stadium, and broadcast sponsorship rights to increase recognition of Zenta.
- **Focus on Technology and Security:** The majority of its budget is invested in ramping up security and avoiding fraud, including systems to prevent money laundering risk.
- **Employee Incentives:** The ESOP scheme for former and current workers demonstrates a commitment towards appreciating and thanking employees.

- **Resilience:** Zenta has showcased resilience and strategic pivots in response to changing consumer needs.

Weaknesses of Zenta

Weaknesses are aspects of a company or a brand that should be improved.

- **Customer Service:** Several customer service concerns, including a lack of a helpline number and FIRC filing delays, are widespread. Call centre executives at Zenta are often rude and unable to handle many of the queries.
- **Experiencing Fraudulent Activities:** Electronic transactions are unquestionably straightforward, convenient, and appropriate. Even yet, it demands a certain amount of risk. As a result, one needs technical assistance as well as a secure mechanism to complete the transaction and transfer payments.
- **Requires an Internet Connection:** The entire transaction mechanism for sending and receiving money, as well as opening an account, is reliant on the Internet and a fast connection. It can function in both advanced and developed environments. Zenta services, on the other hand, would be ineffective in growing economies and developing countries where internet availability is a major concern.
- **TDR Rates that are Higher:** Their TDR rates for payment gateways are slightly higher than other companies.
- **IT Infrastructure:** As Zenta can work only on the internet, most of the time it makes things worse for the user when he/she is zero with cash and relies on Zenta payments at the time of merchant payments. Internet issues can occur in rural areas, remote locations, and even tier 2 cities.
- **Services Creating Confusion:** Sometimes offering lots of services can also be confusing for users as most users are unaware of all the services that Zenta offers. The level of unawareness of technology and fear of online transactions is making things worse.
- **Fear of Losing Money:** Indians still have a fear of doing online payments and transactions as most Indians are used to transacting in cash. But things are evolving so the people of India will. Secured digitalization will soon pick up online wallet services.

Dependence on External Financial Institutions: Barred from banking business, Zenta is forced to work with other banks.

Opportunities for Zenta

Opportunities are areas in which a firm might focus to improve performance, improve services, and, ultimately profit.

- **Digital Cryptocurrency:** Freelancers and online users are increasingly using digital cryptocurrencies such as bitcoins. Many platforms are even willing to accept cryptocurrency. Many variables, such as digital literacy, internet connectivity, and the internet, have contributed to its growth. It also opens the door for Zenta to either launch or begin accepting this currency.
- **From Cash Economy towards Digital Economy:** Developing economies, such as India, are aiming to go cashless or reduce their reliance on the currency, thereby it presents a fantastic chance for Zenta to expand its services to capitalize on the potential.
- **International Expansion:** The Board has unveiled plans for international expansion.
- **AI Integration:** Plans to become an AI technology leader within the financial services sector and invest over ₹100 crore in a global payment development center.

Threats to Zenta

Environmental variables that can harm a company's growth are known as threats. Zenta's threats include the following:

- **Competition:** Zenta is up against stiff competition from others platforms. all of which are vying for the same market share as Zenta. Zenta has always been vulnerable to competition and will continue to be so in the future.
- **Fraud & Hackers:** When we consider the scope of the company's operations, we find that it operates in over 3 nations. It also poses a significant security risk from hackers throughout the world.
- **Strong Economic Regulations & Policies:** Some nations, such as Taiwan, China, and Japan, have rigid rules and regulations that make it difficult for corporations like Zenta to set up shop there.
- **Talent Acquisition and Retention:** Workforce reduction may impact employee morale and talent retention.

Answer 1(c)**Zenta - Business Model**

Pioneering India's QR and mobile payments revolution, Zenta's business model centers on advancing financial inclusion through a broad spectrum of payments and financial services. The key components of this model can be summarized as follows:

- **Comprehensive Payments Ecosystem:** The core of Zenta's business model is to attract merchants and customers by offering a wide range of payment options. With UPI acting as a low-cost acquisition channel, the platform cross-sells high-margin banking and merchant services by utilizing insights.
- **Empowering Customers:** In addition to Zenta's Payment Instruments, company offers a variety of third-party payment choices, such as cards and online banking, to empower its users. They make it easier to pay for things online, promoting convenience with the Zenta's app and allowing QR code-based in-store and third-party app transactions.
- **Subscription-Led Ecosystem for Merchants:** Zenta's provides its partners with technology tools so they may take payments using a variety of methods. Reconciliations are made easier by subscription-based devices, and beginning merchants can accept payments using a free mobile QR code, mostly using Zenta's Payment Instruments or UPI.
- **Merchant Growth through Platform Engagement:** When customers use the platform's payment options, it encourages merchants to sign up as well, which feeds back into itself and results in a high volume of repeat business. Significant consumer stickiness and retention are fueled by this combination.

Zenta - Revenue Model

Zenta generates revenue through a diversified set of streams, some of the prominent ones are listed below:

- **Profitable UPI Use:** Zenta makes money through the widely-used Unified Payments Interface (UPI).
- **Monetization avenues:** Zenta makes money on its platform through selling of loans and payment devices, as well as from subscription revenue, payment processing fees, and marketing services it offers to other companies via its Commerce and Cloud business.

- **Co-Branded Credit Cards:** Co-branded credit card partnerships with banks generate income from upfront distribution and lifetime usage fees.
- **Diverse Revenue Streams:** Zenta's strong business strategy guarantees profits from non-UPI and UPI transactions, resulting in a steady and stable flow of income.

What goes into starting a fintech Start-up:

Starting a fintech startup is a complex endeavor that requires a combination of vision, technological prowess, regulatory understanding, and financial acumen. Based on Zenta's journey and general industry requirements, here are key elements:

- **Vision and Problem Solving:** A clear vision to address a specific financial need or pain point in the market. Zenta's mission was to "bring Half-a-Billion Indians to the Mainstream Economy".
- **Technological Foundation:** Developing a robust, secure, and scalable technology platform is paramount. This includes mobile-first design, seamless transaction experiences, and strong cybersecurity infrastructure.
- **Regulatory Compliance:** This is arguably the most critical and challenging aspect. Fintech startups must navigate a complex web of financial regulations (e.g., KYC, AML, data privacy). Non-compliance can lead to severe penalties and operational bans, as Zenta experienced. It requires a dedicated compliance team and continuous monitoring of regulatory changes.
- **Capital Infusion and Investment:** Securing significant seed funding and subsequent rounds of investment is crucial for development, operations, and scaling. Early investors, venture funds, and financial institutions are key.
- **Market Research and Niche Identification:** Understanding the target audience, their needs, and identifying a viable market niche. Zenta focused on digital payments for both consumers and merchants across all economic strata.
- **User-Centric Design:** Creating user-friendly products and services that offer convenience and ease of use, leading to rapid adoption.
- **Strong Leadership and Team:** A visionary founder (like Anandit) and a skilled team with expertise in technology, finance, marketing, and legal aspects are essential for execution and strategic direction.
- **Partnerships and Ecosystem Building:** Collaborating with banks, financial institutions, and other businesses can expand service offerings and reach. Building a two-sided ecosystem (consumers and merchants) is vital for network effects.
- **Security and Fraud Prevention:** Investing heavily in security measures to protect customer data and prevent fraud is non-negotiable for building trust.
- **Scalability and Diversification Strategy:** Planning for future growth and the ability to diversify product offerings strategically. However, this diversification must be carefully managed to avoid complexity that confuses the market.
- **Marketing and Customer Acquisition:** Developing effective strategies to acquire customers, though recognizing that customer acquisition costs can be substantial.

Answer 1(d)

The statement accurately encapsulates Zenta's remarkable journey and its significant role in India's fintech revolution, demonstrating vision, innovation, and a commitment to financial inclusion, despite facing substantial challenges.

Vision:

Anandit, the founder, spearheaded Zenta with a strong belief in emerging technologies and played a major role in the evolution of mobile payments in India. The company's clear mission – “We will bring Half-a-Billion Indians to the Mainstream Economy” – and its vision to become “India's leading payments App” highlight a profound understanding of the unbanked and underbanked population in India and the potential of digital payments to foster financial inclusion. Zenta's initial focus as a simple mobile recharge platform evolving into a comprehensive digital payment company showcases a visionary approach to addressing everyday financial needs.

Innovation:

Zenta's journey is a continuous narrative of innovation. It began as a mobile recharge platform and consistently evolved, becoming a “mobile-first” digital payments platform empowering cashless transactions. Its diversification into various product offerings, including FASTag, Postpaid, wealth management, lending, and insurance, demonstrates a constant drive to innovate and meet changing consumer needs. The introduction of Zenta Mall to venture into e-commerce and the launch of a micro app store to support Indian developers further underscore its innovative spirit in expanding its digital ecosystem. The current plans for international expansion and significant investment in AI integration for financial services signify Zenta's ongoing commitment to being at the forefront of technological innovation.

Commitment to Financial Inclusion:

Zenta's core objective of bringing “Half-a-Billion Indians to the Mainstream Economy” directly speaks to its commitment to financial inclusion. By offering user-friendly digital products and services and providing inclusive access to financial services, Zenta has played a crucial role in facilitating a shift toward cashless transactions across all economic strata in the nation. It empowered Indians to make cashless transactions conveniently from their mobile devices, serving as a critical bridge for many to enter the digital economy. This focus on a wide audience, including those previously underserved by traditional banking, has been a cornerstone of its impact.

A Testament to India's Fintech Revolution:

Zenta's journey truly reflects the broader fintech revolution in India. Its rapid growth, significant valuation, and attempts at diverse financial services mirror the aspirations and dynamism of the Indian fintech sector. The challenges it faced, particularly regarding regulatory compliance and intense competition, are also indicative of the evolving landscape of fintech in India, where innovation must go hand-in-hand with robust regulatory adherence. Despite the hurdles and setbacks, such as regulatory crackdowns and operational challenges, Zenta's resilience and renewed efforts to regain its position and become a global leader in the payment ecosystem highlight its enduring significance. It has undeniably scaled great heights and remains one of the most successful startups in India's fintech industry.

In conclusion, Zenta's narrative is indeed a powerful testament to the transformative potential of fintech in India, driven by a clear vision, continuous innovation, and a strong commitment to empowering financial access for a vast population. Its story, complete with triumphs and tribulations, serves as a crucial case study in the unfolding of India's digital finance landscape.

Question 2

- (a) Zulma, a famous gynaecologist and obstetrician was the Managing Director, of Zulma Hospitals and Research Centre Private Ltd. She has been engaged in various philanthropic activities and working for human rights with various organisations by offering affordable treatment and protecting patient rights. Namaste, also ran a hospital specialising in infertility

care and was running a MeTube channel, on social media. He uploaded various videos regarding medical conditions related to pregnancy and treatment offered by them.

One of her patients informed Zulma about the medical advices given by Namaste on his MeTube channel. Zulma filed a case on Namaste, stating that he made certain misleading statements/misinformation about the cost of IVF and fertility treatments on his MeTube channel against hospitals offering affordable treatment for infertility care. These statements are alleged to be detrimental to a competitive market and would prejudice market players who are willing to offer quality treatment at an affordable rate. She approached the Competition Commission and sought to conduct necessary investigation and direct to remove MeTube video and to refrain from publishing inaccurate and misleading statements in social media that can either directly or indirectly affect the interest of the patients and the market adversely.

With reference to a case law, comment whether Zulma's contention is justified.

(6 marks)

- (b) Reliable Auto Ltd, is a tools and spares manufacturing company and has four wholly-owned subsidiary companies. A scheme of amalgamation was approved by the equity shareholders of the Company and its subsidiaries in their respective general meetings along with the 90% of the creditors consent. Reliable Auto Ltd. being the transferee company in the proposed amalgamation submitted an application for approval of scheme of amalgamation under Section 233(2) of the Companies Act, 2013. Relevant documents were annexed and copy was also submitted to the Official Liquidator as well as the Registrar of Companies as per the requirement of the Act.

This application was rejected by the Regional Director, citing a lack of solvency of petitioner's companies based on their balance sheet submitted, asserting that the Central Government has the authority to reject the scheme, if the companies are found to be insolvent. The directors of Reliable Auto Ltd. aggrieved by order passed by the Regional Director and were planning to file an appeal with High Court.

In the background of a judicial precedent, advise the directors of Reliable Auto Ltd.

(6 marks)

Answer 2(a)

Ms. Zulma has approached the Competition Commission of India to conduct an investigation on the Me Tube Video Channel owned by Namaste for spreading false information/misinformation regarding cost of infertility treatments, especially IVF and inferring that cheaper treatment indicated inferior quality. Ms Zulma contended that because of the huge reach of the Me Tube Video Chanel, Namaste was abusing his dominant position to influence the market and harm competition. Hence action should be taken under Section 4 of the Competition Act.

This case is similar to a complaint placed before the CCI in *Sabine S. v. Mitera Hospital [CCI] Case No. 17 of 2024*. In this case, Informant is running a hospital which offers services including infertility treatments such as IVF; paediatrics, laparoscopy (Endoscopy); obstetrics & gynaecology; orthopaedics treatment etc. The primary grievance of the Informant was that the Opposite Party through Dr. Raju Nair, has made certain misleading statements/ misinformation about the cost of IVF and fertility treatments on their You Tube channel against hospitals offering affordable treatment for infertility care. These statements are alleged to be detrimental to a competitive market and would prejudice market players who are willing to offer quality treatment at an affordable rate. This conduct has been alleged to be in abuse of dominant position by the Opposite Party in contravention of provisions of Section 4 of the Act.

However, the allegations that the Opposite Party is allegedly spreading mis- information/ misstatements about the cost of such treatment do not fall within the ambit of the Competition Act, 2002. The Commission was of the view that there was no prima-facie case of contravention of provisions of the Act warranting an investigation into the matter. Accordingly, the Information was directed to be closed forthwith.

In the light of what has been stated earlier, and going by the averments made by Dr. Zulma, it is felt that the allegations by Dr. Zulma are not justified and the CCI will not proceed further with any inquiry against the You Tube Channel of Mr. Namaste.

Answer 2(b)

The application by Reliable Auto Ltd to merge with itself its four subsidiaries was rejected by the Regional Director citing lack of solvency of the various companies being merged basis their submitted balance sheets.

In a similar case of *Asset Auto India Private Limited & 4 Ors (Petitioners) V/s. The Union of India & 3 Ors (Respondents)* the Bombay High Court held that the phrase "may" used in Section 233 (5) of the Companies Act 2023 will have to be Construed as Mandatory.

The Petitioners in the decided case were companies with common Directors and Shareholders. Asset Auto India Pvt Ltd was the holding Company and the other four were wholly-owned subsidiary companies. Scheme of Amalgamation of the subsidiaries with the holding company was approved by the respective Equity Shareholders. The scheme has also been approved by ninety percent of the creditors. Asset Auto being the Transferee Company in the proposed amalgamation submitted an application for approval of scheme of amalgamation under Section 233 (2) of the Companies Act in the Form prescribed being Form No.CAA.11 as per Rule 25(4) of the of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. Relevant documents were annexed. Copy was also submitted to the Official Liquidator as well as the Registrar of Companies. The Application was rejected by the Regional Director on the grounds of lack of solvency of the companies as per the documents submitted by them. Portioners aggrieved by the order passed by Respondent, Regional Director, appealed to the High Court.

Section 233 (5) of the Companies Act, 2013 reads as under:

"(5) If the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, *it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (2) stating its objections and requesting that the Tribunal may consider the scheme under section 232.*"

Hon'ble Bombay High Court (Division Bench) interpreted that on a conjoint reading of sub-sections (2), (3), (4) and (5), the phrase "may" used in sub-section (5) of Section 233 of the Companies Act, 2013 will have to be construed as mandatory. Because if the Government is of the view that the scheme is not in the public interest or in the interest of the creditors then same is to be decided by the Tribunal. If the phrase "may" in sub-section (5) is used as optional then company involved in the amalgamation scheme would be at the mercy of the Central Government if the scheme is rejected without any adjudication. It is, therefore, mandatory for the Central Government to make an application before the Tribunal and get adjudication on said issue.

Therefore, going by the judgement in the aforesaid case, Reliable Auto Ltd can prefer an appeal to the High Court seeking a direction to the Regional Director to refer the scheme of amalgamation to the NCLT and get adjudication on said issue.

Question 3

- (a) Gajraj, a renowned businessman, wanted to establish a cloth dyeing unit for his textile business. He approached Kamai, a director of Swinla Manufacturers and Suppliers Ltd. ('Swinla') for supply of raw indigo, to be used as a basic raw material in the dyeing unit. After detailed negotiations, Gajraj and Swinla represented by Kamai, entered into an agreement for the supply of raw indigo. However, Gajraj did not make any payment for few months for the supply made by the Company. Since, it was a long- term contract having an extended credit period, Swinla, terminated the agreement. Due to this termination, commercial production at the plant especially set up for the purpose, ceased. Gajraj filed a suit against Swinla for damages towards the loss of anticipated profits and cost of the plant.

Discuss with the help of decided case law(s), whether Gajraj will succeed.

(6 marks)

- (b) Delphi Printers Ltd., listed on a recognized stock exchange, during the period 2021-22 to 2023-24, issued redeemable preference shares amounting to ` 50 crore to some 500 investors. The matter came to the notice of the market regulator and on March 1, 2024, the adjudicating officer of SEBI passed an order imposing a penalty of ` 1 crore on the Company, under the SEBI Act, 1992 for violation of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013. The adjudicating officer was of the opinion that since the number of investors from whom money was collected by the Company exceeded 49 in each of the three years, it is a clear violation of the aforesaid regulation and the issue made by the Company is deemed to be a public issue, which has been done without following the procedure laid down by the regulations. The Company filed an appeal against the Order, which was challenged by the adjudicating officer on the ground that the Order cannot be challenged in SAT and that SAT has no power to reduce or waive the penalty so imposed by the officer appointed under the SEBI Act, 1992.

With reference to a decided case law, evaluate whether the contention of the adjudicating officer tenable.

(6 marks)

Answer 3(a)

The suit filed by Gajraj against Swinlaw Manufacturers and Suppliers relates to the abrupt termination of the contract for supply of indigo that led to the complete stoppage of commercial production at the cloth dyeing unit plant set up by Gajraj. Gajraj claimed compensation for the loss of profits at the new plant consequent to its stoppage and also for the full cost of the plant incurred by him.

In a similar case in *Kanchan Udyog Ltd. (Appellant) vs. United Spirits Ltd. (Respondent)* the appellant entered into an agreement with the respondent for establishment of a non-alcoholic beverages bottling plant. The concentrate (Essence), for preparation of the non-alcoholic beverage, was to be supplied by the respondent. The beverage was to be sold in specified districts of West Bengal, as provided for in the marketing agreement. The bottler's agreement was terminated by the respondent. Commercial production at the plant ceased and the suit was instituted by the appellant in 1990. The learned Single Judge decreed the Suit, awarding damages towards loss of anticipated profits, and towards costs for installation of the plant, after deducting Rs.9.05 lakhs payable by the appellant to the respondent as consultancy charges. The respondent was held liable to pay to the appellant a sum of Rs.4,24,33,000/- with interest @ 10% from the date of suit till payment. The Division Bench in appeal reversed the decree, and dismissed the Suit. The appellants moved the Supreme Court. The Supreme Court held that the appellant was not entitled to any expectation loss towards anticipated profits for the reasons that it was already seeking deferred

payment for the concentrates purchased due to its poor financial position, the confirmation that sales had not picked up and the fact that they had acknowledged that they will not be able to run the plant profitably for the next six years. The Court also held that any grant of reliance loss would tantamount to giving a benefit to it for what was essentially its own lapses. There are no allegations of any deficiency in the plant.

The appellant had failed to establish its claim that the breach by the respondent was the cause for loss of anticipated profits, that the profitability projection in its loan application was a reasonable basis for award of damages towards loss of anticipated profits. The appellant had failed to abide by its own obligations and lacked adequate infrastructure, finances and manpower to run its business. It also failed to take reasonable steps to mitigate its losses. The Supreme Court held that the appeal lacked merit and dismissed the same.

Since the facts are similar in Gajraj's case, it can be concluded that Swinla, similarly, is not liable to pay compensation to Gajraj.

Answer 3(b)

SEBI through its adjudicating officer passed an order against Delphi Printers Ltd imposing a penalty of Rs. one crore for issuing Redeemable Preference Shares to around 500 investors during the period 21-22 to 23-24. An appeal was filed by the Company to the Securities Appellate Tribunal against the orders of the adjudicating officer.

In a similar case in *Indus Weir Industries Limited (Appellant) vs. SEBI (Respondent)*, SEBI imposed a penalty of 1.00 crore for violation of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013. The Appellant, a Company registered under the Companies Act mobilized funds through issuance of Redeemable Preference Shares ("RPS") during 2010-11 to 2013-14. Admittedly, the appellant collected an amount of Rs. 33,39,86,230/- from 32,454 investors during this period of 4 years. Since the number of investors from whom money was collected by the appellant through issuance of RPS exceeded 49 in each of the 4 years, the adjudicating officer of SEBI held that the appellant has violated Regulation 4(2) and 16 of the Issue and Listing Regulations, 2013. This act of collecting funds from more than 49 investors is tantamount to a deemed public issue which has been done without following the procedure as stipulated by the regulations for such public issue and listing, and hence the violation. For this violation, the Adjudicating Officer by his order dated January 15, 2018 levied a penalty of Rupees One Crore on the appellant under Section 15HB of SEBI Act.

This appeal was challenged by the Company in SAT. While upholding the impugned order on merit, SAT reduced the amount of penalty imposed on the appellant from Rs. 1 crore to Rs. 50 lakhs and directed the Appellant to pay the penalty of Rs. 50 lakhs to SEBI within a period of 4 weeks from the date of the order. In the event, the appellant failed to deposit the penalty within the stipulated period of 4 weeks. SEBI was at liberty to recover the amount of Rs. 50 lakhs along with interest @ 12% p.a. from the date of the impugned order. order of the Adjudicating Officer of SEBI.

In the light of the above, it can be concluded that the Order of the SEBI Officer against Delphi Printers Ltd can be challenged at SAT and SAT has power to reduce the penalty imposed by the SEBI Officer. The Contention of the adjudicating officer that SAT has no powers to reduce the penalty is not tenable.

Question 4

- (a) Kamal Nayan, is a Right to Information (RTI) activist. He is known for exposing various non-compliances in the financial sector. One of his applications under RTI, regarding certain information related to defaults in banks, was rejected by Reserve Bank of India (RBI) on the

ground of economic interest, fiduciary relationship with other banks and public interest. The details sought by him are summarized as under :

- Details of show cause notices and fines imposed by the RBI on various banks.
- In light of the failure of some cooperative banks in recent times, various inspections carried out by the apex banks as a preventive measure.
- Details of the report sent by the RBI to the Ministry of Finance with respect to FEMA violations committed by banks and various intermediaries.
- Details of loans taken by intentional defaulters and the amount due from those defaulters to each of the PSBs.

On rejection of his application, Kamal Nayan has approached you, to know the next course of action. Advise Kamal Nayan with the help of a relevant case law.

(6 marks)

- (b) The Enforcement Directorate provisionally attached a property of Aham and Swaham on December 10, 2005 under the Prevention of Money Laundering (Amendment) Act, 2005 stating that the said property was acquired through proceeds of crime. Aham and Swaham, the joint owners of the said property, argued that the allegations of making wrongful gains in violation of the provisions of the said Act were baseless, as the said property was purchased on April 1, 2005, which is a date before the enforcement of the Act, the act of the Enforcement Directorate is not tenable under the said Act.

Whether the contention of Aham and Swaham is tenable ? Justify your answer with the help of decided case law.

(6 marks)

Answer 4(a)

The details sought for by Mr. Kamal Nayan in his application to RBI under the Right to Information Act were not provided on the grounds of economic interest, fiduciary relationship of RBI with the other Banks and public interest.

The Supreme Court had in a similar case in *Reserve Bank of India vs Jayantilal N Mistry* considered RBI's refusal to provide similar information (as sought for by Kamal Nayan) to a group of applicants under the RTI. Upon refusal by RBI to provide the called for information on the grounds of being exempted under Sec 8(1)(e) of the RTI Act, the applicants moved the Chief Information Commissioner for relief. The CIC ordered RBI to provide the information sought for to which an appeal was preferred by RBI to the Supreme Court. The main issue that arose for the consideration of the Court was whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. If the answer to above question was in negative, then up to what extent the information can be provided under the 2005 Act.

In the instant case, the RBI does not place itself in a fiduciary relationship with the financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional "fiduciary" label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an in terrore effect.

RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory

authority to oversee the functioning of the banks and the country's banking sector. RBI has been given powers to issue any direction to the banks in public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them.

RBI has to uphold public interest and not the interest of the banks. It has to act with transparency and not hide information. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country was totally misconceived. It has to comply with the provisions of the RTI Act and disclose the information sought for. The Supreme Court dismissed the application of RBI and ordered for information to be provided.

In the instant case Kamal Nayan can move the CIC to direct the RBI to provide the requisite information citing the above precedent.

Answer 4(b)

The contention of Aham and Swaham is that the property alleged to have been purchased with proceeds of crime was actually bought on 1st April 2005 before the Prevention of Money Laundering Act came into force and hence cannot be confiscated.

This case is similar to the case of *Mahanivesh Oils and Foods Pvt Ltd vs Directorate of Enforcement* filed in the Delhi High Court.

On 08.05.2009, an FIR was lodged by the CBI on a written complaint made by NAFED wherein it was alleged that Mr. Homi Rajvansh - the Additional Managing Director of NAFED, had hatched a conspiracy, in connivance with the directors of M/s M.K. Agri International Ltd. (hereafter 'MKAIL'), for making wrongful gains by executing Memoranda of Understanding (MOUs) with MKAIL on behalf of NAFED for import of raw sugar and selling the same by entering into three High Seas Sale (HSS) Agreements with M/s M.K. International Ltd. (hereafter 'MIL'), a sister concern of MKAIL, without charging/recovering any cost for the commodity.

MIL on 10.02.2005, through its director - Mr. M.K. Agarwal issued cheques for an amount aggregating to Rs.1.5 crores in favour of its two holding companies namely, M/s Duoroyale Enterprises Ltd. and M/s Sri Radhey Trading Pvt. Ltd. Subsequently, both the said companies issued two cheques each amounting to Rs.75 lacs in favour of M/s Mahanivesh Oils & Foods Pvt. Ltd., the petitioner company, where Smt. Alka Rajvansh - wife of Mr. Homi Rajvansh was a Director. On 16.02.2005 and 17.02.2005, M/s Mahanivesh Oils and Foods Pvt. Ltd., issued two cheques of Rs. 1,32,00,00/- and Rs. 10,81,000/- respectively in favour of M/s Uppal Agencies Pvt. Ltd. for purchase of the ground floor and basement of the property situated at E-14/3, Vasant Vihar, New Delhi (hereafter 'the said property'). It is alleged that Smt. Alka Rajvansh used the funds received from M/s Duoroyale Enterprises Ltd. and M/s Sri Radhey Trading Pvt Ltd. for purchasing the abovementioned property pursuant to a sale deed dated 18.03.2005 executed by Shri B.K. Uppal in favour of the petitioner company. The property was provisionally attached by the Enforcement Directorate under the provisions of the Prevention of Money Laundering Act, 2005 as having been purchased through proceeds of crime. (Kickback paid by MIL for the high sea sales contract). Petitioner challenged this attachment before the High Court.

The Delhi High Court held that any proceeds of crime arose from the occurrence of a scheduled offence and hence falling under Section 5(1) of the PMLA Act. The central issue in the instant case was not whether an offence was committed but whether Section 5 can be enforced where the offence and the use of the proceeds of the crime happened before the Act came into force.

Article 20(1) of the Constitution expressly forbids that no person can be convicted for an offence except for the violation of a law in force at the time of commission of the Act charged as an offence.

On this basis the Delhi High Court held the attachment of property by the Enforcement Directorate is not tenable and set aside the order.

In the instant case the contention of Aham and Swaham are similar to the above case, they having purchased the property on 1st April 2005. They have a strong case to appeal in the High Court to set aside the attachment on the grounds that the transaction happened before the PMLA Act became operative.

Question 5

- (a) Pranayo Ltd, was incurring losses since last few years and its workers were not getting paid on a regular basis. The workers approached their Workers Union for relief. The Workers Union filed a writ petition in the High Court, where the High Court passed an order directing the labour commissioner to determine the dues of the workers.

Accordingly, the labour commissioner quantified the same and certain properties of the Company were put on auction sale. Meanwhile, one financial creditor initiated corporate insolvency proceedings against the Company. NCLT admitted the same and moratorium was duly announced. The High Court ordered sale of certain properties of the Company in writ proceedings during the period of moratorium.

In the background of a case law, analyse whether the action taken by the High Court is justified.

(6 marks)

- (b) Jay is a Director in Drupadi Private Limited ("DPL"). The business of the Company was mainly divided into three units manufacturing trading and consulting. The Consulting division was being managed by Jay, who was also a relative of directors and shareholder of the Company. In the course of business, Jay thought of improving the consultancy services and reached out to various consultants, who apparently advised creation of a separate entity known as Drupadi Consultancy Services. The website also reflected the name as 'Drupadi Consultancy Services'. The invoices raised by the consultants were paid from the funds of DPL, as advised by Jay. There were no separate transactions by the consultancy division and all the transactions were routed through DPL only. The relationship between Jay and other directors was strained and a case was filed against him under the Sections 65 and 66 of the Information Technology Act, 2000.

With reference to a case law, comment whether the case filed against Jay is justified.

(6 marks)

Answer 5(a)

One of the financial creditors of Pranayo Ltd has filed corporate insolvency proceedings against the Company, which has been admitted by NCLT. Parallely the Workers' Union had filed a writ petition in the High Court seeking payment of dues to workers. On a direction by the High Court, the Labour Commissioner had provided workings determining the dues. The High Court then ordered for sale of properties of Pranayo Ltd even as CIRP was in operation.

This case is similar to the case as decided by the Supreme Court in *Anand Rao Korada Resolution Professional (Appellant) Vs. M/S Varsha Fabrics (P) Ltd. (Respondent)*

In the writ petitions filed by the workers Union, the High Court passed order directing the labour commissioner to determine the dues to the workers and accordingly labour commissioner quantified the same and certain properties of the corporate debtor was put on auction sale. Meanwhile, one financial creditor initiated corporate insolvency proceedings against the corporate debtor and the NCLT fixed the moratorium. The sale of the properties was to be made during the period of moratorium and the resolution professional challenged the orders of the High Court. The Appellant – Resolution Professional filed Civil Appeals to challenge the Interim Orders passed by the Odisha High Court in W.P. (Civil) No. 7939/2011 on the ground that since the CIRP against Respondent No. 4 had commenced, the proceedings before the High Court ought to be stayed.

The Supreme Court held that Section 238 of the IBC gave an overriding effect to the IBC over all other laws. In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the properties of the corporate debtor once an order declaring moratorium was passed by the NCLT. The Supreme Court set aside the orders of the High Court but stated that the Workers' Union could file an application before the competent authority under the IBC for payment of their dues.

Based on the above case-law, it can be concluded that once an application is admitted by NCLT under the IBC and moratorium declared, no order regarding sale of any assets can be passed by any courts. Thus, the Order given by the High Court is not tenable.

Answer 5(b)

The given situation is similar to the case of *Ramesh Rajagopal (Appellant) vs. Devi Polymers Pvt. Ltd (Respondent)* decided by the Supreme Court.

The appellant was a Director in Devi Polymers Private Limited ["DPPL"]. DPPL has three Units – A, B and C. Unit 'C' is being headed by the appellant. Unit 'C' primarily renders consultancy services. However, all the three Units are units of one entity i.e., DPPL. In the course of business, the appellant thought of improving the consultancy services and apparently contacted consultants, who apparently advised the creation of a separate entity known as Devi Consultancy Services and accordingly, in the web page that was created by the consultant, this name occurred. The invoices raised by the consultants were paid from the funds of DPPL, as advised by the appellant. It is significant that no amount has been paid or received by Unit C separately, independently of DPPL. The relationship being strained between the respondent and the appellant, who are relatives, several proceedings seem to have been initiated in the Company Law Board. However, in the course of disputes and the pending proceedings, the respondent initiated the instant criminal complaint against the appellant. The appellant was prosecuted by the respondent under Sections 409, 468 and 471 of the Indian Penal Code (in short 'the IPC') read with Sections 65 and 66 of the Information Technology Act, 2000(IT Act) read with Section 120(b) of the IPC.

The Supreme Court indicated that it might have been possible to attribute some criminal intent to the projection of the Unit-C as DCS in the website, if as a result of such projection, the appellant had received any amounts separate from DPPL, but a perusal of the complaint shows that this is not so. Not a single rupee has been received by the appellant in his own name or even separately in the name of Unit-C, which he is heading. All amounts have been received by DPPL. It is not possible to view the contents of the website showing the DCS as a concern which is separate from DPPL in view of the contents of the website described above. Moreover, it is not possible to impute any intent to cause damage or injury or to enter into any express or implied contract or any intent to commit fraud in the making of the said website. The appellant has not committed any act which fits the above description. Admittedly, he has not received a single rupee nor has he entered into any contract in his own name on the basis of the above website. In the absence of any act in pursuance of the website by which he has deceived any person fraudulently or dishonestly,

induced any one to deliver any property to any person, we find that it is not possible to attribute any intention of cheating which is a necessary ingredient for the offence under Section 468. We find that the allegations that the appellant is guilty of an offence under the aforesaid section are inherently improbable and there is not sufficient ground of proceedings against the accused. The proceedings have been initiated against the appellant as a part of an ongoing dispute between the parties and seem to be due to a private and personal grudge.

As regards the commission of offences under the Information Technology Act, 2000 the allegations are that the appellant had, with fraudulent and dishonest intention on the website of DCS i.e., www.devidcs.com that the former is a sister concern of Devi Polymers. Further, that this amounts to creating false electronic record. In view of the finding above we find that no offence is made out under Section 66 of the I.T. Act, read with Section 43. The appellant was a Director of DDPL and nothing is brought on record to show that he did not have any authority to access the computer system or the computer network of the company. That apart there is nothing on record to show the commission of offence under Section 65 of the IT Act, since the allegation is not that any computer source code has been concealed, destroyed or altered. The Court already observed that the acts of the appellant did not have any dishonest intention while considering the allegations in respect of the other offences. In the circumstances, no case is made out under Sections 65 and 66 of the I.T. Act, 2000. The Court quashed the proceedings against the appellant.

In the given situation, Jay is a Director of Drupadi Private Limited. There is no allegation that any source code has been concealed, destroyed or altered. There is also no dishonest intention in creating a new entity and a website as all transactions have been routed only through Drupadi Private Limited. Going by the tenets of the Supreme Court judgement cited above, it can be concluded that the case filed against Jay may not be justified.

Question 6

- (a) Narad serves as the long-standing Chief Executive Officer (CEO) of Fantasy Industries Ltd, a company listed on the Bombay Stock Exchange. Narad recently met two institutional investors, who together held a 5% stake in the company. During these discussions, he provided an update on the Company's financial performance over recent months, profitability and business growth, as the Company's quarterly results were set to be disclosed to the market by next week. Narad also briefed these institutional shareholders on the Company's strategic direction, informing them of his plan to establish a strategy committee within the Company, comprising executive directors and key senior managers.

At a regular management meeting, Narad met with the newly-appointed Chairman of the Company, Sarad, who also happens to be his brother-in-law. A number of pressing issues were discussed during this meeting, including the upcoming retirement and re-election process for members of the Board at the forthcoming Annual General Meeting (AGM). Xula, the Company Secretary raised a concern regarding Kurup's designation as independent director, given his proximity to the Company's management. Kurup had served as an independent non-executive director for nearly nine years. Though Kurup had proven to be highly experienced and made substantial contributions during Board meetings, his independent status had come into question. Narad maintained that Kurup's independence remained intact, despite his prolonged tenure. Furthermore, Narad informed Sarad that he had organized additional training sessions for two directors on the Board, one of the non-executive directors and the Marketing Director.

On the basis of above-mentioned facts, outline the discernible weaknesses in the corporate governance practices of the Company.

(6 marks)

- (b) Bazinga Games and Sports Ltd, a start-up catering to new games and sports activities was founded by Bose. The Company was funded by well-known investors and the planning for IPO was also going on. Methra, a Company Secretary and Corporate Advisory Professional, was appointed to review the existing governance processes and suggest recommendations, if any. She was also requested to do an evaluation from risk management perspective. While Mehtra's review was underway, she spoke to Bose about the changes they need to bring in the Company's practices especially from a governance risk perspective. When Bose asked her to explain, she said that governance risks refer to significant deficiencies that can severely affect the reputation, viability, and ongoing operations of an organization. These risks arise due to the failure of the Board to properly direct and control the organization or from inappropriate practices adopted by the Board itself. In some cases, collusion between management and the Board may override critical internal controls, leading to substantial financial losses. Additionally, the inability of the Board to identify key risk factors that could threaten business continuity further exacerbates these vulnerabilities. These failures are often a result of broader corporate governance shortcomings, where Boards fail to fully grasp the risks being taken by the company—whether through careless risk-taking or inadequate risk management systems. In many instances, lack of comprehensive oversight and accountability compounds the situation, leaving the organization vulnerable to external shocks, regulatory penalties, or operational breakdowns. Therefore, robust governance and risk management frameworks are crucial for ensuring long-term organizational stability and sustainability.

In view of the above facts, highlight some of the sound practices for the Board of Directors which help to improve risk governance.

(6 marks)

Answer 6(a)

Upon reviewing the given scenario, several weaknesses in the corporate governance practices of Fantasy Industries Ltd are evident. These include:

- **Potential Conflict of Interest:** The family relationship between the CEO and the Chairman could raise concerns about independence and decision-making, as personal ties may influence corporate governance and oversight.
- **Lack of Independent Judgment:** Kurup's extended tenure as an independent director (nearly nine years) raises doubts about his continued independence, which is essential for ensuring unbiased judgment on the Board. His re-election without an objective evaluation of independence undermines corporate governance standards.
- **Over centralization of Power:** Narad's control over both strategic decision-making and communication with institutional investors, without substantial input or scrutiny from independent directors, could result in an imbalance of power and lack of checks and balances. Usually, the Chairman also plays a role in discussions with shareholders which is absent in this case.
- **Inadequate Training and Development:** While Narad has arranged for training for two Board members, the initiative appears limited and reactive, instead of part of a comprehensive, ongoing development plan to enhance governance practices across the Board.

These issues point to significant gaps in the company's governance framework, which, if not addressed, could compromise the long-term sustainability and transparency of Fantasy Industries Ltd.

Answer to Question 6(b)

Some of the sound practices which can help the Board of Directors to improve risk governance:

- *Establish clear risk governance framework:* Board should set clear risk parameters and define the organisation's risk appetite, which guides decision making and ensures alignment with company's objectives.
- *Risk management policies:* Implement robust risk management policies to guide the identification, assessment and mitigation of risks
- *Ensure Board expertise and diverse composition:* Board should include members with diverse skills and expertise, particularly in areas of finance, law, operations and risk management.
- *Foster open communication and accountability:* Establish clear channels for reporting risks including regular updates from management on emerging risks and mitigation efforts.
- *Engage in regular risk assessments:* Board should ensure that the organisation regularly conducts risk assessments, both internal and external to identify emerging risks and trends.
- *Promote risk aware culture:* Board should set the tone for the entire organisation by emphasising the importance of effective risk management.
- *Robust controls and compliance systems:* Board must oversee the establishment of strong internal controls to prevent fraud, financial misreporting, operational failures.
- *Effective collaboration between Board and the management:* Board and senior management should share joint responsibility for risk oversight. While the Board provides governance, management is responsible for day-to-day risk management.
- *Proactive crisis management and response plans:* The Board should oversee development and testing of crisis management plans, ensuring that the organisation is ready to respond swiftly to emergencies or disruptions.

Continuous improvement of risk governance practices: After significant risk events or incidents, Board should review the outcomes and lessons learnt. Incorporating these lessons into future risk governance practices enhances the organisation's ability to manage risks over time. Even otherwise, a periodical review of the risk governance practices is a must.

BANKING LAWS AND PRACTICE

MODULE 3 ELECTIVE PAPER 9.1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

Liquidity Adjustment Facility

Liquidity Management is a key function of the Reserve Bank of India (RBI) that ensures effective Monetary Policy transmission and smooth financial system operations. It involves the Central Bank's procedures to align short-term interest rates with the policy rate. The RBI's liquidity management framework involves three key aspects ;

- The operating framework,
- Liquidity drivers, and
- Liquidity control mechanisms.

The RBI's liquidity management framework has evolved through progressive refinements since 1999 in response to changing domestic and global conditions. Since 2011, the fixed overnight Repo (repurchase) Rate under the Liquidity Adjustment Facility (LAF) has been formally announced as the single Monetary Policy Rate, with the Weighted Average Call Money Rate (WACR) as the operating target of Monetary Policy. The effectiveness of Liquidity Management Operations depends on being predictive in assessing Liquidity and Market conditions and deploying instruments productively, singly and/or in combinations. The Liquidity Management framework was modified in April 2016, assuring both durable and frictional liquidity, while aiming to progressively lower the average ex-ante liquidity deficit in the system to a position closer to neutrality.

Efficient Liquidity Management is critical to Monetary Policy Operations. Even though liquidity management has short-term effects in financial markets, its implications are enduring in terms of its impact on Consumption, Investment and Capital formation in the economy. It has the following benefits to the economy.

- **Supporting Economic Growth** : By maintaining optimal liquidity, Banks can continue lending to businesses and consumers, supporting economic activity and growth in India.
- **Facilitating Monetary Policy transmission** : Effective liquidity management by the RBI helps in the smooth transmission of Monetary Policy to the broader economy.
- **Ensuring Financial Stability** : Effective Liquidity Management helps Indian Banks and financial institutions maintain adequate Cash Reserves and liquid assets to meet short- term obligations and withstand economic shocks.
- **Meeting Regulatory Requirements** : The RBI has implemented stringent liquidity requirements such as the Liquidity Coverage Ratio (LCR) for Banks. Proper Liquidity Management is essential for Banks to comply with these Regulatory Norms.
- **Managing Volatility** : Sound Liquidity Management helps Banks and the RBI handle sudden inflows or outflows of Foreign Capital.

- **Mitigating Systemic Risk** : Robust Liquidity Management Practices reduce the risk of contagion, as the liquidity shortages at major banks can quickly spread through the financial system.
- **Building Investor and Depositor Confidence** : Strong Liquidity Positions enhance the credibility of Banks among Investors and Depositors, crucial for maintaining stability.
- **Managing Currency Fluctuations** : Liquidity Management helps Banks handle Exchange Rate Volatility, which is important, given India's increasing Global Financial Integration.

Key Drivers of Liquidity in the Banking System :

- **Government Cash Balances with RBI** : The Government's higher Cash holdings at the RBI reduce system Liquidity and lower cash holdings increase liquidity.
- **Changes in Currency in Circulation** : An increase in currency in circulation reduces liquidity in the Banking System, while a decrease in currency in circulation increases liquidity.
- **RBI's Forex Operations** : When the RBI buys foreign currency, it injects rupee liquidity into the system, and when it sells foreign currency, it absorbs rupee liquidity.
- **RBI's Market Operations** : Through its liquidity tools such as Open Market Operations (OMOs), the RBI can inject liquidity by purchasing government securities or absorb liquidity by selling them.
- **Changes in CRR, SLR** : An increase in Cash Reserve Ratio (CRR) or Statutory Liquidity Ratio (SLR) requirements reduces liquidity in the banking system, while a decrease increases liquidity.

Key Factors Affecting Surplus Liquidity :

- **Credit and Deposit Mismatch** : When there is an increase in bank deposits compared to the demand for credit, it creates a liquidity surplus in banks.
- **Government Spending** : Higher Government spending at the end of the month (salaries, pensions) can contribute to surplus liquidity.
- **Redemption of Government Bonds** : When government bonds mature and are redeemed, it adds to the surplus liquidity in the banking system.
- **Withdrawal of High Denomination Currency Notes** : Deposit of withdrawn currency notes contributes to increased surplus liquidity.
- **RBI Intervention in Forex Markets** : The RBI buying dollars to weaken the rupee, can increase rupee liquidity.

Key Factors Leading to Liquidity Tightness :

- **High Demand for Bank Credit** : If credit growth surpasses deposit growth, it can cause fund constraints and liquidity tightness.
- **Advance Tax Payments by Corporates** : Quarterly advance tax outflows can aggravate liquidity tightness.
- **RBI Intervention in Forex Markets** : The RBI selling dollars to defend the rupee can reduce rupee liquidity.

Banks try to borrow their shortfall of reserves from the interbank market. If reserve requirements such as CRR and SLR cannot be met in the interbank market, then banks borrow funds from the RBI under LAF. If banks are net borrowers under LAF, the system liquidity can be said to be in deficit. Conversely, if banks deposit more than the reserve requirement, then they become a net lender to RBI, and the system liquidity can be said to be in surplus. The RBI uses various tools to manage liquidity in the banking system, which is in line with its monetary policy stance. The RBI's main challenge is

to ensure that changes in its policy instruments quickly and effectively influence its target interest rates. To achieve this, the RBI typically adjusts its liquidity operations in the following ways :

- Injecting funds into the system when needed, especially during periods of liquidity shortage.
- Timing government borrowing strategically to smooth out cash flows and prevent sudden liquidity crunches.
- Encouraging banks to rely more on borrowing from each other (the interbank market) rather than depending heavily on the RBI for their daily liquidity needs.

Liquidity management is an important function of the RBI that ensures the smooth functioning of the financial system and the effective transmission of monetary policy. The RBI's liquidity management framework has evolved to address changing economic conditions and challenges and the RBI employs various direct tools such as CRR, SLR, or indirect tools through LAF to regulate the money supply and manage the Indian economy as and when required.

As the Indian Economy continues to grow and integrate with Global Markets, effective liquidity management will remain crucial for maintaining financial stability and supporting economic growth. The RBI's ability to adapt its liquidity management tools and strategies to address emerging challenges, such as shifts in customer preferences and technological disruptions, will be key to ensuring the continued effectiveness of its Monetary Policy implementation.

With this background, answer the following questions :

- (a) What is Liquidity Adjustment Facility (LAF) and whether Re-repo in Government Securities Market is allowed ?
- (b) Who are the major players in the Government Securities (G-Secs) market ?
- (c) How and in what form can G-Secs be held ?
- (d) What is meant by Repo Market and Repurchase (buyback) of G-Secs ?
- (e) What are Open Market Operations (OMOs) ? What are the different money market instruments ?
- (f) How are the G-Secs issued ?
- (g) What is Money Market ? Whether Certificate of Deposit is Money Market Instrument ?
- (h) What are the role and functions of FIMMDA & FBIL ?

(8×5 marks = 40 marks)

Answer 1(a)

Liquidity Adjustment Facility (LAF) is a facility extended by RBI to the Scheduled Commercial Banks (excluding RRBs) and Primary Dealers to avail of liquidity in case of requirement or park excess funds with RBI in case of excess liquidity on an overnight basis against the collateral of G-Secs including State Development Loans (SDLs). Basically, LAF enables liquidity management on a day-to-day basis. The operations of LAF are conducted by way of Repurchase Agreements with RBI being the counter-party to all the transactions. The interest rate in LAF is fixed by RBI from time to time. LAF is an important Tool of Monetary Policy and Liquidity Management. The substitution of Collateral (Security) by the market participants during the tenor of the Term Repo is allowed from April 17, 2017 subject to various conditions and guidelines prescribed by RBI from time to time.

Scheduled commercial banks, Primary Dealers along with Mutual Funds and Insurance Companies (subject to the approval of the regulators concerned) maintaining Subsidiary General Ledger account with RBI are permitted to Re-repo the Government Securities, including SDLs and Treasury

Bills, acquired under Reverse Repo, subject to various conditions and guidelines prescribed by RBI time to time.

With the introduction of LAF, the important tool of monetary policy- 'the repo rate' became the prime instrument at the hands of RBI for controlling the monetary policy. LAF is a mechanism for adjusting liquidity in the banking system. It has twin aims of withdrawing funds or increasing the same in the banking system when there are excess or shortages of liquidity in the system. LAF is operated daily by RBI thro Repo / Reverse Repo mechanisms.

Normally the Reverse repo rate is charged at a lower rate than the repo rate. This means whenever the repo rate changes, the reverse repo rate also changes.

For example, an increase in repo rate by 50 basis points, the reverse repo rate may also increase by 50 basis points or on any other basis by as decided by RBI from time to time. Therefore, LAF forms a component tool for controlling monetary system.

Answer 1(b)

Major players in the G-Secs market include Commercial Banks and Primary Dealers besides institutional investors like insurance companies. Primary Dealers play an important role as market makers in G-Secs market. A market maker provides firm two-way quotes in the market i.e. both Buy and Sell executable Quotes for the concerned securities. Other participants include Co-operative Banks, Regional Rural Banks, Mutual Funds, Provident and Pension Funds. Foreign Portfolio Investors (FPIs) are allowed to participate in the G-Secs market within the quantitative limits prescribed from time to time. Corporates also Buy / Sell the G-Secs to manage their overall portfolio.

Answer 1(c)

The Public Debt Office (PDO) of RBI, acts as the Registry and Central Depository for G-Secs. They may be held by investors either as Physical Stock or in Dematerialized (Demat / Electronic) Form. From May 20, 2002, it is mandatory for all the RBI regulated entities to hold and transact in G-Secs only in Dematerialized (SGL) Form.

- (i) *Physical Form:* G-Secs may be held in the form of stock certificates. A stock certificate is registered in the books of PDO. Ownership in stock certificates cannot be transferred by way of endorsement and delivery. They are transferred by executing a transfer form as the ownership and transfer details are recorded in the books of PDO. The transfer of a stock certificate is final and valid only when the same is registered in the books of PDO.
- (ii) *Demat Form:* Holding G-Secs in the electronic or scripless form is the safest and the most convenient alternative as it eliminates the problems relating to their custody, viz., loss of security. Besides, transfers and servicing of securities in electronic form is hassle free. The holders can maintain their securities in dematerialised form in either of the two ways

Answer 1(d)

Repo or ready forward contract is an instrument for borrowing funds by selling securities with an agreement to repurchase the said securities on a mutually agreed future date at an agreed price which includes interest for the funds borrowed. The interest rate at which the Reserve Bank provides this short duration liquidity to banks is known as 'Repo' rate. Under inflationary conditions RBI increases the Repo rate and this discourages the banks to borrow thereby reducing the money circulation in the economy. This helps to reduce inflation. Repo rate has become a reference rate for interest rate movements in the banking system as of now, a place which was occupied by Bank rate in earlier times

The reverse of the repo transaction is called 'reverse repo' which is lending of funds against buying

of securities with an agreement to resell the said securities on a mutually agreed future date at an agreed price which includes interest for the funds lent. The (fixed) interest rate at which the Reserve Bank absorbs liquidity, on an overnight basis, from banks against the collateral of eligible government securities under the LAF. The effect of increasing Reverse Repo rate, will lead to decrease in the money supply as commercial banks will get better interest rates to keep their funds with the RBI. Therefore, Reverse Repo rate also is used as an instrument of monetary control by RBI.

It can be seen from the definition above that there are two legs to the same transaction in a repo/ reverse repo. The duration between the two legs is called the 'repo period'. Predominantly, repos are undertaken on overnight basis, i.e., for one day period. Settlement of repo transactions happens along with the outright trades in G-Secs.

The consideration amount in the first leg of the repo transactions is the amount borrowed by the seller of the security. On this, interest at the agreed 'repo rate' is calculated and paid along with the consideration amount of the second leg of the transaction when the borrower buys back the security. The overall effect of the repo transaction would be borrowing of funds backed by the collateral of G-Secs.

The repo market is regulated by the Reserve Bank of India. Repo Market transactions should be traded/reported on the electronic platform called the Clearcorp Repo Order Matching System (CROMS).

Repurchase (buyback) of G-Secs is a process whereby the Government of India and State Governments buy back their existing securities, by redeeming them prematurely, from the holders. The objectives of buyback can be reduction of cost (by buying back high coupon securities), reduction in the number of outstanding securities and improving liquidity in the G-Secs market (by buying back illiquid securities) and infusion of liquidity in the system. The repurchase by the Government of India is also undertaken for effective cash management by utilising the surplus cash balances.

Answer 1(e)

Open Market Operations (OMOs) are the market operations conducted by the RBI by way of sale/ purchase of G-Secs to / from the market with an objective to adjust the rupee liquidity conditions in the market on a durable basis. When the RBI feels that there is excess liquidity in the market, it resorts to sale of securities thereby sucking out the rupee liquidity. Similarly, when the liquidity conditions are tight, RBI may buy securities from the market, thereby releasing liquidity into the market.

Money market instruments include Call Money, Repos, T- Bills, Cash Management Bills, Commercial Paper, Certificate of Deposit and Collateralized Borrowing and Lending Obligations (CBLO). Call Money Market is a market for uncollateralized lending and borrowing of funds. This market is predominantly overnight and is open for participation only to scheduled commercial banks and the primary dealers.

Answer 1(f)

G-Secs are issued through auctions conducted by RBI. Auctions are conducted on the electronic platform called the E-Kuber, the Core Banking Solution (CBS) platform of RBI. Commercial banks, scheduled UCBs, Primary Dealers, Insurance Companies and Provident Funds, who maintain funds account (current account) and securities accounts (Subsidiary General Ledger (SGL) account) with RBI, are members of this electronic platform. All members of E-Kuber can place their bids in the auction through this electronic platform. The results of the auction are published by RBI at stipulated time. All non-E-Kuber members including non-scheduled UCBs can participate in the primary auction through scheduled commercial banks or PDs (called as Primary Members-PMs). For this purpose, the Banks need to open a securities account with a Bank / PD – such an account

is called a Gilt Account. A Gilt Account is a dematerialized account maintained with a scheduled commercial bank or PD. The proprietary transactions in G-Secs undertaken by PMs are settled through SGL account maintained by them with RBI at PDO. The transactions in G-Secs undertaken by Gilt Account Holders (GAHs) through their PMs are settled through Constituent Subsidiary General Ledger (CSGL) account maintained by PMs with RBI at PDO for its constituent (e.g., a Non-scheduled UCB).

Answer 1(g)

Money Market is a very important segment of the Indian financial system. It is the market for dealing in monetary assets of short-term nature. Short-term funds up to one year and for financial assets that are close substitutes for money are dealt in the money market. It is not a physical location (like the stock market), but an activity that is conducted over the telephone. Money market instruments have the characteristics of liquidity (quick conversion into money), minimum transaction cost and no loss in value. Excess funds are deployed in the money market, which in turn is availed of to meet temporary shortages of cash and other obligations.

Money Market provides access to providers (financial and other institutions and individuals) and users (comprising institutions and government and individuals) of short-term funds to fulfil their borrowings and investment requirements at an efficient market-clearing price. The rates struck between borrowers and lenders represent an array of money market rates. The interbank overnight money rate is referred to as the call rate. There are also a number of other rates such as yields on treasury bills of varied maturities, commercial paper rate and rates offered on certificates of deposit. Money market performs the crucial role of providing an equilibrating mechanism to even out short-term liquidity and in the process, facilitating the conduct of monetary policy. Short-term surpluses and deficits are evened out. The money market is the major mechanism through which the Reserve Bank influences liquidity and the general level of interest rates. The Bank's interventions to influence liquidity serve as a signalling device for other segments of the financial system.

Certificate of Deposit (CD) is a Negotiable Money Market Instrument and issued in Dematerialised form or as a Usance Promissory Note, for funds Deposited at a Bank or other eligible financial institution for a specified time period. Banks can issue CDs for maturities from 7 days to one year whereas eligible FIs can issue for maturities from 1 year to 3 years.

Answer 1(h)

The Fixed Income Money Market and Derivatives Association of India (FIMMDA), an association of Scheduled Commercial Banks, Public Financial Institutions, Primary Dealers and Insurance Companies was incorporated as a Company under Section 25 of the Companies Act, 1956 on June 3, 1998. FIMMDA is a voluntary market body for the bond, money and derivatives markets. FIMMDA has members representing all major institutional segments of the market. The membership includes Nationalized Banks such as State Bank of India and other nationalized banks; Private sector banks such as ICICI Bank, HDFC Bank; Foreign Banks such as Bank of America, Citibank, Financial institutions such as IDFC, EXIM Bank, NABARD, Insurance Companies like Life Insurance Corporation of India (LIC), ICICI Prudential Life Insurance Company, Birla Sun Life Insurance Company and all Primary Dealers.

FIMMDA represents market participants and aids the development of the bond, money and derivatives markets. It acts as an interface with the regulators on various issues that impact the functioning of these markets. FIMMDA also plays a constructive role in the evolution of best market practices by its members so that the market as a whole operates transparently as well as efficiently.

Financial Benchmarks India Pvt. Ltd (FBIL) was incorporated in 2014 as per the recommendations of the Committee on Financial Benchmarks. FBIL has taken over existing benchmarks such as

Mumbai Inter-Bank Outright Rate (MIBOR) and option volatility and introduced new benchmarks such as Market Repo Overnight Rate (MROR), Certificate of Deposits (CDs) and T-Bills yield curves. The development of FBIL as an independent organisation for administration of all financial market benchmarks including valuation benchmarks is important for the credibility of these benchmarks and integrity of financial markets. FBIL has assumed the responsibility for administering valuation of Government securities with effect from March 31, 2018.

FBIL has also assumed the responsibility for computation and dissemination of the daily "Reference Rate" for Spot USD/INR and other major currencies against the Rupee, which was previously being done by the Reserve Bank.

Question 2

- (a) What is Foreign Exchange Market and explain the factors affecting Foreign Exchange Markets ?
- (b) Calculate Current Assets of a Company from the following information :

Inventory Turnover Ratio = 4 Times.

Inventory at the end is ₹ 20,000 more than the Inventory in the beginning.

Revenue from Operations ₹ 3,00,000 and Gross Profit is 20% of revenue from Operations.

Current Liabilities = ₹ 40,000

Quick Ratio = 0.75 : 1

(6 marks each)

Answer 2(a)

The Foreign Exchange Market, or Forex Market, is a global, decentralized marketplace where currencies are bought and sold. It is the largest and most liquid financial market in the world, with daily trading volumes handling approximately \$7.5 trillion. This market plays a crucial role in facilitating international trade and investment by allowing businesses to convert one currency into another. The forex market operates 24 hours a day, five days a week, with trading occurring in major financial centres worldwide. Various factors drive the market, including economic data, geopolitical events, and central bank policies. The exchange rate, which reflects the value of one currency compared to another, is determined by supply and demand within the market. Understanding the role of foreign exchange markets is essential for anyone involved in global business and finance.

Several factors influence the foreign exchange market, impacting how currencies are valued and traded. Understanding these factors is crucial for grasping the role of foreign exchange markets in global finance. The main factors affecting Foreign Exchange Markets are:

- *Economic Indicators:* Indicators like inflation, GDP, and employment data affect a country's economic outlook, influencing its currency value. Strong economic performance typically strengthens a currency, while weak performance can lead to depreciation.
- *Central Bank Policies:* Central banks' monetary policies, such as changes in interest rates and quantitative easing, play a significant role in determining currency values. Higher interest rates often attract foreign investment, boosting a currency's value.
- *Geopolitical Events:* Political events, including elections, wars, and trade agreements, can cause significant currency volatility. For example, uncertainty during an election can lead to currency depreciation.

- *Market Sentiment*: Investor confidence and risk appetite also influence currency values. Positive market sentiment can drive demand for a currency, while fear and uncertainty can lead to sell-offs.
- *Natural Disasters*: Natural disasters can disrupt economic activity, causing currency values to fluctuate. For instance, a major earthquake can harm a country's economy, leading to a weaker currency.
- *Speculation*: Speculative trading activity, where traders buy or sell currencies based on their expectations of future price movements, can also impact currency values. High volumes of speculative trading can lead to short-term volatility.

Answer 2(b)

- Cost of Revenue from Operations = Revenue from Operations – Gross Profit
 $= ₹ 3,00,000 - (₹ 3,00,000 \times 20\%)$
 $= ₹ 3,00,000 - ₹ 60,000$
 $= ₹ 2,40,000/-$
- Inventory Turnover Ratio = Cost of Revenue from Operations / Average Inventory.
 Average Inventory = Cost of Revenue from Operations / 4
 $= ₹ 2,40,000 / 4 = ₹ 60,000/-$
 Average Inventory = (Opening Inventory + Closing Inventory) / 2
 $₹ 60,000/- = (\text{Opening Inventory} + (\text{Opening Inventory} + ₹ 20,000)) / 2$
 $₹ 60,000 = \text{Opening Inventory} + ₹ 10,000$
 Opening Inventory = ₹ 50,000
 Closing Inventory = ₹ 70,000
- Liquid Ratio = Liquid Assets / Current Liabilities
 $0.75 = \text{Liquid Assets} / ₹ 40,000$
 Liquid Assets = ₹ 40,000 $\times$ 0.75 = ₹ 30,000/-
- Current Assets = Liquid Assets + Closing Inventory
 $= ₹ 30,000 + ₹ 70,000 = ₹ 1,00,000/-$

Question 3

- Explain RBI's New Guidelines On "Commercial Papers and Non-Convertible Debentures".
- What is CKYC ? How does CKYC work ?
- Explain the Step-by-Step Process of Claims to be settled for the Farmers under Pradhan Mantri Fasal Bima Yojana.

(4 marks each)

Answer 3(a)

The RBI's new notification provides detailed guidelines for the issuance and regulation of Commercial Papers (CPs) and Non-Convertible Debentures (NCDs).

The Key highlights are:

- *Applicability*: These directions are effective from April 1, 2024, and apply to all entities dealing in CPs and NCDs of up to one year's maturity.
- *Eligible Issuers and Investors*: Broadens the scope of entities that can issue CPs and NCDs. It includes Companies, NBFCs, REITs, AIFs, and other corporates meeting specific criteria. Both Residents and Non-residents, as per FEMA 1999, can invest in these instruments.
- *Issuance and Investment Conditions*: CPs and NCDs must be issued in dematerialized form, in minimum denominations of ₹5 lakh, and follow specific tenor limits. They cannot be underwritten or co-accepted.
- *Tenor limits*: CPs – 7 days to 1 year; NCDs – 90 days to 1 year.
- *Settlement window*: Primary issues must settle within T+4 days; secondary within T+1
- *Credit Enhancement and Rating Requirements*: Banks and AIFs may provide credit enhancement. CPs and NCDs must have a minimum credit rating of 'A3'.
- *Issuance terms*: CPs at discount; NCDs either at discount or with fixed/floating coupon linked to RBI policy or FIMMDA benchmarks
- *Primary and Secondary Market Guidelines*: Includes guidelines on issuance, subscription, trading, and settlement of CPs and NCDs. Secondary market trades must be settled through DvP (Delivery versus Payment) basis.
- *Repayment and Default Management*: Specifies no grace period for repayment and details procedures for handling defaults and buybacks.
- *Reporting Requirements*: Mandates timely reporting of primary issuances, secondary market transactions, buybacks, and defaults.
- *Roles and Responsibilities*: Outlines the responsibilities of Issuing and Paying Agents, Debenture Trustees, and Credit Rating Agencies.

These directions aim to strengthen the framework for short-term debt instruments, enhancing transparency and investor protection. The RBI's restructured Master Direction effective April 1, 2024, revamps the short-term debt framework by integrating CPs and NCDs under common standards—including eligibility, issuance, settlement, rating, buybacks, and reporting. The changes aim to ensure greater uniformity, transparency, investor protection, and market discipline.

Answer 3(b)

Central Know Your Customer (CKYC) is a system implemented by the Indian Ministry of Finance to streamline KYC verification procedures for financial institutions. It establishes a centralized repository managed by the Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI). This database houses the KYC information of individuals who have undergone the CKYC process. . It streamlines customer verification for all financial sector participant like banks, mutual funds, insurance companies, and many more by replacing repetitive KYC paperwork with a one-time, centralized process

CKYC as a secure digital vault that stores the KYC details of a person after they complete the process with a participating financial institution. This eliminates the need to go through the entire KYC hassle again when dealing with other institutions.

CKYC assigns a unique identification number to a customer that acts as their KYC passport across various financial service providers in India. No more piles of paperwork or repeated verifications-just a smooth and efficient onboarding experience.

CKYC operates through a collaborative effort between individuals, KYC Registration Agencies (KRAs), financial institutions, and CERSAI. The process:

For Individuals:

1. *CKYC Registration:* Individuals initiate the CKYC process by approaching a KRA or a participating financial institution. The KRA or institution collects the required KYC documents (PAN card, address proof, etc.) and begins the verification process. This can be an in-person verification or eKYC (electronic KYC), depending on the available option.
2. *CERSAI Verification:* Once the KYC documents are submitted, CERSAI performs a thorough verification, ensuring the authenticity and accuracy of the information.
3. *Unique CKYC Number:* After successful verification, CERSAI assigns a unique 14-digit CKYC identification number to the individual. This number serves as a single point of reference for all future KYC needs across participating financial institutions.

For Businesses:

1. *Customer Shares CKYC Number:* During customer onboarding, a business can inquire if the customer has a CKYC number.
2. *CKYC Information Retrieval:* If the customer possesses a CKYC number, the business can retrieve their KYC details directly from the CERSAI database with the customer's consent. This retrieval process typically happens electronically through APIs offered by CERSAI or authorized service providers.
3. *Seamless Verification:* Once the KYC details are retrieved, the business can verify the customer's information and proceed with account opening or product offering without the need for further document collection or verification.

Key Points are:

Individuals only need to undergo CKYC once. Their KYC information remains valid for a specific period (typically 10 years) unless there are any changes requiring an update.

Businesses and financial institutions can leverage CKYC APIs to seamlessly integrate KYC verification into their existing workflows, further streamlining the customer onboarding process.

CKYC accounts vary based on documentation and risk profile:

- Normal Account: Verified with PAN, Aadhaar, Voter ID, Passport, etc.
- Simplified Measures Account: Uses other official ID proofs
- Small Account: Minimal details + photograph
- OTP-based eKYC Account: Uses OTP and photograph verification.

Answer 3(c)

In a country like India where agriculture is the lifeblood of millions, farmers face an unrelenting battle against unpredictable weather, pests, and other devastations. Recognising the crucial need for a safety net, the Ministry of Agriculture and Farmer's Welfare introduced the Pradhan Mantri Fasal Bima Yojana (PMDBY) in 2016. The government-backed agricultural insurance scheme aims to protect farmers from the financial burden of crop loss and promoting sustainable agricultural practices.

The Pradhan Mantri Fasal Bima Yojana claim process involves the following steps:

- *Intimation of loss:* In case of crop loss or damage, farmers must immediately notify the

concerned authorities, such as the nearest Agriculture Department Office or the insurance company's representative. Farmers should provide details regarding their policy, crop, extent of damage, and the cause of loss. It is important to intimate within the specified time frame to ensure a smooth claim settlement process.

- *Submission of documents:* To support the information provided during the initial intimation, farmers are required to submit a duly filled intimation form with documentary evidence. If information for all the columns is not readily available, semi-filled is acceptable by the insurance company. A period of seven days after the loss occurrence is granted to gather and submit the complete details. Besides, farmers are required to preserve damaged or defective parts and make them available for inspection during claim assessment.
- *Crop Cutting Experiments (CCE):* To assess the actual crop yield and determine the extent of loss, Crop Cutting Experiments (CCE) are conducted by designated agencies. These experiments involve randomly selecting sample fields and recording the crop yield. The results obtained from CCEs play a crucial role in determining the compensation amount for the affected farmers under the PMFBY claim process.
- *Loss assessment procedure:* The Ministry of Agriculture & Farmers Welfare shall empanel evaluators to assess the losses and approve the claim request. The assessor/evaluator chosen is an agency with relevant field experience, financial strength, infrastructural facilities, and skilled manpower. The designated assessor will complete the assessment within stipulated timelines and finalise the assessment report to settle the claim.
- *Settlement of claim:* Based on the CCE findings, the claim amount is calculated using predetermined parameters such as crop yield, threshold yield, and sum insured. The claim settlement is done in the following manner:
- *In case of bank coverage:* The amount of the claim is released to individual correspondent banks. The banks at the ground level, in turn, display the particulars of beneficiaries on their notice board and credit the accounts of the individual farmers. The banks have to provide individual farmer-wise claim credit details to the Insurance Agency (IA) and the information is incorporated into the centralised data repository.
- *In case of coverage offered by other insurance intermediaries:* The claim amount is directly deposited to the individual insured bank account through an electronic mode.

In the event of any discrepancies or dissatisfaction, farmers can approach the designated grievance redressal cell or the Agriculture Department Office for resolution on the Pradhan Mantri Fasal Bima Yojana claim process.

On-Account Payment of Claims Due to Mid-Season Adversity: In difficult seasonal conditions like prolonged dry spells, severe drought, floods, unseasonal rains, the insurance agency makes on-account payment of claims. The process is carried out in consultation with the concerned State Government/UT based on satellite imagery, meteorological data, or any other substitute indicator. Only 25% of likely claims will be addressed this way. Besides, such claim settlement is executed only in those notified areas or districts where such indicators are measurable. Another condition applies to the expected yield during the season, which must likely be less than 50% of the normal yield.

Question 4

- (a) Gajamukha Fuel Injections Pvt Limited is a unit enjoying FBWC Limit of ₹ 50 Lakhs. Margin stipulated against Stocks is 25% and for Book debts is 50% as per the sanctioned terms and Conditions. Stale stocks and book debts outstanding beyond 90 days are not considered for DP calculation. The Stock statement dated 31.01.2025 is received on 05.02.2025. As per the

Stock statement, Value of Stocks is showing ₹ 45 Lakhs (₹ 5 lakh stocks are old) and value of Book Debts is ₹ 30 Lakhs of which ₹ 10 lakh worth debtors are 4 months old. Value of Sundry Creditors for purchases is ₹ 10 lakhs. The Borrower has also advised outstanding LC Backed Bills discounted of ₹ 10 lakhs.

Based on these facts, calculate the Drawing Power for the company as per the given stock statement ?

(4 marks)

- (b) A person pays ₹ 64,000 per annum to the Bank, for 12 years at the rate of 10% per year. Find the Annuity.

(4 marks)

- (c) "One of the important requirements of the Lending Banker is to hold valid legal documents". Explain the importance and Key Clauses of Loan Agreements/Documents in Lending Process of Banks ?

(4 marks)

Answer 4(a)

Value of stock as per stock statement Rs. 45 lakhs

Less old stock Rs.5 lakhs

Value of stocks Rs.40 lakhs

Less stock on credit Rs.10 lakhs

Therefore, value of stock eligible for DP calculation Rs.30 lacs

Margin on stock 25% of 30 Lakh = Rs.7.50 lacs

Therefore, Funding-on Stock = Rs. 30- Rs. 7.50=Rs.22.50 lakhs

Book debts value Rs.30 lacs

Less old debts Rs.10 lacs

Eligible book debts for DP calculation. Rs.20 lakhs

Less margin 50% of 20 lakh = Rs.10 lakhs

DP out of book debts Rs.10 lakhs

Total DP = 22.50+10=Rs.32.50 akhs

Note: since BD facility is backed by LC, not taken in DP calculation.

Answer 4(b)

Future value (FV) of annuity paid (A)

$$\text{FV of Ordinary Annuity } A = \frac{P (1+i)^{n} - 1}{i}$$

Here

A = FV of Annuity

P = Periodic payment, Here Rs.64000

i = Rate of interest. Here it is 10% or 0.10

n = Number of years. Here it is 12

$$\text{Therefore } A = \frac{64000 (1+0.10)^{12-1}}{0.10}$$

$$= 6,40,000 (1.1)^{12-1}$$

$$= 6,40,000 (3.1384 - 1)$$

$$= 6,40,000 (2.1384)$$

$$= ₹ 13,68,576/-$$

Present Value (PV) of the Annuity = $FV / (1+r)^n$

$$PV = 13,68,576 / (1+0.10)^{12}$$

$$= 1368576 / 3.1384$$

$$PV = 436,074$$

Answer 4(c)

An essential part of the lending procedure is loan documentation. The terms and conditions of the loan are outlined in a legal contract between the bank and the borrower. There are various loan documentation forms, each with its own specifications. The loan agreement is another crucial document. The loan agreement is important. It outlines the loan's terms, interest rate, repayment plan, and collateral. The document also protects the bank's interests with acceleration and default clauses.

Loan documentation is essential since it safeguards the bank's interests in the event of a default by the borrower. The bank can pursue its rights and get its money back faster with proper paperwork.

Key Clauses in Loan Agreements: Loan agreements contain several key clauses designed to protect the bank's interests. These clauses include:

Default Clause: This clause states that the borrower defaults if they fail to make a payment on time or breach any other term of the Loan Agreement.

Acceleration Clause: This clause allows the bank to demand immediate repayment of the loan if the borrower defaults.

Cross-Default Clause: If the borrower defaults on another loan or debt, it is also considered a default on the bank's loan.

Negative Covenant: This rule stops the borrower from doing things that might make it harder for them to pay back the loan. For example, they can't get more debt or sell things they own.

Collateral Clause: This clause outlines the collateral requirements for the loan and specifies the bank's rights in the event of a default.

Interest, Fees & Payment Mechanics: Defines interest rate type (fixed/floating), calculation method, compounding, and applicable fees

Representations & Warranties: Borrower declares its legal existence, authority to enter into the loan, truthfulness of financial statements, absence of litigation, etc.

In view of the above, Banks should be careful while accepting various securities and ensure

such securities are properly charged (Like Lien, Hypothecation, Pledge, Assignment, Set-off and Mortgages) in favour of the Banks.

Question 5

(a) Explain the revised guidelines of RBI on appointment of Whole-Time Director(s) in Banks.

(3 marks)

(b) PRAVAAH Portal introduced by Reserve Bank of India for individual and entity's purpose. Explain three major initiatives of PRAVAAH.

(3 marks)

(c) What are the characteristics of a Self-Regulatory Organization(s) (SRO) in FinTech as defined by Reserve Bank of India ? What are the functions of an SRO in FinTech ?

(6 marks)

Answer 5(a)

Banks are advised by RBI to ensure the presence of at least two Whole Time Directors (WTDs), including the MD&CEO, on their Boards. The number of WTDs shall be decided by the Board of the bank by taking into account factors such as the size of operations, business complexity, and other relevant aspects. In compliance with RBI instructions, banks that currently do not meet the minimum requirement as mentioned above are to submit their proposals for the appointment of WTD(s) under Section 35B(1)(b) of the Banking Regulation Act, 1949, within a period of four months from the date of issuance of RBI circular in this regard. Those banks which do not already have the enabling provisions regarding the appointment of WTDs in their Articles of Association may first seek necessary approvals under Section 35B(1)(a) of the Act, expeditiously, so as to be in a position to comply with the requirements under RBI instructions. While ensuring compliance with the above RBI instructions, careful consideration shall also be given to meet the requirements under other applicable statutory /regulatory provisions.

Answer 5(b)

The PRAVAAH portal is a centralized, web-based platform launched by the Reserve Bank of India (RBI) for streamlining the application process for various regulatory approvals, permissions, and licenses. It stands for Platform for Regulatory Application, Validation, and Authorization. The Reserve Bank of India (RBI) introduced three major initiatives: the Pravaah portal, the Retail Direct Mobile App, and a FinTech Repository.

These initiatives, previously announced in the RBI's bi-monthly Statement on Development and Regulatory Policies in April 2023, April 2024, and December 2023, aim to enhance regulatory processes, provide easier access to government securities for retail investors, and improve the understanding of the FinTech sector.

Pravaah Portal: The Pravaah portal is designed to streamline the application process for various regulatory approvals. It allows individuals and entities to apply online, enhancing the efficiency of the processes related to granting approvals and clearances by the Reserve Bank.

Retail Direct Mobile App: The Retail Direct Mobile App aims to provide retail investors with seamless access to the retail direct platform. It simplifies the process of transacting in government securities (G-Secs), making it more convenient for individual investors.

FinTech Repository: The FinTech Repository is a comprehensive database of Indian FinTech firms. This repository is intended to offer a better understanding of the sector from a regulatory perspective and aid in the formulation of appropriate policy approaches.

Answer 5(c)

A Self-Regulatory Organization (SRO) in the FinTech sector is a non-governmental entity recognized by the Reserve Bank of India (RBI) to act as a regulator for FinTech companies, according to a Business Standard article. It sets industry standards, ensures compliance, and promotes ethical business practices within the rapidly evolving FinTech sector.

An SRO is required to guide the conduct of its members, ensure that they adhere to industry standards, comply with relevant laws and regulations, and maintain high ethical standards. This involves establishing and enforcing guidelines for consumer protection, data security, data privacy, etc. Thus, an SRO must also have adequate powers to investigate and take disciplinary action against its members for non-adherence.

Further, an SRO facilitates communication between industry players and RBI, advocating for necessary changes, and promoting a culture of compliance. It can comprise of multiple FinTech entities, with vastly different functions. "For example, some entities might aggregate both loan and insurance products, while RegTech providers develop solutions for a range of financial institutions including lending and insurance", the RBI explained. Thus, an SRO must set guidelines and adopt a framework that is conducive to broad spectrum of industry players.

An SRO should also encourage innovation equitably. It must bridge the skill gap and keeping smaller FinTech entities abreast with the dynamic nature of financial technology. This involves prescribing minimum eligibility criteria for its members, providing specialised knowledge and expertise, offering guidance, and contributing to capacity-building through training programs. It must also maintain a repository of information that can serve as a valuable resource for industry research, trend analysis, and policy making

Characteristics of a FinTech SRO (as per RBI)

True Industry Representation: Must have a diverse membership—including both regulated and unregulated FinTechs (excluding banks), representing the full spectrum of sector activity

Development-Oriented: Focuses on capacity-building via training, guidance, and hand-holding for smaller or early-stage FinTechs .

Independence & Credibility: Structured to be unbiased—no single member or dominant group can influence decision-making.

Legitimate Dispute Arbiter: Credible for resolving member disputes and customer grievances in a fair and transparent manner

Bridge to Regulator: Acts as a channel for industry concerns and regulatory inputs—encouraging alignment with RBI priorities while not supplanting RBI regulations

Data Repository: Maintains industry-wide data for analysis, trend identification, and policy support.

An SRO is required to partake in the following actions as mandated by the RBI:

- (a) Standard-setting:** Set a code of conduct for responsible advertisements and market standards. Develop appropriate baseline governance standards for the FinTech sector. Specify to its members all the consequences for violation of rules and ensure its enforcement. Collect and store data as necessary, in compliance various statutory legislations.
- (b) Oversight and Enforcement:** Create a structured framework and baseline surveillance standards, to guide oversight and enforcement functions. Deploy suitable surveillance mechanisms for effective monitoring of compliance in the FinTech sector. Ensure stringent confidentiality of surveillance data and restrict data collection to essential and specific information only. Implement data collection procedures from member FinTechs that safeguard

proprietary information. Establish clear standards of conduct. Specify consequences for violations, such as counselling, cautioning, reprimanding and expelling members, monetary penalty. The monetary penalty should be reasonable and not prohibitive. Bar / remove any of the FinTech entities for a limited period of time or for eternity if required.

- (c) **Development:** Promote understanding of statutory and regulatory requirements and promote a culture of compliance. Facilitate the exchange of expertise and experience and organize training programs for members. Disseminate sector-specific information through various channels such as periodicals, bulletins, pamphlets, magazines, etc., to raise awareness about the developments, trends, and best practices in the FinTech sector. Encourage a culture of research, development and responsible innovation by facilitating studies, surveys, research papers, think tank discussions, etc. Extend guidance and support, particularly to smaller entities within the sector, agnostic of membership.
- (d) **Grievance Redressal and Dispute Resolution:** Establish an efficient, fair, and transparent grievance redressal and dispute resolution framework. Work towards customer education focused on products and services offered by the industry. Conduct periodic assessment of customer service standards and review of grievance redressal framework.

Question 6

- (a) When does RBI Invoke Prompt Corrective Action (PCA) on commercial banks ?

(4 marks)

- (b) A draft for ₹ 1,30,000 was purchased by a Govt. department in favour of a contractor. The same was sent by post. The draft is lost probably while in transit. The Govt. Dept. requests for issuance of duplicate draft and it is not in favour of giving an indemnity. As a practicing Banker, how will you act in the matter ?

(4 marks)

- (c) Mr. 'X' an employee of ABC Ltd, who visits the Bank frequently for deposits and payments, withdrew a sum of ₹ 1 lakh on 16.5.2024. On 17.5.2024 Mr. 'D', director of the Company comes to the bank and informs that the employees Mr. 'X' was removed from service on 12.5.2024. The company denied that it had issued the cheque for Rs. 1 lakh that was paid on 16.5.2024. On scrutiny, it was found that the signature of the director on the cheque was forged. The director demanded for the refund of the money.

The Bank took the stand that it was a small amount and the cheque was paid in good faith. Discuss.

(4 marks)

Answer 6(a)

RBI takes into account four factors to determine whether it needs to put a bank under the Prompt Corrective Action (PCA) framework. These include profitability, asset quality, capital ratios and debt level.

The central bank grades each of these factors based on actions depending upon the grade / threshold level, categorised from one to three, where 1 is the lowest of the lot and 3 being the highest based on how banks stand with respective frameworks.

Following is a look at these Factors and their Grades:

Capital Adequacy Ratio (CRAR): The CRAR is basically the capital needed for a bank measured in terms of assets (mostly loans) disbursed by the banks. The higher the assets, the higher should be

the capital retained by the bank. This measures how much debt and equity capital banks possess to cover their asset book risk.

If CRAR is less than 10.25%, but above 7.75%, the bank falls in the first grade. Banks having a CRAR of over 6.25%, but below 7.75%, fall under grade 2. However, if a bank's capital adequacy ratio is less than 3.625%, it is categorised under grade 3.

Asset Quality: This parameter refers to the non-performing assets of a bank. If the net NPA of a bank is more than 6%, but less than 9%, it falls under the first threshold. If Net NPA crosses the 9% mark, it triggers the second grade. That said, if this metric is 12% or more, the bank will fall in the third grade of PCA.

Profitability: The regulator considers the return on assets (ROA) of a bank as the key measure for profitability. Note that if a bank's ROA is negative for two, three and four years in a row, it will be categorised as grade 1, grade 2 and grade 3, respectively.

Debt Level/Leverage: The last factor that RBI considers to measure the financial risk of any bank is its overall debt level/leverage.

The regulator triggers grade 1 if the overall leverage of a bank is more than 25 times its Tier 1 capital. However, when total leverage is over 28.5 times its core capital (including disclosed reserves), RBI takes action according to grade 2 of PCA.

Answer 6(b)

When the draft is lost in transit it amounts to constructive delivery to the payee and therefore the bank can ask the payee to execute an indemnity and with the concurrence of the Govt dept (in writing) it can issue a duplicate draft. Non-payment (stop payment) of the draft has to be ensured by verifying in the system. The Branch should also get the higher authority's permission for issue of the duplicate draft.

Proposed Action Plan

1. Receive written request from the Government department detailing the loss.
2. Ask for an indemnity letter, emphasizing it's essential for safeguarding public funds.
3. Optionally request an FIR copy or written confirmation of loss in transit.
4. Cancel the original draft in the system to stop any unauthorized encashment.
5. Issue the duplicate draft within 15 days, as mandated, and levy any nominal administrative charges per bank policy. If delayed, credit interest.
6. If department still refuses indemnity, escalate: recommend they secure funds in a public-sector indemnity format, or ask RBI branch for guidance.
7. Document all the steps—communications, reminders, and the indemnity request—to ensure audit compliance and transparency.

Answer 6(c)

There is no doubt that Mr. 'X' is the known agent of the company for making deposits, withdrawing money etc. However, it should be remembered that the company is the Bank's customer and the Bank can only pay as per the 'mandate' of the company. There is forgery in the signature which means that there is no mandate to pay. The bank is liable to the company. The bank would have been put on guard if the company had advised about his removal from service earlier. However, the omission does not affect the legal position. The bank's stand that the amount was small and that it was paid in good faith is not tenable. The signature is forged and the bank is liable.

INSURANCE – LAW & PRACTICE

MODULE 3 ELECTIVE PAPER 9.2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

Mr. Pawan, aged 40 Years purchased an Insurance Policy for the Sum Assured of ₹ 1 Crore from XYZ Company Limited. The proposal date was 22.02.2024 and has paid one year premium of ₹ 30,733/-. In the proposal form, he nominated his second wife Ms. Aparna and minor son Mr. Abhiroop who was born to his first wife as beneficiaries of 50% share of each for policy benefits. As his son is minor, his second wife Ms. Aparna is considered as legal trustee/guardian for the minor son.

His first wife Ms. Karuna passed away on 1-2-2021 with post-partum problems leaving behind a son. Since his first wife passed away in 2021, he has been using anti-depressant medicines to come out from his bereavement and also married Ms. Aparna on 20-12-2023 to take care of his two-year-old son Mr. Abhiroop. The usage of depressant medicines is not mentioned in the proposal form as he thought that was not a material fact. His business also got affected with his mental depression and to raise money for his business continuation he assigned this ₹ 1 Crore insurance policy to his creditor on 25.06.2024 against the loan of ₹ 30 lakhs.

Within 7 months of the proposal date, he died on 28.08.2024. The cause of death was reported in the discharge form of deceased life assured as sudden cardiac arrest in the sleep due to atherosclerosis (hardening of the arteries).

As Ms. Aparna is not biological mother to Abhiroop and father passed away, parents of Ms. Karuna the biological mother of Mr. Abhiroop approached the insurance company for the policy benefits in the name of minor son Mr. Abhiroop under the trustee of biological grandparents.

As it is an early claim, the investigation on death of the insured is initiated and the insurance company could not prove that it is a suicide though they come across the rumors of suicide from neighborhood due to his depressive mentality. But on investigation, it is identified that life assured had suppressed or concealed the material fact of using anti-depressant medicines. Research showing that antidepressants might contribute to atherosclerosis by affecting factors like blood pressure, platelet aggregation, inflammation and endothelial function within the blood vessels which may lead to heart failure.

Insurer put on hold the claim based on the following issues :

- (i) Suppression of material facts or breach of the condition of 'utmost good faith' from the life assured.
- (ii) Early claim with a suspicion of suicide.
- (iii) Litigation on Trustee/Guardian for the minor son.
- (iv) Part of Insurance policy benefits is assigned to creditor.

On the basis of the points mentioned above, answer the following questions by quoting sections 38, Section 39, Sections 39(4), (7) & (8), Section 45 and Section 47 of the Insurance Act, 1938.

- (a) Mr. Pawan did not mention his usage of anti-depressant medicines in the application form. Usage of anti-depressants may lead to the failure of heart due to atherosclerosis (hardening of the arteries) and he died with heart failure. As per the insurance company, the policyholder concealed or suppressed the material fact that he is using anti-depressants. On this ground in this case, can an Insurance Company repudiate the Claim ? Justify your answer by quoting the relevant section of Insurance Act, 1938.
- (b) What is an early Claim ? What can be the exclusions to repudiate the early claim and what are the possible frauds in early death claims ? Justify your answer for the requirement of investigation in early claims.
- (c) One of the reasons mentioned by Insurance Company to put on hold the claim was that the Litigation on Trustee/Guardian for the minor son in the nomination form. What is nomination and why it is important to specify the beneficiaries in the nomination form ? Explain your answer by quoting the relevant sections of Insurance Act, 1938.
- (d) As per this case, life assured has assigned his insurance policy to his creditor. What is an Assignment ? What are the provisions as per the Insurance Laws (Amendment) Act, 2015 regarding assignment of insurance policies ? Can the creditor in this case is eligible for entire death benefit of Mr. Pawan ? Explain your answer with the support of Laws of Insurance.
- (e) As this case is an early claim and due to complications in discharging the policy benefits, Insurance Company put on hold the benefits. What are the procedural compliance requirements under the IRDAI (Protection of Policy holder's interests) Regulations, 2017 to solve this case ?

(5×8 marks each = 40 marks)

Answer 1(a)

The insurance company can repudiate the claim based on the suppression of material facts. Section 45 of the Insurance Act, 1938 provides that if a policyholder has made any statement that is false or has suppressed any material fact, the insurer can void the policy after two years from the date of commencement of the policy. However, this provision is particularly applicable if the suppression or misrepresentation is material to the risk

As a result of the investigation conducted by the life insurer, it is established that a material fact which was critical for assessment of the risk was not disclosed at the time of application in the Proposal form, the Life Insurance Company has right to re-assess the underwriting keeping in mind the facts revealed by the Investigation Report. Had this fact been revealed to the insurance company at the time of submitting the proposal form-what would have been the impact of underwriting (decision to accept the risk and issue a Policy) where fraud or misrepresentation is established, surrender value shall be paid. As per the Sec.45 of the Insurance Act, 1938, no claim shall be repudiated on any reason after a period of 3 years from the commencement of the policy. In this case, it is less than a year. Hence, this clause is not restricting them to repudiate the claim on the grounds of suicide or on the grounds of suppression/concealment of material fact.

Answer 1(b)

Any death claim which is submitted within 2 years of date of commencement of the policy is referred to as early claims. The insurer often scrutinizes these claims more rigorously due to the higher risk of fraud.

Exclusions to repudiate an early claim may include:

- Suppression of material facts or misrepresentation.

- Suspicion of suicide or intentional harm.
- Evidence of fraudulent activity or misstatement in the application.

Possible frauds in early death claims can include:

- Faking death or staging an accident.
- Concealment of pre-existing conditions that may have contributed to death.

The reason for referring such cases to investigation is to rule out the possibility of any moral hazard or non-disclosure of any pre-existing illnesses or treatments taken by the part of the life assured when the policy was taken. Life Insurance has faced serious frauds by persons taking life insurance policy on persons who are not in good health by giving false declarations. In all such cases, death usually happens soon after the policy is taken. In extreme cases, Life Insurance companies have also faced cases of taking life insurance policies on the lives of persons who were already dead even before the policy was taken, by forging documents. Therefore, claim investigation is very important in the case of early claims.

Answer 1(c)

Nomination refers to the process by which a policyholder designates one or more individuals to receive the benefits of the insurance policy upon the death of the insured. The importance of specifying beneficiaries in the nomination form includes ensuring that the intended recipients receive the policy benefits without legal disputes.

Under life insurance policies, upon death of the life assured, the Sum Assured is required to be paid to the legal heirs of the deceased life assured. However, if there is a dispute between legal heirs, the benefits may not reach the intended beneficiaries on time. To avoid this, the facility of nomination is provided to the person who is taking the policy at the time of taking the policy, by filling the names of Nominees in the proposal form and his/her relationship to the Life Assured as per the Section 39 of the Insurance Act, 1938. This section recognizes 2 types of Nominees:

- ✓ Beneficial Nominee.
- ✓ Collector Nominee.

Provisions under Sections 39(7) & (8) of the Insurance Act, 1938:

- Section 39(7): This section clarifies that if a beneficial nominee dies after the death of the life assured but before receiving the death benefit, the legal heirs of the deceased beneficial nominee shall be entitled to the claim proceeds. This provision ensures that the benefits are not lost even if the nominated beneficiary is unable to collect them due to their own demise.
- Section 39(8): This section emphasizes the need for policyholders to appoint a guardian (appointee) when a minor is designated as a nominee. The appointee is responsible for receiving and managing the policy proceeds on behalf of the minor until they reach the age of majority.

In this particular case, while Ms. Aparna, the legal wife of Mr. Pawan, is eligible to act as the trustee for her stepson, Mr. Abhiroop, who is a minor, the situation has become complicated. The biological grandparents of Mr. Abhiroop are contesting the claim, asserting their rights to the benefits on behalf of their grandson. This dispute highlights the importance of clear nominations and the potential for conflicts when the relationships between the insured, nominees, and legal heirs are complex.

Answer 1(d)

An assignment is a legal transfer of rights or benefits under an insurance policy from the policyholder

to another party, known as the assignee. The provisions regarding assignment are covered under Section 38 of the Insurance Act, 1938, which states that a policyholder can assign their insurance policy to another party, provided that the assignment is duly registered with the insurer.

The provisions regarding assignment of insurance policies are:

- Notice of assignment to insurer and registration of assignment mandatory.
- Conditional assignment is recognized i.e., assigned policy can be retransferred to the original policy holder once the conditions are fulfilled. In this case, repayment of loan.
- KYC of Assignee is mandatory.
- Partial assignments of insurance policies recognized. In this case, it is assigned the ₹1 Crore policy for ₹ 30 lakhs only.

If Mr. Pawan assigned his life insurance policy to his creditor in accordance with the provisions of Section 38 of the Insurance Act, 1938, and the assignment was properly documented and registered, then the creditor is eligible to claim the entire death benefit upon Mr. Pawan's death, up to the amount of the debt owed. However, if there were any nominations made or restrictions on the policy, those would need to be taken into account to determine the final distribution of the benefits.

Answer 1(e)

Procedural Compliance Requirements under the IRDAI (Protection of Policyholders' Interests) Regulations, 2017:

The IRDAI (Insurance Regulatory and Development Authority of India) has established regulations to safeguard the interests of policyholders in the life insurance sector. Below are the key procedural compliance requirements outlined in the 2017 Regulations:

1. Timely Customer Requirements:

- Life insurance companies must raise any customer requirements within 15 days of receiving the intimation from the policyholder. This ensures prompt communication and facilitates a smoother claims process.

2. Investigation Timeline:

- The time limit for completing the investigation of a claim is set at 90 days. After the investigation is concluded, the insurer must decide on the claim within 30 days of receiving the investigation report. This regulation aims to ensure that claims are resolved efficiently and without unnecessary delays.

3. Interest on Delays:

- In the event of delays in the settlement of claims, the insurance company is required to pay interest at the rate of 2% above the bank rate from the date of receipt of the last necessary document. This provision acts as a deterrent against undue delays in claim settlement and emphasizes the importance of timely processing.

4. Claims for Deaths by Suicide:

- For claims related to deaths caused by suicide, the regulations stipulate that 80% of the premiums paid shall be payable to the beneficiaries. This provision recognizes the sensitive nature of such claims and aims to provide some financial relief to the beneficiaries without imposing excessive penalties on the policyholder.

Question 2

(a) XYZ Life Insurance Ltd. is preparing its annual financial statements as per Indian Accounting Standards (Ind AS) and IFRS-17. During the audit process, the company identified challenges related to :

- Valuation of investments as of the balance sheet date, given market fluctuations.
- Recognition of premium income and policyholder disbursements under Statutory Accounting Principles (SAP).
- Compliance with Anti-Money Laundering (AML) guidelines, particularly in high- value policy transactions.
- Taxation aspects, including GST on insurance services and tax implications of bonus declarations to policyholders.

Given the complexity of these financial reporting and regulatory compliance challenges, the company's finance team must ensure accurate financial statements while adhering to regulatory frameworks and industry best practices.

Analyze the application of Ind AS and IFRS-17 in life insurance financial reporting. Discuss how valuation of investments, premium recognition, taxation, and AML compliance impact the financial statements of a life insurance company like XYZ Life Insurance Ltd.

(6 marks)

(b) Ramesh, a small-scale farmer in Maharashtra, cultivates wheat and soybeans on his 10-acre land. In 2023, he enrolled under the Pradhan Mantri Fasal Bima Yojana (PMFBY) to protect against yield losses due to natural calamities. However, due to unexpected drought conditions, his crops suffered severe damage, leading to over 50% yield loss.

When Ramesh filed a claim, he faced multiple challenges :

- The insurer stated that weather data from nearby stations did not indicate severe drought, affecting claim approval.
- Ramesh's claim was partially approved, citing average yield calculations across the district rather than individual farm losses.
- The survey process took longer time than expected, delaying compensation, which affected his ability to repay loans.

Questions :

Using your knowledge of PMFBY and agricultural insurance principles, analyze :

(i) Whether Ramesh's claim rejection was justified based on standard assessment methods ?

(2 marks)

(ii) What legal and procedural remedies he has under PMFBY to challenge the decision ?

(2 marks)

(iii) How the government can improve agricultural insurance schemes to ensure timely claim settlements and fair farmer compensation ?

(2 marks)

Answer 2(a)

Application of Ind AS and IFRS-17 in Life Insurance Financial Reporting:

Ind AS and IFRS-17 standardize financial reporting in life insurance, ensuring transparency, consistency, and comparability across financial statements.

Key Impact Areas:

- **Valuation of Investments:**

Ind AS requires fair value measurement of investments, meaning XYZ Life must adjust values based on market fluctuations. This affects asset valuation and solvency margins, requiring mark-to-market adjustments on the balance sheet.

- **Premium Recognition & Policyholder Disbursements:**

Under IFRS-17, premiums are recorded as contractual service margin (CSM) and recognized over the policy period. Statutory Accounting Principles (SAP) require timely premium recognition, impacting revenue reporting and claim reserves.

- **AML Compliance:**

AML regulations require rigorous KYC verification for high-value transactions. XYZ Life must report suspicious transactions to the Financial Intelligence Unit (FIU), affecting policy approval timelines and financial disclosures.

- **Taxation & GST on Insurance Services:**

GST applies at 18% on ULIP charges and life insurance premiums, impacting on customer pricing and policy administration costs. Additionally, bonus declarations must comply with Section 10(10D) of the Income Tax Act, affecting policyholder payouts and tax liabilities.

By aligning with Ind AS & IFRS-17, XYZ Life can enhance financial transparency, regulatory compliance, and investor confidence while managing market risks and taxation complexities.

Answer 2(b)

Agricultural Insurance and Claim Challenges Under Pradhan Mantri Fasal Bima Yojana (PMFBY):

- ✓ Justification of Claim Rejection Based on Standard Assessment Methods.

Under the Pradhan Mantri Fasal Bima Yojana (PMFBY), claims are assessed based on:

- Yield-based assessments using district-level crop-cutting experiments (CCEs) rather than individual farm losses.
- Weather-based data from designated stations to confirm extreme climatic conditions.

Loss is assessed when actual yield falls below the threshold yield. Individual farm losses are not directly measured unless for localized calamities, which involve field-level joint surveys.

In Ramesh's Case:

- The insurer's rejection may be valid if district-wide yield loss did not meet the threshold for compensation.
- However, if localized drought conditions were severe and not reflected in the station data, the assessment method may be flawed, justifying a dispute.

While rules were technically followed, small farmers often lose out when localized losses exceed area averages. Experts note this model favors ease but can overlook significant farm-level impacts.

✓ Legal and Procedural Remedies Under PMFBY to Challenge the Decision

Ramesh can challenge the claim decision through:

- Grievance Redressal System (GRS): He can file a complaint with the insurance company, district-level grievance committee, or agricultural department.
- Independent Crop Loss Verification: He can request a re-survey if the damage is significantly higher than reported.
- State & Central Government Appeals: If dissatisfied, he can escalate to state-level authorities or file a petition with the Insurance Ombudsman under IRDAI regulations.
- Yield Data Dispute Mechanism: If Ramesh believes crop-cutting experiments (CCE) data is inaccurate, it can be contested.
- ✓ Improvements Needed in Agricultural Insurance for Timely Settlements & Fair Compensation.
- Use of Satellite & Drone Technology: To ensure real-time damage assessment for faster and more accurate claim approvals.
- Individual Farm-Level Assessments: Reduce reliance on district-wide averages to ensure fair compensation for affected farmers.
- Faster Claim Processing & Transparency: Implement automated claim settlement within 30-45 days to prevent financial distress.
- Awareness & Farmer Training: Educate farmers on policy terms, claim filing procedures, and dispute resolution mechanisms to reduce claim rejections.
- Automate Subsidy & Yield Data Sharing: Ensure state subsidies are released timely—delays currently block insurer payouts

By strengthening claim assessment methods, improving transparency, and ensuring fair dispute resolution, PMFBY can provide better financial security to farmers like Ramesh.

Question 3

(a) Marine insurance plays an important role in domestic trade as well as international trade. Most contracts of sale require that the goods must be covered, either by the seller or the buyer against the loss or damage. Identify who is responsible for coverage of insurance in the following types of contracts.

- (i) Free-on-Board Contract.
- (ii) Free on Rail Contract.
- (iii) Cost and Freight Contract.
- (iv) Cost, Insurance and Freight Contract

(4×2 marks each=8 marks)

(b) Third party insurance is compulsory for all vehicle-owners as per the Indian Motor Vehicles Act. It covers only the legal liability for the damage cause to a third party. But there are so many risk factors involved while using motor vehicles like personal injuries, damages to the vehicle with floods, fire, theft etc. Discuss the policies which cover the aforesaid risks.

(4 marks)

Answer 3(a)

Qn. No	Types of Contracts	Responsible for Affecting Insurance
(i)	Free-on-Board Contract	The seller is responsible till the goods are placed on board the steamer. The buyer is responsible thereafter. He can get the insurance done wherever he likes. Once the goods are on board, the risk and responsibility for the goods, and any associated costs, transfer to the buyer.
(ii)	Free on Rail Contract	A Free on Rail (FOR) contract, also known as Free on Truck (FOT) in some cases, is a type of contract where the seller delivers goods to the buyer on a railcar or truck at a specified loading point without any additional charge to the buyer for the transportation to that point. The seller handles the loading and transportation costs up to that point. Once the goods are on the railcar or truck, the buyer is responsible for any further transportation, insurance, and costs.
(iii)	Cost and Freight Contract	It is a trade term used in international sales contracts that outlines the responsibilities of the seller in transporting goods by sea to a designated port of destination. Under CFR, the seller is responsible for the cost of the goods, the freight, and the necessary documentation to release the goods at the destination port, but the buyer assumes the risk of loss or damage once the goods are loaded on the ship at the port of shipment.
(iv)	Cost, Insurance and Freight Contract	CIF (Cost, Insurance and Freight) contract is an international trade agreement where the seller covers the cost of goods, insurance, and freight to deliver the goods to the buyer's designated port. This contract, developed by the International Chamber of Commerce (ICC), is primarily used for sea or inland waterway transport. Once the goods are loaded onto the vessel, the risk of loss or damage shifts from the seller to the buyer, but the seller still pays for freight and insurance until that point.

Answer 3(b)

Comprehensive package policy covers loss or damage to the vehicle insured in addition to liability coverage.

'Form B' which is also known as Comprehensive Policy is an optional cover. It will include all kinds of risk factors that are associated with vehicle, driver, passengers, third-party vehicle, third-party driver, third-party vehicle passengers and third-party property.

This insurance policy also covers to the vehicle with weather damages, floods, fire, theft, roadside assistance, zero depreciation, engine protection, and cover for electrical/non-electrical accessories, etc. by installing anti-theft devices and other security-enhancement gadgets, one decreases the insurance premium quoted by the insurance carrier.

Question 4

- (a) Discuss the applications of life insurance in financial planning, focusing on its role in risk management, investment planning, retirement planning, and tax efficiency. Explain how life insurance policies, including pension plans and annuities, contribute to long-term financial security while addressing key risks associated with income stability and estate planning. Additionally, highlight the tax implications of life insurance policies under Indian tax laws and their impact on overall financial well-being.

(6 marks)

- (b) ABC Industries Ltd., a leading manufacturing company, recently suffered a cyberattack that disrupted its supply chain operations and led to a significant data breach, exposing sensitive customer and financial information. The company faced operational downtime, regulatory penalties, and reputational damage, leading to financial losses and lawsuits from affected clients.

Despite having a comprehensive risk management framework, the company had not fully integrated cyber risk insurance into its Enterprise Risk Management (ERM) strategy. The insurer is now evaluating the claim, citing concerns that :

- The company failed to implement adequate internal controls, increasing vulnerability.
- The losses exceed policy limits, raising questions about reinsurance support.
- Certain losses related to reputational damage and business interruption were not explicitly covered under the policy.

Analyze the role of risk management and insurance in mitigating financial and operational risks in this scenario. Discuss how internal controls, reinsurance, and reserving strategies can enhance a company's ability to recover the losses from large-scale cyber risks.

*(6 marks)***Answer 4(a)****Applications for Life Insurance in Financial Planning:**

Life insurance plays a crucial role in financial planning by providing risk coverage, wealth accumulation, retirement security, and tax benefits.

- **Risk Management:** Life insurance ensures financial protection for dependents in case of the policyholder's demise. It helps families manage liabilities such as loans, mortgages, and daily expenses.
- **Investment Planning:** ULIPs and endowment policies combine insurance with investment, allowing policyholders to grow wealth while securing life cover. These plans offer market-linked returns and long-term financial growth.
- **Retirement Planning:** Pension plans and annuities provide a steady post-retirement income, reducing dependence on personal savings. Policies like Immediate Annuities ensure lifetime financial security.
- **Tax Efficiency:** Under Section 80C of the Income Tax Act, 1961, premiums paid on life insurance qualify for deductions up to ₹1.5 lakh annually. Additionally, maturity proceeds are tax-free under Section 10(10D) if conditions are met.
- **Estate Planning:** Life insurance ensures seamless wealth transfer to heirs without legal complications, helping policyholders structure their estate efficiently.

Tax Implications of Life Insurance under Indian Tax Laws

Life insurance enjoys significant tax benefits under the Income Tax Act, 1961:

- (a) **Tax Deductions:** Section 80C: Premiums paid for life insurance policies (self, spouse, children) qualify for deduction up to ₹1.5 lakhs per annum. Applicable for traditional, ULIP, and pension policies (conditions apply). Premiums must not exceed 10% of sum assured (20% for policies issued before 1 April 2012).
- (b) **Tax-Free Maturity:** Section 10(10D): Maturity proceeds or death benefits are exempt from tax, subject to:
 - Premium $\leq$ 10% (or 15% for disabled) of sum assured.
 - ULIP conditions (2021 onwards): If annual premium > ₹2.5 lakhs, capital gains may be taxed.
 - Death benefit is always tax-free.
- (c) **Pension Plans & Annuities:** Under Section 80CCC, premiums paid for pension plans are eligible for deduction up to ₹1.5 lakhs (part of 80C). Pension income/annuity received is taxable in the year of receipt. Commutation of one-third of the pension corpus is tax-free; the rest is taxable as per slab.

Impact on Financial Well-being:

- Enhances post-tax returns.
- Reduces taxable income, improving cash flows.

Aids in building retirement corpus in a tax-efficient manner.

Answer 4(b)**Risk Management and Insurance in Cyber Risk Mitigation:**

In the case of ABC Industries Ltd., risk management and insurance play a crucial role in mitigating financial and operational risks arising from the cyberattack. Effective risk management helps in identifying, assessing, and addressing cyber threats through internal controls, compliance mechanisms, and business continuity planning. However, ABC's failure to fully integrate cyber risk into its Enterprise Risk Management (ERM) framework led to significant exposure. Insurance, on the other hand, serves as a financial safeguard by covering losses related to data breaches, legal liabilities, and operational disruptions. Yet, policy limitations, inadequate internal controls, and insufficient coverage reduced its effectiveness. Together, a robust risk management system complemented by well-structured cyber insurance is essential to protect against large-scale digital threats and support recovery.

Enhancing Risk Management through Internal Controls:

- ✓ Stronger cybersecurity protocols-Regular vulnerability assessments, multi-factor authentication, and encryption can reduce exposure.
- ✓ Incident response plans: A proactive cyber risk strategy helps minimize downtime and regulatory fines.
- ✓ Employee training and monitoring: Reduces risks from phishing and insider threats.

Role of Reinsurance in Large Cyber Risks:

- ✓ If losses exceed policy limits, reinsurance helps insurers distribute risk, ensuring higher payouts.

- ✓ Cyber catastrophe reinsurance supports insurers during large-scale breaches, reducing claim denials.

Reserving Strategies for Cyber Risks:

- ✓ Insurers should build cyber risk reserves to manage unexpected claims from data breaches and business interruption.
- ✓ Companies should evaluate and adjust coverage limits period
- ✓ By integrating stronger risk controls, proper reinsurance strategies, and adequate reserves, ABC Industries can mitigate cyber risks and improve recovery from future attacks.

Question 5

- (a) Manufacturers, doctors, engineers, architects, employers and Directors are all liable to the public. What are the insurance policies which cover the risks of their liability ?
- (b) Explain the benefits of Aviation Insurance and list the documents required for submission of claim under Aviation Insurance.

(2×6 marks each = 12 marks)

Answer 5(a)

There are two types of public liability insurance policies-industrial and non-industrial risks. Industrial risk policies cover the risks arising in manufacturing premises including go down, warehouses etc., non-industrial risks comprise or risks arising out of the establishments of hotels, restaurants, cinema halls, schools, exhibitions, amusement parks etc.

The liability of doctors, engineers, architects are covered under professional indemnity policies which cover their legal liability to pay damages arising out of negligence in the performance of their professional duties.

Employer's liability towards their employees is covered in the Employer's liability policy which is also known as workmen's Compensation Insurance.

Directors' and officers' liability policy is a specialized insurance policy introduced to cover the liabilities of Directors or Officers of a Company. It covers their liability towards employees, suppliers, competitors, regulators, customers, shareholders and other stakeholders.

These policies are essential for safeguarding professionals and businesses from financial losses and legal consequences.

Answer 5(b)

A comprehensive aviation insurance policy covers the risks of turbulent weather, terrorist activities leading to hijacks, mysterious disappearance of flights, auto / technical failure, or a plane crash. All the risks after boarding a flight will be compensated for any damages.

The documents required for submission of claim under Aviation Insurance are:

From the Pilot Copies:

- ✓ A full copy of the pilot's licence with name, ID number and expiry dates.
- ✓ Current medical certificate.
- ✓ The last three pages of the pilot's logbook and summary of total time and experience on type.

- ✓ Completed SACAA Pilot questionnaire.

From the aircraft copies of:

- ✓ Certificate of registration.
- ✓ Certificate of airworthiness
- ✓ Maintenance release.
- ✓ Last CA43-02 form (from the maintenance organization).
- ✓ Completed SACAA owner's questionnaire.

For the Operation – if it was a charter flight copies of:

- ✓ Cargo and passenger manifest.
- ✓ Load sheet.
- ✓ AOC, Airway Bills.
- ✓ Copies of Authorization Sheet.
- ✓ ATO Certificate.
- ✓ DGCA investigation report etc.

Question 6

Sharma Textiles Ltd., a large garment manufacturing company, has a Standard Fire Insurance Policy with a sum insured of ₹ 5 crore and an additional Consequential Loss Insurance cover for business interruption losses.

In March 2023, a fire broke out in the factory due to a short electrical circuit, destroying machinery, raw materials, and finished goods. The total estimated material damage was ₹ 6 crore, while the company's operations remained halted for three months, leading to a loss of ₹ 2 crore in net profits.

Upon claim assessment, the insurer noted :

- The factory was underinsured by 20%, based on actual property values.
- The claim documents for consequential loss were incomplete, delaying approval.
- The company did not implement recommended fire prevention measures, raising concerns about policy compliance.

Based on the information, answer the following questions :

- Given that Sharma Textiles Ltd. was underinsured by 20%, calculate the final claim amount approved by the insurer under the fire insurance policy.
- If Sharma Textiles' policy covered loss of net profit due to business interruption, and the insurer applied a deductible of 10%, calculate the final consequential loss payout.
- If Sharma Textiles Ltd. had implemented fire safety recommendations, how could this have influenced the underwriting process and claim approval ? Provide two strategic risk management steps they should adopt.
- Considering the delays due to incomplete documentation, what key steps should Sharma Textiles Ltd. take in future to ensure smooth fire insurance and consequential loss claim process ?

(4×3 marks each = 12 marks)

Answer 6(a)

Sharma Textiles Ltd. Insurance Claim Analysis are as follows:

Final Claim Amount Under Fire Insurance Policy:

Since Sharma Textiles Ltd. was underinsured by 20%, the Condition of Average Clause applies. The claim payout is calculated as:

- Sum Insured: ₹5 Crore
- Actual Loss (Material Damage): ₹6 Crore
- Actual Property Value: Since the property was underinsured by 20%, the actual value is:
 $\text{₹5 crore} / (1 - 0.20) = \text{₹6.25 Crore}$
 Claim Payable = (Sum Insured / Actual Value) x Loss Incurred
 $= (5 / 6.25) \times 6 = \text{₹ 4.8 Crores}.$

Thus, the insurer will approve a final payout of ₹ 5 Crore, covering only a proportional amount of the actual loss due to underinsurance.

Answer 6(b)

Final Consequential Loss Payout After Deductible:

The company faced a business interruption loss of ₹2 crore, and the insurer applied a 10% deductible.

Claim Payable = Business Loss x (1 - Deductible) = $2 \times (1 - 0.10) = 1.8 \text{ Crore}.$

Thus, the final consequential loss payout is ₹1.8 crore after applying the deductible.

Answer 6(c)

Impact of Fire Safety Measures on Underwriting & Claim Approval:

Implementing fire safety recommendations could have:

- ✓ Lowered premium rates: Insurers assess fire risks while underwriting policies. Compliance with fire prevention measures reduces risk and leads to lower premiums.
- ✓ Faster claim approvals: A well-documented fire prevention strategy increases insurer confidence, reducing disputes over compliance and facilitating quicker claim settlements.

Strategic Risk Management Steps:

- ✓ Install automated fire detection & suppression systems (e.g., sprinklers, smoke detectors).
- ✓ Conduct regular fire safety audits and employee fire drills to ensure compliance with industry safety standards.

Answer 6(d)

Steps for Ensuring Smooth Fire Insurance & Consequential Loss Claims:

To prevent delays in future claims, Sharma Textiles Ltd. should:

- Maintain complete & updated documentation, including asset valuation reports and safety compliance records.
- Assign a Claims Coordinator or Risk Officer: A dedicated person/team should handle insurance communication, document submission, and compliance tracking.

- Ensure accurate financial records to support business interruption claims, including sales reports, profit trends, and expense sheets.
- Regularly review insurance coverage to prevent underinsurance and align sum insured with actual asset values.
- Conduct periodic meetings with the insurer to understand policy terms, exclusions, and claim filing best practices.

By adopting these steps, Sharma Textiles can strengthen its risk management strategy and ensure timely insurance claim settlements in the future.

INTELLECTUAL PROPERTY RIGHTS – LAWS & PRACTICES

MODULE 3 ELECTIVE PAPER 9.3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART- I

Question 1

For diabetic patients, daily injections are an uncomfortable and often painful part of life. With multiple injections required every day, anxiety and fear are typical emotions a patient may have when diagnosed with diabetes, especially for children and those with a fear of needles. Traditionally thought of as an unavoidable part of treatment, injection therapy and the pain and discomfort it causes has become one of the major concerns of diabetes patients.

To increase the quality of life of patients, alleviate discomfort and dispel fears surrounding diabetes injection therapy, in 2005 Tishla a multinational corporation at the forefront of innovating new medical technologies proposed a challenge to make a needle so fine that it makes injections painless. Tishla felt a strong social obligation to help provide them with physical and psychological relief. The company called on Mr. Harsh, one of its best engineers who has a string of patents to his name for medical syringes, and Mr. Yash, the head of Prem Industrial Corporation, a company involved in metal pressing, to make this vision a reality.

Mr. Yash decided to take up Tishla's challenge because of his own dread for needles. He recalled how he had to receive regular nutrient injections for a condition when he was a teenager and how painful the thick needles were. He hated the injections so much that he developed a disdain for hospitals and stayed away from them as much as possible.

Mr. Yash could understand the pain of diabetes patients, especially of the children suffering from the disease. "I thought if no one else can do it, I will," he resolved. While traditional production lines could be used to make a somewhat smaller needle, manufacturing costs would be expensive the resulting product would be approximately ` 80 per needle, which is too expensive for the average patient and thus makes commercialization unfeasible.

The usual method of manufacturing needles is to hollow out a tiny cylinder of metal. But it is extremely difficult to make ultra-thin needles this way, because the thinner the cylinder, the more difficult the procedure becomes. Tishla's quest for an ultra-thin needle proved technically difficult, and after one year of research they were not making much progress. Tishla was turned down by a string of large metalwork firms, which thought that Tishla's requirements were too impractical and essentially impossible. Tishla turned to Yash, a company whose skilled craftsmanship boasts a high level of technology despite its small size. Yash is credited with developing the small lithium batteries that made cellular telephones possible. The company is so skilled in its trade that it has attracted the attention of major international corporations and governmental agencies. Mr. Yash, the company's founder, had earned himself a reputation as a metalwork magician. Working together with Yash, Tishla was able to innovate the world's thinnest needle for insulin injections.

After five years of research and development (R & D), Yash discovered a new method which defied experts and conventional methods of needle manufacturing. Instead of hollowing out

a metal cylinder, Yash's method takes a super thin sheet of stainless steel and rolls it into a tiny tapered cylinder, which is then sealed by tightly welding the seam to ensure that it will not leak. Mr. Harsh then used his medical engineering expertise to refine this cylinder into the world's first double tapered needle and added a special coating that acts as a lubricant. This lowers insertion forces and lessens discomfort. The resulting syringe is only 0.2 millimeters in diameter, which is no wider than two strands of human hair and 33% thinner than a conventional needle. The discomfort associated with the syringe is no more than a mosquito bite, making it nearly painless to use. With insurance, the syringe only costs about 18 Japanese Yen (Yen) per needle (approximately US\$ 0.20), which is around five percent more expensive than traditional needles, but still well within the reach of the majority of patients.

Tishla's innovative product has not only been a financial success for the company, but it has also helped patients around the world lead better lives, innovations such as the needle has given the company the freedom to continue to develop new medical products and create new manufacturing processes that reduce the end cost to the patient. Tishla has also capitalized on the success of the needle to educate the public on diabetes and dispel many of the myths surrounding the disease.

How smoothly insulin is injected is one of the major concerns when patients commence insulin injection therapy. Improving its usability may be important in initiation therapy and adherence, resulting in clinical benefits to the patient. The syringe has a significant effect on increasing the quality of life and well being of diabetes patients throughout the world. Patients suffering from diabetes have to inject themselves with insulin an average of four times a day, and these injections can be painful and scary, especially for children. Many times a needle will be difficult to inject and insulin may leak out, causing further discomfort and stress. Conventional needles can cause psychological problems as well as physical problems, such as bruising and excessive bleeding where injections are made.

Smaller, less painful needles can mitigate these problems and make patients less afraid of their treatment, giving them the ability to focus on their life and not on uncomfortable and stressful insulin injections. A study concluded that the needle has already had a significant social impact on patients using it. Compared to older needles, patients using the needle experience less pain, anxiety, bleeding, and insulin leakage and are enjoying a higher quality of life.

The case of Tishla and the needle is an example of a company using R&D, innovation and IPRs to grow and make a positive social impact. Tishla is a multinational corporation at the forefront of innovating new medical technologies, protecting its intellectual property (IP) is an important part of its business strategy.

With reference to the above case, answer the following :

- (a) Securing IP rights (IPRs) deters copying and gives the company a competitive advantage, allowing it to continue to develop medical products that help people. Company wants to file patent in order to protect its invention. Advise the company accordingly to get the patent successfully.
- (b) The company Tishla wants to protect its invention simultaneously in large number of countries as well. Explain.
- (c) The patent agent should never become the inventor but should strive to have the clearest grasp of the invention needed to obtain a patent with the broadest claims allowed by law. Discuss.
- (d) All rights granted to patentee are subject to certain limitations. Elaborate the statement.

(10 marks each)

Answer 1(a)**Requirements or Principles of Patent Law**

The patent system in India is governed by the Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005 and the Patents Rules, 2003. The Patent Rules are regularly amended in consonance with the changing environment, most recent being in 2024.

To get a product patented, it has to fulfil the following requirements, which also serve as the principles of patent law in India. These are:

- An invention must be new.
- It must involve an inventive step.
- Capable of being used in industries i.e. industrial application.
- It must not fall into the category of exceptions or subjects that are not patentable under sections 3 and 4 of the Act.

The following criteria determine what can be patented in India:

Novelty or Newness

The invention must be new and not similar to any other inventions or existing products. According to Section 2(l) of the Patents (Amendment) Act, 2005 'new invention' means an invention that has not been anticipated by prior publication and does not fall into the public domain. There must be no prior publication of the invention. However, a mere discovery does not amount to an invention. The two criteria for granting patents, i.e., novelty and utility, were recognized as important in the case of *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries (1979)*. It was observed in the case of *Gopal Glass Works Ltd. v. Assistant Controller of Patents (2005)*, that for an invention to be patented it must be new and original. Novelty in itself is not a complete criterion. The product or invention must be sufficiently original as well.

Non-Obviousness or Inventive Step

According to Section 2(1) (j) of the Indian Patents Act, 1970, any product or process that involves an inventive step and is capable of being used in the industry is called an invention. This definition makes it clear that the invention must have an inventive step and it must not be known to any skilled person in that particular field. Section 2(1) (ja) of the Act defines 'inventive step'. The concept of inventive step was introduced in India in the case of *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries (1979)*. It also reiterated the four tests of obviousness. These are:

- A skilled person must identify the inventive step in the form of prior use, art or knowledge.
- He must be able to tell the difference between the subject matter and the invention.
- Consideration must be given to observing the differences.
- There must be a degree of invention.

Usefulness or Utility

This is another important criterion for granting patents. An invention must be useful and have an industrial application besides being new and non-obvious. In the case of *Cipla Ltd. v. F Hoffmann-La Roche Ltd. (2015)*, the Court observed that according to the definitions of 'invention' and 'capable of industrial application' under the Act, an invention must have a commercial use so that it can be utilized in the industries. In the case of *Indian Vacuum Brake Co. Ltd. E.S. Luard (1925)*, the Court observed that the term 'utility' has not been used in an abstract sense in the Act. In order to qualify for a patent, an invention must have some utility. Mere usefulness is not enough.

By satisfying the above conditions, the Company can apply for the patent.

Answer 1(b)

The Patent Cooperation Treaty (PCT) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a PCT Contracting State. It may generally be filed with the national patent office of the Contracting State of which the applicant is a national or resident or, at the applicant's option, with the International Bureau of WIPO in Geneva. If the applicant is a national or resident of a Contracting State party to the European Patent Convention, the Harare Protocol on Patents and Industrial Designs (Harare Protocol), the Bangui Agreement, or the Eurasian Patent Convention, the international application may also be filed with the European Patent Office (EPO), the African Regional Intellectual Property Organization (ARIPO), the African Intellectual Property Organization (OAPI) or the Eurasian Patent Office (EAPO), respectively.

The Treaty regulates in detail the formal requirements with which international applications must comply. Filing a PCT application has the effect of automatically designating all Contracting States bound by the PCT on the international filing date. The effect of the international application is the same in each designated State as if a national patent application had been filed with the national patent office of that State.

The international application is subjected to an international search. That search is carried out by one of the competent International Searching Authorities (ISA) under the PCT and results in an international search report, that is, a listing of the citations of published documents that might affect the patentability of the invention claimed in the international application. In addition, a preliminary and non-binding written opinion on whether the invention appears to meet patentability criteria in light of the search report results is also issued.

The international search report and written opinion are communicated to the applicant who, after evaluating their content, may decide to withdraw the application, in particular where the content of the report and opinion suggests that the granting of patents is unlikely, or the applicant may decide to amend the claims in the application. If the international application is not withdrawn, it is published by the International Bureau, together with the international search report.

An applicant that decides to continue with the international application with a view to seeking national (or regional) patents can, in relation to most Contracting States, wait until the end of the thirtieth month from the priority date to commence the national procedure before each designated office by furnishing a translation (where necessary) of the application into the official language of that office, paying to it the necessary fees.

Answer 1(c)

In order to obtain patent protection in any country, a patent application has to be filed in the patent office. From preparing a patent application for submission, negotiating with the patent examiners for its grant, and appearing before the administrative tribunals within the office the patent professionals play an important role. Preparing a patent application and navigating the proceedings before the patent office requires an understanding of statutory provisions governing the patents, and familiarity of the scientific and technical details of the invention. As the scale of knowledge grows, it becomes increasingly difficult for any one person to stay on top of details and developments across a field, and specialization represents something of a natural division of labour. Patent system is no exception to this role.

The primary role of a patent agent is to help any inventor or applicant secure legal protection for his or her invention by filing a patent application and prosecuting the same toward its grant. Any

matter or proceeding before the Patent Offices can be represented by a patent agent. They can communicate on behalf of the applicant and represent them at all attendances before the Patent Office. In order to make a good representation in a competent manner, a patent agent must have the ability to understand an invention and its technical aspects. Expertise in the field assists a patent agent to better understand the invention and draft a technically sound patent application.

A patent agent at first may have to take instructions concerning the invention. Details regarding the nature and field of the invention are comprehended for understanding the invention. The patent agent must also establish what the inventors believe is new about his or her invention, how the invention is different from and advantageous over earlier prior art. Other details include information regarding the problem that the invention intended to solve, details with respect to inventor or entitlement with respect to filing the application. Adding to this, it is also essential to determine whether the invention meets the criteria of patentability in the country in which the patent is deemed to be protected. If the inventors do not have enough information about the field of invention, patent agent may be required to perform searches to get an overall idea of the invention.

In general, a patent agent must identify the essential idea or concept that the patent application should seek to protect and reduce the essential features of the invention to writing in a legal document called a Specification with one or more claims. Claims define the scope and extent of the legal protection conferred by the patent and their object is to provide the owner of the patent with a legal right to exclude others from making, using, selling or offering for sale the subject matter of the patent in the territory in which the patent is registered.

The Patent Agent is required therefore to write the patent application and especially the claims in a clear and concise manner that can withstand. Also, they must possess sufficient knowledge to be able to review and advise the people whom they represent of the merit of any objections raised by the Patent Office, submit oral or written responses to the Patent Office that overcome the objections or amend the patent application so as to allow the application to proceed to grant.

Hence, the right patent professional (patent agent) with appropriate experience can remarkably add value to patent application. The patent agent provides maximum possible protection for your invention since the drafting of the patent is done from a technical as well as legal perspective. The patent application is written such that it provides the broadest possible protection for your invention. Following things will be considered by patent agent while drafting patent:

- The claims are written in such a way that they provide maximum protection
- All possible embodiment and variants are covered
- Each claim finds its support in the detailed description in the specification
- Use of specific words in description and claims that has a specific meaning in patent law.

Thus, the patent agent must not assume the role of the inventor but should have the clearest grasp and understanding of the invention in order to properly execute his role as a patent agent to obtain a patent with the broadest claims allowed by law.

Answer 1(d)

A patent granted under the provisions of the Patents Act, 1970 confers an exclusive right to the patentee to exploit their invention and to produce, sell or import the patented product or process for the duration of the patent. However, this is not an absolute right, and certain limitations have been stipulated in Section 47 of the Patent Act.

According to Section 48 of the Patents Act, 'Rights of Patentees' elaborate the rights of the patentee after granting the patent. According to this section, exclusive rights are given to the

patentee for his invention. The patentee may prevent third parties who do not have his consent from the act of making, using, offering for sale, selling or importing for those purposes that product in India. Any person cannot use the patented invention without the permission of the patentee. To the inventor, according to Section 48, patent law confers certain definite advantages. However, the rights of the patentee under Section 48 curtail some of the rights of the patentee.

Section 47 of Patents Act, 1970 entitled 'Grant of patents to be subject to certain conditions' states certain conditions to grant a patent. According to this section, the Government may import or make or have made on its behalf any patented product or product made by a process for purposes 'merely of its use'. According to this section, the Government may impart educational instructions and the distribution of patented medicines in government dispensaries or hospitals on account of public service. Both process and product patents can be imported by the government for the purpose merely of its own use.

Question 2

Modern Cookers Ltd. is the registered proprietor of the trademark MODERN pertaining to pressure cookers and parts including gaskets. Prasad Enterprises, the respondent was manufacturing and selling gaskets under the trademark NAVIN, but on the packaging material indicating "Suitable for : Modern Pressure Cookers". In the packaging material the word Modern was printed in red colour and the words suitable for and Pressure Cookers were printed in black colour. It was very apparent that the intention is that the word Modern catches the eye of any customer.

The plaintiff filed a suit against Prasad Enterprises, alleging trademark infringement. The defendant used the phrase "Suitable for Modern Cookers" on the packaging of their gaskets, which Modern argued misleading consumers and violated their registered trademark rights. Prasad Enterprises countered this by invoking Section 30(2)(d) of the Trade Marks Act, 1999, which allows reference to a trademark if it is reasonably necessary to indicate compatibility with a product.

- (a) How does the interpretation of "reasonably necessary" under Section 30(2)(d) influence trademark infringement cases ?
- (b) Discuss the applicability of trademark law to domain name by referring to a case law.

(6 marks each)

Answer 2(a)

The interpretation of "reasonably necessary" under Section 30(2) (d) of the Trade Marks Act, 1999, plays a crucial role in distinguishing between fair use and trademark infringement. The court in *Modern Cookers Ltd. vs. Prasad Enterprises* held that the defendant's use of "Suitable for Modern Cookers" was not reasonably necessary since the gaskets could be used with any pressure cooker of the same size, not exclusively with Modern products. The phrase created a misleading association with Modern, implying endorsement or compatibility beyond mere factual description.

The defendant could have used alternative descriptions such as "Compatible with most 3L pressure cookers" or "Fits various pressure cookers" to avoid infringing upon the Modern trademark while still conveying the intended message. In trademark infringement cases, the burden of proof lies on the defendant to demonstrate that their use was necessary for consumers to understand the product's compatibility.

Courts also consider consumer perception and likelihood of confusion, ensuring that the average buyer is not misled into assuming an official association between the plaintiff and defendant. In previous cases, courts have ruled against comparative advertising or misleading product descriptions where a brand name was unnecessarily used in a way that could create false brand affiliation.

Thus, Section 30(2)(d) of the Act must be interpreted restrictively, allowing reference to a registered mark only when no other reasonable alternative exists to inform consumers. The ruling in this case aligns with global jurisprudence, as seen in *BMW v. Deenik (ECJ, 1999)*, where unauthorized use of a trademark was only permitted when essential for describing services. Had Prasad Enterprises used a disclaimer clarifying their independence from Modern, the case outcome might have been different.

However, the court correctly determined that the use of the “Modern” name was unnecessary, making the defendant liable for infringement. This case sets a strong precedent for accessory manufacturers, ensuring they do not misuse well-known trademarks for marketing advantages. The ruling upholds trademark owners’ rights while still allowing factual descriptions where truly indispensable to consumer understanding.

Answer 2(b)

Domain names can be registered and protected as trademark at national and international level, provided that the domain names do satisfy all conditions to be duly registered and protected like trademark. Any unique internet name which is capable of identifying and distinguishing goods or services of a company from that of other companies, and can also act as a reliable source identifier for the concerned goods and services on the internet, may be registered and thus protected as trademark, if it satisfies all other rules and requirements for registration which are commonly applicable to the trademarks. For proper registration of a domain name as a trademark, this must be unambiguously unique from all other domain names and well known trademarks on the internet, so that it does not mislead or deceive customers of other companies engaged in the same or different fields, or violate public order or morality. Such cases might give rise to instances of trademark infringement litigation.

Trademark law is applicable to domain names when a domain name is used in a manner that causes confusion with an existing trademark. Courts have recognized that unauthorized registration or use of domain names identical or similar to trademarks can constitute cybersquatting or trademark infringement.

A landmark case in this context is *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd. (2004)*, where the Supreme Court of India ruled that domain names serve as business identifiers, similar to trademarks. In this case, Satyam Infoway, which owned the registered trademark “Sify,” sued Sifynet Solutions for using domain names like “sifynet.net” and “sifynet.com,” claiming trademark infringement. The Court held that domain names function as trademarks when they distinguish goods and services, and unauthorized use could lead to confusion in the minds of consumers. This case established that trademark law applies to domain names when they are used in commerce to indicate the source of goods or services. The ruling also reinforced the principle that domain names should not be misused to exploit an existing trademark, thereby protecting brand owners from unfair competition and online identity theft. The court in this case had held as below:

“The original role of a domain name was no doubt to provide an address for computers on the internet. But the internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for internet communication but also identifies the specific internet site, and distinguishes specific businesses or services of different companies. Consequently a domain name as an address must, of necessity, be peculiar and unique and where a domain name is used in connection with a business, the value of maintaining an exclusive identity becomes critical. As more and more commercial enterprises trade or advertise their presence on the web, domain names have become more and more valuable and the potential for dispute is high.”

Question 3

The Channel Corporation herein after referred as Plaintiff entered into an Audio Rights Agreement with ICC Business Corporation FZ LLC, which was the organizer of ICC Men's World Cup, 2019, an event organized every four years and whose edition began on May 30th, 2019 and concluded on July 14th, 2019. Under the mentioned agreement, the Plaintiff has the exclusive right to exploit the Audio Rights in relation to the matches and warm up matches being held under the stated ICC tournament and the right to negotiate and conclude the license agreements with sub-licensees.

The Plaintiff has the following Rights :

- I. Transmit audio coverage of Matches and warm-up matches (or any adapted, altered or edited version thereof, and including comment, commentary, interviews and/or associated data) whether live, delayed, highlights or report in all languages via any delivery system now known or hereafter developed which is capable of transmitting or making available audio material for reception anywhere in the world, including via analogue and/or digital radio broadcasts, audio streaming/broadcasts to mobile phones, audio transmission on a digital TV channel (provided such transmission is accompanied only by basic scoring graphics and does not contain and ICC Marks).
- II. Stream such audio coverage via the internet and/or simulcast radio broadcasts via an audio internet stream, and/or make such audio content available on demand, including the provision of downloadable audio content commonly called podcast.
- III. Transmit or broadcast resulting from the exercise of the Audio Rights, by Private FM Radio Stations within and throughout India, after obtaining the necessary rights, clearances licenses and permission in relation to such broadcast subject to the Indian law which permit such live broadcast of cricket events on Private FM Radio Stations.
- IV. Exclusive right to exploit the Audio Rights and the right to negotiate and conclude the license agreements with sub-licensees.

The plaintiff came to know that the defendant who are (URLs/websites, private radio platform operators ISP (Internet Service Providers)/TSPs (Telecom Service Providers) are also broadcasting deferred update pertaining to ICC Event. An Injunction suit is filed by the plaintiff.

Answer the following :

- (a) Whether defendant's act amounts to infringement ? Explain with the help of decided case(s).
- (b) The Copyright Act safeguards both the work's essence and the creator's reputation.

Explain.

(6 marks each)

Answer 3(a)

The Hon'ble Delhi High Court laid down the principle in *Star India Pvt. Ltd. v Piyush Agarwal*, 2013 (54) PTC 222 (Del), which says that any person, wishing to gratuitously relay ball-by-ball or minute-by-minute score update or match alerts without a license, can do so, provided a time lag of 15 minutes is maintained in transmitting such updates. The court observed:

- The right to use information emanating from cricket matches cannot be recognized as a separate copyright. As under Section 16 of the Copyright Act, except for the specified copyrights, there cannot exist any right or copyright in any other work.
- As long as the Respondents are not copying in the original audio or visual recording of the match and are only using the information relating to the match, there is no bar on the

Respondents to disseminate the information for commercial purposes after two minutes of first broadcast by Star India.

This 15-minute time lag principle was also upheld by the Supreme Court vide its order dated 30th September, 2013 in *Star India Pvt. Ltd. v. Akuate Internet Services Pvt. Ltd.*, SLP (C) No. 29633 of 2013.

The case also finds mention of the Hot-News Doctrine. The court, considering the proximity of the sports news aired and the impact of copyright exploitation on competition, ruled that there would be no violation on the part of the defendant because outdated news holds no relevance. In this case, the doctrine of "Hot News" was dismissed, and attention was redirected to "principles of fair use and unjust enrichment".

Answer 3(b)

As per section 57 of the Copyright Act, the author of a work shall have the right to restrain or claim damages in respect of any distortion, mutilation, modification or other act in relation to the said work if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation.

In *Mannu Bhandari v. Kala Vikas Pictures Ltd.* the plaintiff, a Hindu writer, had assigned rights over her novel "Aap ka Bunty" to the defendants for producing a movie. The defendants produced a movie called "Samay ki Dhara" based on the novel. The plaintiff argued that the movie and the novel were based on different plots, which harmed her reputation as a writer and filed a suit for permanent injunction in the court. The court held that even though the plaintiff had transferred all her rights to the defendant, she still had moral rights over the work. Moral rights are not only in literary works but also apply to films and documentaries. It also held that some modifications while transforming a novel into a movie are permissible but should not harm the reputation of the author. Concerning the contract between the parties, the court stated that the provisions in the contract should not be in contravention of section 57 of the Copyright Act, 1957. Finally, it was agreed by the defendants that the name of the plaintiff and her novel's name should be removed from the film. The plaintiff will not have any rights over the film.

Question 4

There are millions of species across the world and India has tremendous varieties of species including plants, animals and biological genetic resources that could be potentially useful to Humans. Significant potential benefits can be obtained by accessing these genetic resources by making use of them. Genetic resources historically formed part of common heritage of mankind (hereinafter referred to as CHM) and were treated as belonging to global commons. The countries that were rich in biological resources were not able to fully utilize and benefit from their biological resources consisting of species, crops and plant varieties like rubber, cocoa, quinine etc. as they were being rampantly smuggled abroad. Due to technological innovation and development, a large number of industries started evolving the use of genetic resources and have become active in bioprospecting i.e. "the collection and exploration of biological resources for commercial purposes. Most well-known industries actively indulging in bioprospecting are pharmaceutical and agricultural industries which are involved in the fields of cosmetics, biotechnology, personal care, botanical medicine, horticulture, crop protection etc.

In the above context, biopiracy emerged as a defining context for the corporations and the industrialized countries who were claiming ownership, taking advantage of the genetic resources and Traditional Knowledge that existed in the developing countries. The term biopiracy is referred to as "illegal use" or "illegal access" by experts and has been adopted under the Bonn Guidelines.

(a) What mechanism is provided under the act for equitable sharing of benefits arising out of the

use of traditional biological resources and knowledge ?

(b) Discuss the means through which CBD and TRIPs could be harmonized.

(6 marks each)

Answer 4(a)

The Biological Diversity Act, 2002 aims to conserve India's biological diversity, promote sustainable use of its components, and ensure fair sharing of benefits arising from biological resources.

It primarily addresses the issues concerning access to genetic resources and associated knowledge by foreign individuals, institutions or companies, and equitable sharing of benefits arising out of the use of these resources and associated knowledge by the country and its people.

The Act governs Access and Benefit Sharing (ABS) through a three tier system, National Biodiversity Authority (NBA), State Biodiversity Board (SBB) and Biodiversity Management Committees (BMC). The NBA deals with matters relating to requests for access to bioresources and associated traditional knowledge by foreign individuals, institutions or companies, and all matters relating to transfer of results of research to any foreigner; imposition of terms and conditions to secure equitable sharing of benefits, establish sovereign rights over the bioresources of India and approval for seeking any form of Intellectual Property Rights (IPRs) in or outside India for an invention based on research or information pertaining to a biological resource and associated traditional knowledge obtained from India.

SBBs deal with matters relating to access to bioresources by Indians for commercial purposes and restrict any activity which violates the objectives of conservation, sustainable use and equitable sharing of benefits. The mandate of the BMCs is conservation, sustainable use, documentation of biodiversity and chronicling of knowledge relating to biodiversity.

BMCs shall be consulted by the National Biodiversity Authority and State Biodiversity Boards on matters relating to use of biological resources and associated knowledge within their jurisdiction. In order to safeguard the interests of the local people and to allow research by Indian citizens within the country, free access to biological resources for use within India for any purpose other than commercial use for Indian people has been given to vaid and hakims (traditional physicians) and other citizens.

Provisions for setting up of Biodiversity Funds at Central, State and Local levels are provided (Sections 27, 32 and 42) in the Biological Diversity Act, 2002. The monetary benefits, received as fees and royalties for approvals by National Biodiversity Authority is deposited in National Biodiversity Fund and used for conservation and development of areas from where resources have been accessed.

Answer 4(b)

The Convention on Biological Diversity (CBD) 1992: Opened for signature at the Earth Summit in Rio de Janeiro in 1992, and entering into force in December 1993, the Convention on Biological Diversity is an international treaty for the conservation of biodiversity, the sustainable use of the components of biodiversity and the equitable sharing of the benefits derived from the use of genetic resources. The interface between biodiversity and intellectual property is shaped at the international level by several treaties and process, including at the WIPO, and the TRIPS Council of the WTO. With 193 Parties, the Convention has near universal participation among countries.

The Convention seeks to address all threats to biodiversity and ecosystem services, including threats from climate change, through scientific assessments, the development of tools, incentives and processes, the transfer of technologies and good practices and the full and active involvement of

relevant stakeholders including indigenous and local communities, youth, NGOs, women and the business community.

India also followed the suit by placing in place legal frameworks for the management of biodiversity and Intellectual property laws. Following India's ratification of the Convention on Biological Diversity (CBD) at international level, the Biological Diversity Act, 2002 was adopted. The Biological Diversity Act aims at conservation of biological resources and associated knowledge as well as facilitating access to them in a sustainable manner and through a just process.

While the TRIPS and the CBD both attempt to legislate some form of intellectual property and technology transfer, the Agreement appear to provide contradictory prescriptions for the control over genetic control over generic resources and biodiversity. The two Agreements embody and promote conflicting objectives, systems of right and obligations.

The core issues is that, in the area of patentable subject matter, benefit sharing, protection of local knowledge, requirements of prior informed consent and role of state. In the benefit sharing arrangements, a key aspect of the CBD is the one, which recognizes the sovereign rights of the states over their biodiversity and knowledge, and thus gives the State the right to regulate access and this in turn, enables the state to enforce its rights on arrangements for sharing benefits.

There is an urgent need to review all the instruments, particularly in the area of trade, intellectual property and conservation of biodiversity that causally influence the people's freedoms and capabilities in the said areas. To overcome the range of these surmountable barriers, a comprehensive approach to development is required, i.e. an all-encompassing functional relation amalgamating distinct development concerns in relevant spheres, especially in economic matters.

Question 5

- (a) How is IPR recognized in the Competition Law ? Also state the relationship of Competition Law and Intellectual Property Law.
- (b) "A trade secret does not have to pass the test of novelty and might be a patentable idea but not always". Discuss.

(6 marks each)

Answer 5(a)

The Competition Act, 2002 in India recognizes the importance of IPRs such as patents, Copyrights, trademarks, geographical indications, industrial designs and integrated circuit designs. Also, Section 3 of the Competition Act prohibits anti-competitive agreements, Section 3(5) lays down that this prohibition shall not restrict "the right of any person to restrain any infringement of or to impose reasonable conditions, as may be necessary for protecting any of his rights" enjoyed under the statutes relating to the above mentioned IPRs.

Hence, this clearly implies that unreasonable conditions imposed by an IPR holder while licensing his Intellectual property rights would be prohibited under the Competition Act. Relationship of Competition Law and Intellectual Property Law Competition law maximizes social welfare by condemning monopolies while intellectual property law somehow also does the same by granting only temporary monopolies (restricted to pre-decided time frames). And after completion of such time frame competition replaces temporary monopolies.

The rationale behind this approach is that the intellectual property law should provide economically meaningful monopolies. Otherwise, competition law which by itself does not condemn the mere possession of monopoly power, but rather certain exercises of or efforts to obtain it, might be allowed to interfere with the monopoly. Hence, there should be reasonable exercise of the

monopoly power in order to protect the consumer's interest, otherwise competition law would surely hinder the practices of the monopoly market.

Answer 5(b)

A trade secret is any kind of information that is secret or not generally known in the relevant industry giving the owner an advantage over competitors. Generally, it has been stated that any information that can be used in the operation of a business or other enterprise and that is sufficiently valuable to afford an actual or potential economic advantage over others is a trade secret. Examples of trade secrets include formulas, patterns, methods, programs, techniques, processes or compilations of information that provide one's business with a competitive advantage.

The precise language by which a trade secret is defined varies by jurisdiction. However, there are three factors that (though subject to differing interpretations) are common to all such definitions: a trade secret is some sort of information that (a) is not generally known to the relevant portion of the public, (b) confers some sort of economic benefit on its holder (which means this benefit must derive specifically from the fact that it is not generally known, not just from the value of the information itself), and (c) is the subject of reasonable efforts to maintain its secrecy.

Trade secrets are not protected by law in the same manner as trademarks or patents. Probably one of the most significant differences is that a trade secret is protected without disclosure of the secret. A trade secret might be a patentable idea but not always. Unlike patent, a trade secret does not have to pass the test of novelty; nevertheless the idea should be somewhat new, unfamiliar to many people including many in the same trade.

Trade secrets are not registered like other forms of intellectual property and are not creatures of statutes. Instead, the judicial system of each country determines the requirements for obtaining trade secrets protection. In India, trade secrets are not covered under any law.

The TRIPS Agreement under Article 39 protects trade secrets in the form of "undisclosed information", and provides a uniform mechanism for the international protection of trade secrets. Such information must be a secret, i.e. not generally known or readily accessible to person within the circles that normally deal with all kinds of information in question. Also, the information must have commercial value because it is secret and the information must be subject to reasonable steps by its owners to keep it secret.

TRIPS Agreement requires the member countries to provide effective remedies for trade secret misappropriation including injunctive relief; damages; and provisional relief to prevent infringement and to preserve evidence. If a trade secret is acquired by improper means (a somewhat wider concept than "illegal means" but inclusive of such means), the secret is generally deemed to have been misappropriated. Thus, if a trade secret has been acquired via industrial espionage, its acquirer will probably be subject to legal liability for acquiring it improperly.

Question 6

- (a) "Parent lines of known hybrid varieties can be considered as new plant varieties for registration purpose". Explain the meaning of parent lines and the eligibility for registration.
- (b) What is Berne Convention ? Explain the basic principles that determine the minimum protection under Berne Convention.

(6 marks each)

Answer 6(a)

Parent Lines of Known Hybrid Varieties as New Plant Varieties for Registration under the Plant

Varieties and Farmers' Rights Act, 2001

The Protection of Plant Varieties and Farmers' Rights (PPVFR) Act, 2001 allows the registration of both new plant varieties and their parent lines.

Protecting parent lines ensures long-term benefits for seed companies, preventing unauthorized use of proprietary breeding materials. Meaning of Parent Lines: Parent lines refer to the distinct inbred or genetically stable lines used to produce hybrid plant varieties. Hybrid Varieties and Their Parent Lines: While hybrid varieties result from crossing two parent lines, these parent lines themselves can qualify as new plant varieties.

Eligibility for Registration: Parent lines can be registered if they meet the criteria of novelty, distinctiveness, uniformity, and stability (NDUS) under the Act.

- (i) If a parent line has not been commercially exploited in India for more than one year, it can be considered novel.
- (ii) The parent line must be distinct from existing registered plant varieties in terms of traits such as morphology, yield, or disease resistance.
- (iii) The parent line should show genetic consistency across multiple generations. The plant's essential characteristics must remain unchanged across successive generations.
- (iv) Registering parent lines allows plant breeders to gain exclusive rights and commercial benefits from their breeding efforts.
- (v) Registration helps protect indigenous and unique genetic materials used in hybrid seed production.
- (vi) While breeders obtain exclusive rights over the registered parent lines, farmers retain the right to save, use, and exchange seeds under the Act. The parent lines undergo Distinctness, Uniformity, and Stability (DUS) testing before registration is granted.
- (vii) Registering parent lines strengthens intellectual property rights (IPR) in the agricultural sector and promotes innovation in plant breeding.
- (viii) Indian courts and the PPVFR Authority have recognized the validity of parent line registration when they fulfill NDUS criteria.

Answer 6(b)

Berne Convention: The Berne Convention for the Protection of Literary and Artistic Works (1886) is an international treaty that sets the foundation for copyright protection across member countries. It was established to ensure that authors receive automatic copyright protection in all signatory nations without requiring separate registration.

The principles include:

- (i) Works created in one member country must receive the same protection in all other member countries as granted to domestic works.
- (ii) Copyright protection is automatic and does not require registration or formalities.
- (iii) Independence of Protection: Protection is independent of whether the work is protected in its country of origin.
- (iv) Ensure automatic protection of works without formalities.
- (v) Guarantee minimum rights to authors worldwide.
- (vi) Prevent discrimination between domestic and foreign authors.

- (vii) Promote international recognition of creative works.
- (viii) Basic Principles Determining Minimum Protection Under the Berne Convention
- (ix) The Berne Convention serves as the foundation for international copyright law, influencing treaties like the TRIPS Agreement and WIPO Copyright Treaty. It aims to harmonize copyright laws across nations.
- (x) Any limitation to copyright must: (i) apply to special cases, (ii) not conflict with normal exploitation, and (iii) not unreasonably prejudice the author's interests.
- (xi) Authors have moral rights to claim authorship and object to distortion or modification of their work.
- (xii) Exclusive Rights of Authors – Authors have exclusive rights to reproduce, distribute, translate, and adapt their works.
- (xiii) Right of Translation (Article 8) – Authors hold the right to authorize or prohibit translations of their works.
- (xiv) Right of Public Performance (Article 11) – Authors control the performance and broadcast of their works

LABOUR LAWS & PRACTICE

MODULE 3 ELECTIVE PAPER 9.4

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

Case Study :

Ludhiana Fashions Pvt. Ltd. was incorporated in the year 2000 as a Private Limited Company. On account of its increased turnover and expansion, it was converted into a Public Limited Company and now known as Ludhiana Fashions Ltd. (LFL).

Ludhiana Fashions Ltd. have 10 directors in its Board. Vanshika is the Managing Director of the Company.

The Company is engaged in the business of manufacturing garments for young boys and girls. The company not even manufacture and sale in the domestic market but also have B2B selling in the European market under the brand name of 'Aha Fashions'.

LFL have its factory in Phillaur, whereas the Registered office is in Ludhiana. The LFL's mission is to provide affordable garments with latest prevailing fashion trends and to promote the employment generation specifically for women. In order to fulfil its noble cause LFL has provided employment to the women and young girls who have been given the roles as managers, supervisors and workers as per the qualifications and experience of the candidate. Thus, the LFL is promoting empowerment and financial stability among the women.

LFL has various divisions in its manufacturing plant which includes the cloth purchase division, cloth cutting division, garment stitching division, ironing division, packing division, storage and distribution division.

Sangmitra is the overall head of the factory. Her responsibility is to oversee the work flow of each of the division and to ensure smooth functioning of the same. Besides this, she also takes care of the leave management of the staff working in the various divisions, and making arrangement of the proper relieving staff. The work load in the factory increases as and when the festive season comes and demand of the LFL make garment increases. During the festive season usually, the workers are encouraged to give focus on the targeted production and not to take leave.

In garment cutting division, Radhika is the Division Head. Radhika's work in the LFL is to take care of overall responsibility of cutting the cloth to different size as per the requirement for its final stitching. When the Diwali time was approaching near, Radhika's father called her over phone and informed that her mother has slipped down from the stairs and has been hospitalised. Radhika's native place is near Jaipur and she thought of going Jaipur by air to save time, so that she gets more time to look after her mother. She forwarded her leave application to Sangmitra (who is overall head of factory divisions). Sangmitra declined the leave application of Radhika without knowing the reasons and shouted on her narrating how she dared to apply for the leave at this festive time, when the management is committed to fulfil the domestic as well as export demand of the garments. As cutting of the clothes is the first stage of tailoring and stitching and if this step is not taken care of in priority the rest of the process will not start functioning, so Sangmitra advised her to take leave only after the end of the festival season. Radhika again requested that it is really urgent on account of the hospitalisation of her mother, but Sangmitra without paying any attention to Radhika's request,

abused her and passed on her unwelcomed personal remarks about her integrity and character and told that earlier also she had fabricated false stories for availing of leave.

Aggrieved from this Radhika made a complaint of sexual harassment against Sangmitra before the Internal Committee formed by the LFL under the provision of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).

The Inquiry Committee summoned both the parties and after a long deliberation recommended for suspension of Sangmitra. The management took cognizance of the report given by the Internal Committee and Sangmitra was suspended on 1st January, 2024. Before the suspension she was getting a monthly salary of ₹ 50,000 per month. After submission of the written apology and withholding one grade increment, Sangmitra was reinstated in the service with effect from 1st October, 2024.

The Board of the LFL recently approved the construction of its second factory premises in the industrial area of Ludhiana. The necessary machinery and electrical equipments were imported and installed in the new factory premises. The promoters of the Company want to start functioning of the new manufacturing plant with effect from the 15th August, 2025. Vanshika who is Managing Director of the Company nominated Ajay (who is Manager, stationed at Registered Office of the Company at Ludhiana) as the Occupier of the new factory premises.

Avantika joined the LFL as Supervisor of Packaging Division. She was to supervise the overall work of packaging of the garments. Very soon she realised that the employees are being exploited by the management and no one has courage to raise their issues. A few workers working in same Division decided to form a trade union. Meanwhile the management came to know that few workers are in the process of formation of Trade Union in this industry, so they called up a meeting of the employees and conveyed the message of the management. It was emphasized about the penal provisions and expulsions from the services if anybody is found involved in the formation or association with any Trade Union.

Ishika, is working in the Ludhiana Fashions Ltd. as Marketing & Recovery Officer (MRO) since 1st August, 2019. Ishika applied for maternity leave from 1st December, 2024 to 31st May, 2025. Her expected date of delivery as per doctor's report is 10th January, 2025. Ishika is already having 2 children.

The HR Deptt. of the Company declined the maternity leave application of Ishika informing her that the maternity leave benefits with wages cannot be granted to a woman who is already having 2 children. However, she can avail the leave without wages. Aggrieved from this, Ishika tendered her resignation to the Company on 10th March, 2025 and also demanded for payment of gratuity.

Based on the facts of the above, answer the following questions :

- (a) Whether Sangmitra is entitled for payment of any subsistence allowance during the period of her suspension as per the provisions of the Industrial Employment (Standing Orders) Act, 1946 ? If so, calculate how much amount she will be entitled to get ? (Assume One month = 30 days).

(8 marks)

- (b) Whether Radhika can make a complaint of sexual harassment against Sangmitra (who is also a feminine gender) ? Discuss the relevant provisions in light of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).

(8 marks)

- (c) Whether Ajay can be designated as occupier of the factory in terms of the provisions of the Factories Act, 1948 ? Give your answer with the decided case laws.

(8 marks)

- (d) Few employees of packaging department are in the process of formation of a Trade Union, however the management has discouraged the thought process. Whether management can prevent the formation and association of workers with any Trade Union? Also explain the process of registration of a Trade Union.

(8 marks)

- (e) Ishika's maternity leave application (with wages) was declined by the management quoting the reason that she already have 2 children and it is not permissible under the Maternity Benefit Act, 1961 . Aggrieved from this, Ishika tendered her resignation to the Company and demanded for payment of the wages during the maternity period and also demanded the payment of gratuity :

- (i) Whether Ishika is entitled to get the maternity leave benefit from 1st December, 2024 to 31st May, 2025 (assuming she has no children prior to this delivery) ?
- (ii) Whether Ishika is entitled to get the maternity leave benefit even when she has 2 children prior to the present expected delivery ?
- (iii) Whether Ishika is entitled to get the wages during her leave period i.e. from 1st December, 2024 to 10th March, 2025 ?
- (iv) Whether Ishika is entitled to get the payment of gratuity amount for the period she served in the Company ?

(2×4=8 marks)

Answer 1(a)

Section 10A of the Industrial Employment (Standing Orders) Act, 1946 provides that where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such a workman the subsistence allowance-

- (a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and
- (b) at the rate of seventy five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.

Any dispute regarding subsistence allowance may be referred by the workman or the employer, to the Labour Court constituted under the Industrial Disputes Act, 1947.

However, if the provisions relating to payment of subsistence allowance under any other law for the time being in force are more beneficial, then the provisions of such other law shall be applicable.

In view of the above, Sangmitra is entitled for payment of subsistence allowance.

Calculation of Subsistence Allowance

In the given case, Sangmitra was suspended on 1st January, 2024 and at that time she was getting a monthly salary of Rs. 50,000/- per month.

(a)	In terms of the Section 10A(a) of the Act, she will be entitled to get 50% of Rs. 50,000 for the first 90 days i.e. from 01.01.2024 to 30.03.2024 (both days inclusive) (assuming One month = 30 days)	Rs.75,000/-
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(b)	She reinstated in the service with effect from 1st October 2024. In terms of the Section 10A(b) of the Act, she will be entitled to get 75% of Rs.50,000 for the remaining period i.e. from 01.04.2024 to 30.09.2024 = 180 days (both days inclusive) (assuming One month = 30 days) $[(75\% \text{ of } 50000) * (180)] / 30 = \text{Rs.}2,25,000$	Rs.2,25,000/-
	Total	Rs.3,00,000/-

Answer 1(b)

In terms of Section 2 (a)(i) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, aggrieved woman means in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent. The definition of respondent has been defined under Section 2(m), which means a person against whom the aggrieved woman has made a complaint under section 9.

In terms of the Section 2(n) “sexual harassment” includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Further, in accordance with Section 2(o)(ii), workplace includes any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service.

Complaint of sexual harassment

Section 9(1) states that any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.

In the given case, Radhika is considered as Aggrieved Woman in terms of Section 2(a)(i) and accordingly she can make a complaint of sexual harassment. Since Sangmitra uttered abusing words to Radhika and passed unwelcomed personal remarks about her integrity and character, hence it comes within the definition of the Sexual Harassment in terms of Section 2(n)(iii) and (v).

Further Section 2(m) states that respondent means a person against whom the aggrieved woman has made a complaint under Section 9. Here Section 2(m) do not limit the complaint against man only, rather this section is gender neutral. So, an aggrieved woman if she has been sexually harassed can make a complaint against any of the gender.

Ludhiana Fashions Ltd. is a workplace as defined in section 2(o)(ii) of the Act. Thus, Radhika can very well make a complaint of sexual harassment against Sangmitra under the POSH Act.

Further, in the case of *Dr. Malabika Bhattacharjee Vs. Internal Complaints Committee, Vivekananda College & Ors.* [WPA 9141 of 2020 dated 27.11.2020] the High Court of Calcutta opined that ‘Respondent’ means a person against whom the aggrieved woman has made a complaint under

section 9. There is nothing in section 9 of Act to preclude a same gender complaint under the Act. A person of any gender may feel threatened and sexually harassed when her / his modesty of dignity as a member of the said gender is offended by any of the acts, as contemplated in Section 2(n), irrespective of the sexuality and gender of the preparator of the Act. If Section 3(2) is looked into, it is seen that the acts contemplated therein can be perpetrator by the members of any gender, given inter se.

Answer 1(c)

In terms of Section 2(n) of the Factories Act, 1948, Occupier of a factory means the person who has ultimate control over the affairs of the factory.

Point (ii) to the proviso provides that in the case of a company, any one of the directors shall be deemed to be the occupier.

The Supreme Court in the matter of *J.K. Industries Limited Vs. The Chief Inspector of Factories and Boilers & ors .SLP (C) No. 12498/96*, held that:

- (1) In the case of a company, which owns a factory, it is only one of the director of the company who can be notified as the occupier of the factory for the purposes of the Act and the company cannot nominate any other employee to be the occupier of the factory.
- (2) Where the company fails to nominate one of its directors as the occupier of the factory, the Inspector of Factories shall be at liberty to proceed against any one of the directors of the company, treating him as the deemed occupier of the factory, for prosecution and punishment in case of any breach or contravention of the provisions of the Act or for offences committed under the Act.

Therefore, Ajay, an employee of company or factory cannot be occupier. Proviso (ii) to Section 2(n) does not travel beyond scope of main provision and is not violative of Article 14 of Constitution of India. Proviso (ii) is not ultra vires main provisions of Section 2(n). No conflict exists between main provisions of Section 2(n) and proviso (ii). Further, proviso (ii) to Section 2(n) read with Section 92, does not offend Article 21.

Answer 1(d)

Formation of the Trade Union is a fundamental right

Article 19 (1) (c) speaks about the Fundamental right of citizen to form an associations and unions. Under clause (4) of Article 19, however, the State may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right of association pre-supposes organization as an organization or permanent relationship between its members in matters of common concern. It thus includes the right to form companies, societies, partnership, trade union and political parties. The right guaranteed is not merely the right to form association but also to continue with the association as such. The freedom to form association implies also the freedom to form or not to form, to join or not to join, an association or union.

In the case of *Damyanthi Naranga Vs. The Union of India* 1971 SCR (3) 840, the court observed that: "The right to form association necessarily implies that the persons forming the society have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association without any option being given to the members to keep them out, or any law which takes away the membership of those who have voluntarily joined it, will be a law violating the right to form association.

The provisions relating to the registration of Trade Union are contained in Section 4 and 5 of the Trade Unions Act, 1926.

Section 4 provides that –

- (1) Any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of this Act with respect to registration, apply for registration of the Trade Union under this Act.

Provided that no Trade Union of workmen shall be registered unless at least ten per cent. or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration:

Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

- (2) Where an application has been made under sub-section (1) for the registration of a Trade Union, such application shall not be deemed to have become invalid merely by reason of the fact that, at any time after the date of the application, but before the registration of the Trade Union, some of the applicants, but not exceeding half of the total number of persons who made the application, have ceased to be members of the Trade Union or have given notice in writing to the Registrar dissociating themselves from the applications.

Further, Section 5 provides that –

- (1) Every application for registration of a Trade Union shall be made to the Registrar, and shall be accompanied by a copy of the rules of the Trade Union and a statement of the following particulars, namely:—
 - (a) the names, occupations and addresses of the members making the application;
 - (aa) in the case of a Trade Union of workmen, the names, occupations and addresses of the place of work of the members of the Trade Union making the application;
 - (b) the name of the Trade Union and the address of its head office; and
 - (c) the titles, names, ages, addresses and occupations of the office-bearers of the Trade Union.
- (2) Where a Trade Union has been in existence for more than one year before the making of an application for its registration, there shall be delivered to the Registrar, together with the application, a general statement of the assets and liabilities of the Trade Union prepared in such form and containing such particulars as may be prescribed.

Answer 1(e)(i)

Maternity Leave Benefit (assuming Ishika has no children prior to the present delivery)

Section 5(3) of the Maternity Benefit Act, 1961 provides that the maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks of which not more than eight weeks shall precede the date of her expected delivery.

In the given case, Ishika applied for maternity leave from 1st December, 2024 to 31st May, 2025 (both days inclusive) which comes to 182 days i.e. 26 weeks. Further the expected date of delivery is 10th January, 2025, thus from 1st December, 2024 to 9th January, 2025 (both days inclusive) it comes to 40 days i.e. which is less than 8 weeks prior to the date of delivery. Thus, as per the provisions of Section 5(3) of the Maternity Benefit Act, 1961 she can apply and be granted the maternity leave. Since she has resigned on 10th March, 2025, she is entitled to get the maternity leave benefit till 9th March, 2025.

Answer 1(e)(ii)**Maternity Leave Benefit (when Ishika has already two children prior to the present delivery)**

The proviso to Section 5(3) of the Maternity Benefit Act, 1961 provides that the maximum period entitled to maternity benefit by a woman having two or more than two surviving children shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

In the given case, Ishika is entitled to avail the maternity leave for 12 weeks of which not more than 6 weeks shall precede the date of her expected delivery, since she is already having 2 children.

Therefore, she can go on the paid maternity leave from 1st December, 2024 to 22nd February, 2025 (both days inclusive). Further, the 6 weeks leave prior to date of expected delivery from 1st December, 2024 to 9th January, 2025 (both days inclusive) comes to 40 days which is less than 6 weeks. Thus, as per the proviso to Section 5(3) of the Maternity Benefit Act, 1961 she can apply and be granted the maternity leave.

Answer 1(e)(iii)**Payment of wages to Ishika during her leave period**

Section 5(1) of the Maternity Benefit Act, 1961 provides that subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day.

Thus, as per the above provisions, since Ishika is already having two children she can avail the maternity leave benefit for 12 weeks only i.e. from 1st December, 2024 to 22nd February, 2025 and is entitled to get the full wages for that period. As, Ishika has resigned from the job on 10th March, 2025, therefore from 23rd February, 2025 to 10th March, 2025 she is not entitled to avail the maternity leave benefit.

Answer 1(e)(iv)

Section 4(1) of the Payment of Gratuity Act, 1972 provides that 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.

Section 4(2) provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.

In the given case Ishika joined the company on 1st August, 2019 and tendered her resignation on 10th March, 2025. Therefore, from 1st August, 2019 to 9th March, 2025 she has served in the Company for 5 years, 7 months and 9 days.

Further, in terms of explanation (iv) to section 2A(2) of the Payment of Gratuity Act, 1972, Ishika shall be not be treated on leave without wages during the period of 1st December, 2024 to 22nd February, 2025 since she is entitled for the maternity leave with wages as per the Maternity Benefit Act, 1961.

(The answer is prepared taking actual days in a month.)

Question 2

- (a) Progressive Cements Ltd. is a Government Company. The 100% share capital of the Company is owned by the President of India. The factory premises of the Company is situated 50 kms away from the Jaipur City Railway Station. To have easy transportation of the cement bags to various parts of the country, a dedicated rail line from the factory to the Jaipur Railway Station was laid down by the Company. For loading- unloading of the cement bags at Jaipur Railway Station, the factory labours were engaged. One day a labour Bhima Ram fell down while the train was moving. With the help of his colleagues, he was admitted to the nearby Government Hospital but was referred to another Government Hospital due to non availability of bed in the ICU and then again referred this case to another Government Hospital due to lack of availability of specialised Doctor. The situation worsened and ultimately the family members of Bhima Ram availed the services of a nearby Private Hospital where they incurred a sum of ` 3.50 lakh on his treatment. Aggrieved from the indifferent attitude of the Government Hospitals, Bhima Ram filed a writ petition in the Supreme Court.

Whether the non-availability of facilities for treatment of the serious injuries sustained by Bhima Ram in the various Government hospitals have resulted in denial of his fundamental right guaranteed under the Constitution ? Examine the case with decided case law.

(6 marks)

- (b) The International Labour Organisation (ILO) was established in the year 1919 on the firm belief that the universal and lasting peace can be established only if it is based upon social justice. Now more than 100 years have elapsed since the creation of the ILO and there are drastic changes in all around. Whether the objectives behind the creation of the ILO are still relevant in today's environment ? Explain.

(6 marks)

Answer 2(a)

Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to a procedure established by law.

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.

The facts of the case are similar to that of *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (AIR 1996 SC 2426). In this case, a mazdoor fell from a running train and was seriously injured. He was sent from one government hospital to another and finally he had to be admitted in a private hospital where he had to incur an expenditure of Rs. 17,000/- on his treatment. Feeling aggrieved at the indifferent attitude shown by the various government hospitals, he filed a writ petition in the Supreme Court under Article 32. The Court has ruled that the Constitution envisages establishment of a welfare state, and in a welfare state, the primary duty of the government is to provide adequate medical facilities for the people. The Government discharges this obligation by running hospitals and health centres to provide medical care to those who need them. Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance.

The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.

In the present case there was breach of the said right of Bhima Ram guaranteed under Article 21 when he was denied treatment at the various Government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention. In respect of deprivation of the constitutional rights guaranteed under the Constitution the position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution.

Answer 2(b)

The International Labour Organisation (ILO) was created after taking into account many factors, primarily relating to security, humanitarian, political and economic issues. These have been enshrined in the preamble of the ILO constitution.

The socio-political situation at the time of creation of ILO was grossly unjust to an average labourer. There was an ideological understanding amongst all the major industrialized nations that there is a pressing need to create a body which addresses the troubles being faced by the working class. The importance of social justice was felt in securing peace. Along with this, the industrial nations were also toying with the idea of globalisation. The importance of economic interdependence was being propagated and the need for cooperation to maintain an equitable working atmosphere was promulgated in all countries competing for markets.

Reflecting these ideas, the Preamble states:

Whereas universal and lasting peace can be established only if it is based upon social justice.

And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.

The areas of improvement listed in the Preamble remain relevant today, for example:

- Regulation of the hours of work including the establishment of a maximum working day and week;
- Regulation of labour supply, prevention of unemployment and provision of an adequate living wage;
- Protection of the worker against sickness, disease and injury arising out of his employment;
- Protection of children, young persons and women;
- Provision for old age and injury, protection of the interests of workers when employed in countries other than their own;
- Recognition of the principle of equal remuneration for work of equal value;
- Recognition of the principle of freedom of association;
- Organization of vocational and technical education, and other measures.

Therefore, the objectives behind the creation of the ILO are still relevant in today's environment.

Question 3

- (a) Which among the following cases will be treated as 'manufacturing process' as per the Factories Act, 1948. Your answer should be with the appropriate reasoning.

Case I : Sarita opened a start-up of cloud kitchen. The necessary electrical equipments like

Refrigerator, Mixer, Oven etc. are available in the kitchen to prepare the food items. She takes order through Mobile App/Website, gets the food items cooked through Chef and delivers it through the delivery boys.

Case II : Rahul runs a motor garage, in which he provides servicing and repairing of all types of cars with the help of skilled and unskilled workers employed by him. The number of workers in the garage varies as per the work orders which usually remains between 8 to 10 but on very few occasions he had employed more than 20 workers.

Case III : Fine Law Publishing House is in the business of publishing of law books and periodicals for which it collects the manuscripts from the authors, compose the material and gets the printing of the books.

(2×3=6 marks)

- (b) Oscar Mines and Granites Ltd. (OMGL) is having mining license to extract marble and granite in the surrounding area of Kishangarh. In order to extract the raw stone beneath the earth, the OMGL availed the services of Kishan Lal a Licensed Contractor for supply of certain number of labours. For this purpose the OMGL got the registration under the Contract Labour (Regulation and Abolition) Act, 1970. After some time, Kishan Lal's license got expired and he eventually disappeared looking to the forthcoming demand from the labours for payment. The contract labours raised demand before the OMGL to keep them in the employment of the OMGL. Meanwhile the OMGL's registration also got expired for want of non-renewal.

Whether the contract labours supplied by Kishan Lal can become the employees of the OMGL, where the OMGL's registration has already been expired ?

(6 marks)

Answer 3(a)

Case I

In accordance with section 2(k)(i) of the Factories Act, 1948, manufacturing process means making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

Preparation of food with aid of various electrical appliances in kitchen of a hotel is a manufacturing process, as decided in the case of *"Poona Industrial Hotel v. I.C. Sarin, 1980, Lab IC 100.*

In *New Taj Mahal Cafe Ltd., Mangalore v. Inspector of Factories, Mangalore, 1956 1 LLJ 273* the preparation of foodstuffs and other eatable in the kitchen of a restaurant and use of a refrigerator for treating or adapting any article with a view to its sale were also held to be manufacturing process.

The Hon'ble Supreme Court in *G.L. Hotels Limited and Ors. Vs. T.C. Sarin and Anr. (1993) 4 SCC 363* it was held that since the manufacturing process in the form of cooking and preparing food is carried on in the kitchen and the kitchen is a part of the hotel or a part of the precinct of the hotel, the entire hotel falls within the purview of the definition of 'factory'.

Thus, the preparation of the food items shall be treated as manufacturing process.

Case II

In accordance with section 2(k)(i) of the Factories Act, 1948, manufacturing process means making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

The Factories Act, 1948 applies to all factories using power and employing 10 or more workers, and if not using power, employing 20 or more workers on any day of the preceding 12 months.

The business of sale of diesel oil, motor spirit, lubricant, servicing of cars and lorries, repairing vehicles and charging batteries with the aid of power, by employing more than 20 workers / labourers amount to manufacturing process, as noted in the case of "*Baranagar Service Station v. E.S.I Corporation (1987) 1 L.L.N 912(Cal)(Divisional Bench) & Labl. C. 302.*"

Thus, servicing and repairing of all types of cars shall be treated as manufacturing process.

Case III

In accordance with section 2(k)(iv) of the Factories Act, 1948, manufacturing process means composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding.

Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the impression on the paper to be printed. Everything that is necessary before or after complete process, would be included within the definition of the word manufacturing process.

Thus, composing shall be treated as manufacturing process.

Answer 3(b)

It has been well settled by the various judgements of Apex Court & High Courts that the contractor's employees will not automatically become the employees of the principal employer, even if the principal employer does not get registration and the contractor does not hold licence, though employing contract labour without obtaining registration or without obtaining licence is an offence under the Act. Legal consequences for default on the part of contractor for non-renewal of his licence have been discussed by a bench of Madras High Court in *Workmen of Best & Crompton Industries Limited represented by their General Secretary of Socialist Workers Union, Madras v. Management of Best & Crompton Engineering Ltd., Madras (1985-1-LLJ, 492)*, their lordship observed that the contractor's licence has not been renewed within the prescribed time limit and that the registration under section 7 was initially granted for 30 workmen, has not been amended to cover engagement of 75 workmen. Rule 29 requires that the application of renewal should be made before the validity of license. It would therefore, be inferred that the contractor is not eligible to apply for renewal at all and that his only remedy if he wants to work as a licensed contractor, is to apply for a fresh and new license. Otherwise, the workmen would not be deemed to be employed as contract labour.

The Act mandates that the principal employer should be registered and the contractor have a valid license prior to engaging contract labours. In *Workmen of Best & Crompton Industries Ltd. v. Best & Crompton Industries Ltd.*, the Madras High Court has held that the principal employer must engage contract labour through a contractor who has a valid license, because an invalid license of a contractor would imply direct employment of contract labour by the principal employer. Further, such a license of the contractor is job specific, non-transferable for any other job and indicative of the maximum number of contract labours to be engaged.

In *Food Corporation of India Workers Union vs. Food Corporation of India and other, 1992 LLJ (Guj.)*, it has been held that workmen can be employed as contract labour only through licensed contractors, who shall obtain licence under section 12. As per section 7, the principal employer is required to obtain Certificate of Registration. Unless both these conditions are complied with, the provisions of Contract Labour Act will not be attracted. Even if one of these conditions is not

complied with, the provisions of Contract Labour Act will not apply. In a situation where in either of these two conditions is not satisfied, the position would be that a workman employed by an intermediary is deemed to have been employed by the principal employer.

In the given case, contract labour supply by the Kishan Lal become the employee of OMGL even though OMGL registration has been expired.

Question 4

- (a) Pioneer Mines and Minerals Ltd. (PMML) is the license holder of 30 mines in the State of Tamil Nadu which produces non-metallic minerals like gypsum, limestone, lignite, and rock phosphate. The PMML has leased out 5 mines to other operators on rent as royalty for 3 years' time period subject to its renewal from time to time.

Kushal, a labour, who was working in a mine (which was leased out to Arihant Marbles by the PMML), below the ground, was injured on account of malfunction of the lift, carrying him below the surface. Kushal's right hand palm was badly injured and the medical doctors had no other alternative except to cut down his right hand palm. It is to mention here that Kushal was the left hander and even after the cutting of his right hand palm, his working efficiency as labour was not affected. However, he claimed compensation from the PMML.

Who shall be considered as the owner of such mine, in which the Kushal was working ? Also state whether the injury to Kushal's right hand palm shall be treated as Serious Bodily injury as per the provisions of the Mines Act, 1952 ?

(6 marks)

- (b) Himadri Productions (HP) make TV Serials, based on the theme of domestic affairs, which are very much popular among the Indian families. Sudhanshu who is the Director in the HP got the approval from Pragati TV for broadcasting of 20 episodes of TV Serial titled as 'Aasmaan Aur Bhi Hai'. HP has already filmed its 5 episodes. from 6th episodes and onward the story revolves around a special child who is of the age of 8 years. Sudhanshu's friend's son is a special child named as Aakaar and he wants to introduce him in the world of TV & Film. However, Prashant, the Producer of the TV Serial, was in doubt whether taking work from Aakaar in the TV Serial would attract any non-compliance of the provisions of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 since Aakaar does not come within the definition of family and seek your professional expertise in this regard. Clarify the relevant provisions of the Act to Prashant.

(6 marks)

Answer 4(a)

In terms of Section 2(1)(l) of the Mines Act, 1952, owner, when used,

- i. in relation to a mine, means
 - any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and
- ii. in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver

But does not include a person

- who merely receives a royalty, rent or fine from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or
- who is merely the owner of the soil and not interested in the minerals of the mine;

But any contractor or sub-lessee for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability.

In the case of *Bharat Coking Coal Ltd. Vs. Madanlal Agrawal*, 1996 IXAD (SC) 415, it was observed that the definition of an 'owner' which also includes a lessee or an occupier apart from the immediate proprietor.

Thus, in the present case the Arihant Marbles shall be considered as owner of the mine.

In terms of Section 2(1)(q) of the Mines Act, 1952, serious bodily injury means any injury which involves, or in all probability will involve,

- the permanent loss of any part or section of a body; or
- the use of any part or section of a body; or
- the permanent loss of or injury to the sight or hearing or any permanent physical incapacity; or
- the fracture of any bone or one or more joints or bones of any phalanges of hand or foot.

Since Kushal has lost his right hand palm and in accordance with the above definition, it shall be treated as serious bodily injury.

Answer 4(b)

In terms of Section 2(ii) of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

Section 3 of the Act provides that –

- (1) No child shall be employed or permitted to work in any occupation or process.
- (2) Nothing in sub-section (1) shall apply where the child,—
 - (a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;
 - (b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed:

Provided that no such work under this clause shall effect the school education of the child.

For the purposes of this section, the expression,

- (a) "family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother;
- (b) "family enterprises" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;
- (c) "artist" means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).

Although, Aakaar does not come within the definition of family of Sudhanshu or Prashant, however, Aakaar's services can be utilised as an artist as per the provisions contained in Section 3(2)(b) of the Act which clearly permits a child to do work as an artist in TV Serial.

Question 5

(a) Put the following scenarios, in the category of :

(i) Arising out of employment' and

(ii) Arising in the course of employment, along with its justification :

Case I : Someone placed a bomb in a workplace, which caused injury to Shalini, a worker.

Case II. Bhola, a construction worker fell down from a ladder while working on a building site.

Case III : Sulochana, a nurse contracted with a contagious disease from a patient.

Case IV : Saransh, a bank employee suffering from heart disease collapsed and died while working in the bank.

Case V: Hari, a railway employee, while travelling to a site to carry out repairs was injured in an accident.

Case VI : Manveer, a delivery driver met with an accident while making a delivery.

(1×6=6 marks)

(b) Vijaykanth and Amar Jha were in the employment as driver in a university. The university later found that operating the bus services for the students has resulted in loss and decided to discontinue the facility. This has resulted in the termination of services of the drivers by way of retrenchment. These two drivers were served with a notice of retrenchment on payment of one month's salary in lieu of notice. The aggrieved drivers filed petitions before the Industrial Tribunal for claiming compensation.

The petitions by the respective drivers were contested by the Appellants — the University on the ground that the university was not the employer under section 2(g) of Industrial Disputes Act, 1947 and secondly on the ground that the work carried on by the university was not industry and so the petitions are liable to be rejected. The tribunal rejected the objections and directed the appellants (University) to pay the petitioners the retrenchment compensation.

In the light of the above mentioned facts, decide the following questions :

(i) Whether the activities carried on by the University is of an Industry ? Explain.

(ii) The staff both teaching and administrative, whether they are workmen ? Explain.

(2×3=6 marks)

Answer 5(a)

Case I: Arising in the course of employment

Reason: There is no casual connection between the employment and the accidental injury. But Shalini was present at the workplace at the time of incident, therefore comes in the category of 'arising in the course of employment'.

Case II: Arising out of employment

Reason: There is connection between the employment and the accidental injury. Bhola was working at the construction site and he has to go through the ladder up and down thus the injury occurred in connection with his employment, hence it shall be treated as arising out of employment.

Case III: Arising out of employment

Reason: Sulochana is working as nurse and there is close connection between her employment and the injury, hence it will come under the category of arising out of employment.

Case IV: Arising out of employment

Reason: Saransh is a bank employee suffering from heart disease collapsed and died while working in the bank. Where a workman suffers from heart disease and dies on account of strain of work by keeping continuously working, held that the accident arose out of employment.

Case V: Arising in the course of employment

Reason: Hari is a railway employee and his nature of work is to take care of the repairing work which have the close connection with his injury during his employment. Hence it shall be classified as arising in the course of employment.

Case VI: Arising out of employment

Reason: Manveer is a delivery driver and he got an accident while making delivery. The nature of his employment have close connection with the injury, hence it shall come in the category of arising out of employment.

Answer 5(b)(i)

Section 2(j) of the Industrial Disputes Act, 1947 defines the term Industry which means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.

The activities carried on by the university is an industry as per Supreme Court decision in *Corporation of City of Nagpur Vs its Employees*, but was over ruled in *Delhi University Vs Ramnath* where Supreme Court held that education is mission and vocation rather than a profession or trade or business. The predominant activities of the university is outside the Industrial Disputes Act, 1947 because teaching and teachers connected with it do not come within its purview and the minor activities carried on by the subordinate staff which may fall within the purview of the Act cannot be after the predominant character of the institution. The Supreme Court allowed the appeal and the orders of Industrial Tribunal were set aside and petition of the drivers were dismissed.

The Supreme Court carried out an in-depth study of the definition of the term industry in a comprehensive manner in the case of *Bangalore Water Supply and Sewerage Board v. A Rajappa*, AIR 1978 SC 548, after considering various previous judicial decisions on the subject and in the process, it rejected some of them, while evolving a new concept of the term "industry". After discussing the definition from various angles, in the above case, the Supreme Court, laid down the tests to determine whether an activity is covered by the definition of "industry" or not. It is also referred to as the triple test.

The Supreme Court observed that professions, clubs, educational institutions. co-operatives, research institutes, charitable projects and other kindred adventures, if they fulfil the triple tests listed, cannot be exempted from the scope of Section 2(j).

As regards institutions, if the triple tests of systematic activity, cooperation between employer and employee and production of goods and services were to be applied, a university, a college, a research institute or teaching institution will be "industry".

The decision of Supreme Court in Delhi University case was examined in length and was over ruled in *Bangalore water supply and Sewerage Board Vs A. Rajappa* by the Supreme Court (AIR 1978 SC 548). It was held that university is Industry and employees (Administrative and Support Staff other than teachers) are workmen.

Answer 5(b)(ii)

Section 2(s) of the Industrial Disputes Act, 1947 defines the term workman which means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial

dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person who is employed mainly in a managerial or administrative capacity.

However, in the case of *University of Delhi Vs Ramnath*, it was held teachers are not workmen, but the support staff administrative staff are workmen. It is even so as per the substituted definitions of industry in *Bangalore Water Supply and Sewerage Board v. A Rajiappa*.

The activities of the university involves academics, administrative work and other ancillary and incidental work. In *Standard Vacuum Oil Co. v. Commissioner of Labour*, it was observed that if an individual has officers subordinate to him whose work he is required to oversee, if he has to take decision and also he is responsible for ensuring that the matters entrusted to his charge are efficiently conducted, and an ascertainable area or section of work is assigned to him, an inference of a position of management would be justifiable. Occasional entrustment of supervisory, managerial or administrative work, will not take a person mainly discharging clerical duties, out of purview of Section 2(s).

Question 6

- (a) Suman, an employee of Prajwal Textiles was dismissed by the employer for misconduct. Suman filed a petition in the Labour Court challenging the order of dismissal. The Labour Court found the dismissal order as invalid and ordered reinstatement. The employer filed appeal in the High Court which confirmed the order of the Labour Court. Unfortunately the employee died. His wife claimed the bonus as applicable for the deceased employee for all the years subsequent to his dismissal. Will she succeed ? Explain with relevant provisions.

(6 marks)

- (b) Keerthan was employed by a publishing company as Marketing Executive. He was found guilty of fraud while in service and after the enquiry he was terminated from service. The company for which Keerthan served for 13 years refused to provide gratuity. Keerthan challenged the action of the company in the Court. Will he succeed ? State the grounds of denial of gratuity.

(6 marks)

Answer 6(a)

Yes, the wife of the deceased employee is entitled to claim bonus for all the years subsequent to the death of the employee. In the instant case, though the employee expired, however, before the death, the Labour Court orders his reinstatement after finding the termination as invalid.

Section 21 of the Payment of Bonus Act, 1965 provides that where any money is due to an employee by way of bonus from his employer under a settlement or an award or agreement, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

It may be noted that every such application shall be made within one year from the date on which the money become due to the employee from the employer. Any such application may be

entertained after the expiry of the said period of one year, if the appropriate Governments satisfied that the applicant had sufficient cause for not making the application within the said period.

Answer 6(b)

Section 4(6)(a) of the Payment of Gratuity Act, 1972 provides that the gratuity of an employee whose services have been terminated for any act or willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, gratuity shall be forfeited to the extent of the damage or loss or caused.

Further, section 4(6)(b) deals with a case where the services of an employee have been terminated:

- (i) for riotous and disorderly conduct or any other act of violence on his part, or
- (ii) for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment.

In such cases the gratuity payable to the employee may be wholly or partially forfeited.

The right of forfeiture is limited to the extent of damage. In absence of proof of the extent of damage, the right of forfeiture is not available (*LLJ- II-1996-515 MP*). The proper rule will be that the employer is entitled to deduct out of gratuity such sum or sums against legitimate loss or damage caused to him by the conduct of the employee. (*Hindustan Times Vs Workman AIR 1963 SC 1332*).

In, the given case, and in view of the above, Keerthan is correct in his challenge. The gratuity can be forfeited for any act or wilful omission or negligence causing any damage or loss to or destruction of property belonging to the employer limited to the extent of damage. Here Keerthan is guilty of fraud. Mere dismissal does not disentitle him from claiming gratuity. Only offences of moral turpitude could be the ground of denial of gratuity. Therefore, Keerthan would not be entitled to full gratuity.

INSOLVENCY – LAW AND PRACTICE

MODULE 3 ELECTIVE PAPER 9.5

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

(a) Read the following background information and answer the questions :

The Insolvency and Bankruptcy Code, 2016 (IBC, 2016) creates an ecosystem for maximizing the value of assets of the Corporate Debtor (CD) and balancing the interests of all stakeholders in a time-bound manner. A significant value of insolvent entities is often locked in assets underlying avoidance transactions which are undertaken by the CD prior to the initiation of the Corporate Insolvency Resolution Process (CIRP). The Resolution Professional (RP) or the liquidator is obliged to file applications, in respect of Avoidance Transactions (Preferential, Undervalued, Fraudulent and Extortionate (PUFE) Transactions) found by him during CIRP and Liquidation Processes before the Hon'ble Adjudicating Authority (AA), seeking appropriate relief permissible under the Code.

As of end of September 2024, 1,326 Avoidance Transaction Applications involving an amount of ₹ 3.76 lakh Crore have been filed with the AA. The AA, after consideration, can order for the amount to be clawed back. The IBC has led to a direct recovery of about ₹ 3.55 Lakh Crore due to Resolution and ₹ 10,446 Crore due to Liquidation till September, 2024. The Recovery from Avoidance Transactions will add to this recovery to the Creditors. Till September 2024, 338 Avoidance Transaction Applications have been settled by the AA ordering a claw back of about ₹ 7,516 Crore.

While the RP/Liquidator may have filed an Application with the AA based on his determination, it may not always be possible for the AA to consider and dispose of the application during the tenure of the CIRP or the Liquidation Process. Section 26 of the Code clarifies that the filing of an Avoidance Application by the RP shall not affect the proceedings of CIRP. Avoidance Applications and CIRP are a separate set of proceedings and Avoidance Applications can be continued Post-completion of CIRP. The IBC provides that the Resolution/Liquidation Process should not be held up if Avoidance Transaction Applications are pending. During CIRP if the decision on Avoidance Transactions is pending before Resolution is finalised, the amount would claw back to CD for the benefit of Creditors. The CIRP Regulations mandate that a Resolution Plan should contain the details of the Party/Person who will pursue these Avoidance Transactions after the Approval of the Resolution Plan, who will get the proceeds and the manner in which the proceeds, if any, from such proceedings will be distributed. Consequently, after the Resolution Plan is approved, the RP has no role in pursuing these transactions and Creditors / Successful Resolution Applicant (SRA) will have to make their own arrangements to pursue them before the AA.

The amount clawed back would reflect in higher bids. In cases where decision on Avoidance Transactions is not available, the Avoidance Transactions being Assets of the CD, could be permitted by the CoC to be bid by Prospective Resolution Applicants (PRAs) in the Resolution plan. In case the CoC decides to assign the Avoidance Transactions to a Resolution Applicant (RA), the specifics of Avoidance Transactions should be made explicit in the

information Memorandum (IM) and Request for Resolution Plan (RFRP), allowing prospective RAs to account for the value of Avoidance Transactions while submitting their plan. The CoC in the Resolution Plan should not give the proceeds of Avoidance Transactions to the RA without detailing such transactions in the IM or RFRP and without transparent bidding for such transactions. Another option could be to invite bids for Avoidance Transactions separately after obtaining the Approval of AA and the amount recovered could be appropriated by the Creditors Post-approval from the AA.

The provisions for Avoidance Transactions aid in maximizing the value of the CD both ex-post (i.e., once the CD is in Insolvency) and Ex-ante. These provisions foster good Corporate Governance and deter solvent entities and market participants from engaging in activities involving diversion of funds from the CD. By annulling such transactions, the Code Aims to prevent the depletion of the Debtor's Assets and protect the interest of Creditors and other Stakeholders. They would act as an additional source of Recovery for the Creditors.

The Code calls upon the Resolution Professional/Liquidator, as the case may be, to bring to the knowledge to the Adjudicating Authority, transactions of Preferential, Under- value, Extortionate, Fraudulent, or unlawful nature, if any, identified during the course of CIRP or Liquidation. Considering the huge sums involved in these transactions, provisions for the same, in IBC as well as on a global scale, is of utmost importance.

In *ABC Bank Limited v. JIL*, the NCLT Bench, dealt with a crucial aspect of Insolvency proceedings, that is, vulnerable transactions. The Resolution Professional (RP) of the Corporate Debtor filed application in relation to a mortgage of an immovable property belonging to the Corporate Debtor to secure the debt of a related party (that is, the Holding Company of the Corporate Debtor). The RP sought directions, inter alia so as to declare the transaction as Preferential, Undervalued and "Fraudulent and Wrongful" under the Code.

Facts in a decided case :

In *ABC Bank Ltd. v. JIL*, certain mortgages created by JIL in favour of the lenders of its Holding Company JAL.

- JIL was a special purpose Company promoted by JAL for certain design, engineering, development and construction projects. JAL held approximately 70% of the shares of JIL.
- JIL started facing financial difficulties and failed to honour its project completion deadlines. It also started defaulting on its loan payments due to its financial creditors. One of the lenders declared JIL as a Non-Performing Account ("NPA") first and other lenders declared it as a NPA subsequently.
- JIL Mortgaged 800 plus Acres of unencumbered land owned by it to secure the debt of JAL, vide Mortgage Deeds entered on various dates.
- The NCLT Admitted an application filed by one of JIL's Financial Creditors, IDBI Bank Ltd., for initiating Insolvency Proceedings under the Code, and appointed an Interim Resolution Professional ("IRP").
- The IRP examined various transactions entered into by JIL with its promoter shareholders, pursuant to his duties as a Resolution Professional.
- The IRP, consequently filed an Application before the NCLT seeking declarations that the Impugned Transactions were :

- (i) Fraudulent Transactions under Section 66 of the Code;

- (ii) Preferential Transactions under Section 43 of the Code; and
- (iii) Undervalued Transactions under Section 45 of the Code; and sought consequent reliefs ("Application").

In the light of the above information and with reference to the relevant provisions and decision of Adjudicating Authority (NCLT Bench) under IBC, 2016, answer the following Questions :

- (i) When shall a transaction entered by any Corporate Debtor be deemed as Undervalued?
(3 marks)
- (ii) What are Extortionate Credit Transactions ?
(3 marks)
- (iii) What are the Powers of an Adjudicating Authority where a Corporate Debtor enters into Extortionate Transactions ?
(4 marks)
- (iv) Based on the decided case law, answer whether the Transaction in the above mentioned case a Preferential Transaction ?
(4 marks)
- (v) Based on the decided case law, answer whether the relief of "Ordinary Course of Business" available in the above-mentioned Case ?
(5 marks)
- (vi) Based on the decided case law, answer whether the Transaction was an Undervalued Transaction in the above-mentioned Case ?
(3 marks)
- (vii) Based on the decided case law, answer whether look-back period will be 1 Year or 2 Years in the above-mentioned Case ?
(5 marks)
- (viii) Based on the decided case law, answer whether the Transaction was to Defraud creditors in the above-mentioned Case ?
(3 marks)

(b) Read the following background information and answer the questions :

Vikram Deshmukh was a successful businessman who had built his empire from scratch. He had a thriving construction business, Deshmukh Constructions, and was well-known for his innovative approach to architecture. His company was booming, and for years, his fortunes seemed unstoppable.

However, as the construction market became increasingly competitive, Vikram found himself facing immense financial pressures. He had invested heavily in land acquisitions and large-scale projects, but a sudden downturn in the economy left him unable to meet his obligations. The debts began to pile up, and creditors were knocking on his door.

One fateful day, unable to meet his financial obligations and faced with the possibility of bankruptcy, one of the financial Creditor's had filed for bankruptcy under the Insolvency and Bankruptcy Code 2016 (IBC, 2016). The date of filing marked the beginning of the legal process, and Vikram's business was soon under scrutiny by his creditors, including banks and

other financial institutions. However, before the official bankruptcy commencement date arrived, a series of events transpired that would forever change Vikram's life.

In the weeks following his bankruptcy filing, Vikram found himself desperate to raise funds. He knew his business was struggling and feared that the creditors would seize his property once the bankruptcy proceedings began. In a bid to save some assets, he made a decision that would later become a point of contention, he sold a prime piece of commercial real estate to a buyer, Raghav, a well-known businessman in the city.

Vikram presented the sale as an opportunity for Raghav, offering him the property at a fair price. Raghav, a seasoned entrepreneur, did his due diligence and was satisfied with the terms of the transaction. Both parties agreed to the sale, and the deal was completed in good faith.

Raghav had no reason to suspect that Vikram was in financial distress or that the transaction could be problematic.

On the above background answer the following questions :

- (i) One of the Creditors of Deshmukh Constructions, approached you as a Company Secretary to give opinion on the genuineness of above transaction as per the IBC, 2016.

(6 marks)

- (ii) Under what circumstances transactions will not be referred to as Preferential Transactions?

(4 marks)

Answer 1(a)(i)

As per Section 45 (2) of the Insolvency and Bankruptcy Code, 2016 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 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.

Answer 1(a)(ii)

As provided in Regulation 5 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an Extortionate Credit Transactions shall be considered extortionate under section 50(2) of the Insolvency and Bankruptcy Code, 2016 where the terms:

- (1) require the corporate debtor to make exorbitant payments in respect of the credit provided, or
- (2) are unconscionable under the principles of the law relating to contracts.

As per Section 50 of the Insolvency and Bankruptcy Code, 2016 any debt extended by any person providing financial services which is in compliance with any law for the time being in force in relation to such debt shall in no event be considered as an Extortionate Credit Transaction.

Answer 1(a)(iii)

As per Section 51 of the Insolvency and Bankruptcy Code, 2016 deals with Orders of Adjudicating Authority in respect of extortionate credit transactions. It provides that:

Where the Adjudicating Authority after examining the application made under subsection (1) of section 50 of the Insolvency and Bankruptcy Code, 2016 is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by an order –

- (a) restore the position as it existed prior to such transaction;
- (b) set aside the whole or part of the debt created on account of the extortionate credit transaction;
- (c) modify the terms of the transaction;
- (d) require any person who is, or was, a party to the transaction to repay any amount
- (e) received by such person; or
- (f) require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

Answer 1(a)(iv)

As per Section 43(2) of the Insolvency and Bankruptcy Code, 2016 a corporate debtor shall be deemed to have given a preference, if–

- (a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and
- (b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

It may be noted that in view of the conditions specified under Section 43 (2), the debt, the creditor, and the assets—all should belong to the Corporate Debtor. In this case, the lender in favour of whom the mortgage was created was not the Creditor of the Corporate Debtor, but it was the Creditor of the Holding Company. Therefore, the provisions of Section 43 are not directly attracted in this case.

However, NCLT noted that the Holding Company is also one of the Operational Creditors of the Corporate Debtor. Section 43(2) requires that the transfer should be for the benefit of a Creditor of the Corporate Debtor. Hence, this being a deeming provision, applies in case of impugned transaction. The Holding Company, which is a creditor of the Corporate Debtor, is put in a beneficial position, than it would have been in the event of distribution of Assets made in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016.

The stand taken by NCLT implies that once the Corporate Debtor has granted security interest in favour of its Holding Company, it has the effect of reducing the direct liability of the Holding Company towards the transferee lender. So, the Holding Company which is also one creditor, is being an indirect beneficiary here. [*IDBI Limited v. Jaypee Infratech Limited*] [CA No. 26/2018 in CP No. (IB)77/ALD/2017, Order dated 16.05.2018]

Therefore, transaction in the given case is a Preferential Transaction

Answer 1(a)(v)

Section 43 (3) (a) of the Insolvency and Bankruptcy Code, 2016 excludes “a transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee”.

NCLT held that the transaction of creating a security interest by way of mortgage in favour of lenders of a third party, on the unencumbered land of the Corporate Debtor without any consideration or Counter Guarantee, cannot be treated as transfer in the ordinary course of business or financial affairs of the corporate debtor. The exclusion clause cannot be interpreted that the ordinary course of business also includes transferee's ordinary business because transferee can never do transfer himself.

The impugned transfer did not benefit either the business or the finances of the Corporate Debtor in any way. Such transfer is for the benefit of the related party, therefore cannot be excluded under Section 43 (3). The word "Transfer made" itself indicates that it relates to the Transferor and not the Transferee. Therefore, the ordinary course of business of transferee bank will not exclude the transactions from the purview of Preferential Transactions. (*IDBI Limited v. Jaypee Infratech Limited*) [CA No. 26/2018 in CP No. (IB)77/ALD/2017, Order dated 16.05.2018]

Therefore, relief of "Ordinary Course of Business" will not be available in the given case in question.

Answer 1(a)(vi)

The alleged transaction has been made without any consideration to the Corporate Debtor. Therefore, the transaction was said to be covered under Section 45 (1) of the Insolvency and Bankruptcy Code, 2016 and will be treated as Undervalued. The arguments as to Collateral Security being common practice in Banking Industry and reciprocity in the relationship the Holding and the Corporate Debtor were rejected by the NCLT. (*IDBI Limited v. Jaypee Infratech Limited*) [CA No. 26/2018 in CP No. (IB)77/ALD/2017, Order dated 16.05.2018]

In view of the said judgement, the transaction in the given case study will also be covered u/s45(1) of the Insolvency and Bankruptcy Code, 2016 and treated as "Undervalued Transaction".

Answer 1(a)(vii)

It was argued that the relevant Sections of the Code [Sections 43,45,60(5),66] came into effect as on 01.12.2016. Therefore, the limitation period of 1 Year / 2 Years will apply only to Transactions made on or after 01.12.2016 and not beyond that date. NCLT rejected the contention stating that the retrospective effect of such provisions is imbibed in the legislation itself. The look-back period is to be determined with reference to the Insolvency Commencement Date and not the date when the Code came into effect. Therefore, in this case, since the beneficiary is a Related Party, the look-back period would be 2 Years from the Insolvency Commencement Date.

Here, the ruling of [*Levit v. Ingersoll Rand*, 874 F.2d 1186 F.2d (7th Cir. 1989)] might be relevant. The Court held that look-back period shall be determined on the basis of the ultimate beneficiary of the transaction, that is, whether the beneficiary is an Outside Creditor or an Inside Creditor.

To reiterate that since the transaction has already been classified as one defrauding creditors by the NCLT, there was no need of delving into the question of lookback period. Reason being-no look-back period has been specified for fraudulent transactions. Where a fraudulent transaction is also a Preference Transaction, there shall be no need of putting the limits of "Look-back Period". (*IDBI Limited v. Jaypee Infratech Limited*) [CA No. 26/2018 in CP No. (IB)77/ALD/2017, Order dated 16.05.2018]

Answer 1(a)(viii)

The NCLT noted that the Corporate Debtor was facing Financial Crunch and its account was declared NPA. The Joint Lenders Forum (JLF) Lenders advised the Corporate Debtor to not to Create any Mortgage / Charge on any Asset / Land parcel without approval from the Lenders of the Corporate Debtors.

However, NCLT noted that the impugned transactions were done not only without the consent of JLF but also contrary to the decision of JLF. [*IDBI Limited v. Jaypee Infratech Limited*] [CA No. 26/2018 in CP No. (IB)77/ALD/2017, Order dated 16.05.2018]

Perusing the above judgement, the transaction in the given case study is deemed to enter to defraud creditors.

Answer 1(b)(i)

Section 158 of the Insolvency and Bankruptcy Code, 2016 deals with Restrictions on disposition of property. It provides that:

- (1) Any disposition of property made by the debtor, during the period between the date of filing of the application for bankruptcy and the bankruptcy commencement date shall be void.
- (2) Any disposition of property made under sub-section (1) shall not give rise to any right against any person, in respect of such property, even if he has received such property before the bankruptcy commencement date in –
 - (a) good faith;
 - (b) for value; and
 - (c) without notice of the filing of the application for bankruptcy.
- (3) For the purposes of this section, the term “property” means all the property of the debtor, whether or not it is comprised in the estate of the bankrupt, but shall not include property held by the debtor in trust for any other person.

As the bankruptcy proceedings officially commenced, the appointed Insolvency Professional (IP) began reviewing all of Vikram's transactions to ensure fairness and that no fraudulent preferences had been made. Upon discovering the sale of the property to Mr. Raghav, the IP raised a red flag. The transaction took place during the window between the filing date and the bankruptcy commencement date.

According to Section 158(1) of the Insolvency and Bankruptcy Code, any disposition of property made by the debtor during this period is considered void, even if the transaction was made in good faith and for value. The law was clear as such dispositions were deemed invalid because they could unfairly prejudice the creditors, depriving them of assets that might have otherwise been used to satisfy their claims.

Despite the fact that Mr. Raghav had purchased the property in good faith and had paid a fair price, the law did not distinguish between good intentions and potential harm to creditors. The Insolvency Professional shall file a report, and the matter would be taken up with the National Company Law Tribunal (NCLT), which ruled that the transaction between Vikram and Raghav was void.

Answer 1(b)(ii)

Section 43(3) of the Insolvency and Bankruptcy Code, 2016 provides that for the purposes of sub-section (2), a preference shall not include the following transfers–

- (a) The transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;
- (b) Any transfer creating a security interest in property acquired by the corporate debtor to the extent that–
 - (i) Such security interest secures new value and was given at the time of or after the

signing of a security agreement that contains a description of such property as security interest and was used by corporate debtor to acquire such property; and

- (ii) Such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property.

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation. – For the purpose of sub-section (3) of this section, “new value” means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

Question 2

- (a) TechWave Private Limited is a small Company, which found itself in a difficult financial situation, unable to pay off its debts. It was struggling, with creditors knocking at its doors, but its total debt was not large—just under ₹ 1 crore. So, the company decided to voluntarily go for Corporate Insolvency Resolution Process (CIRP) to try to find a way out of its troubles.

The case was brought before the National Company Law Tribunal (NCLT), the Adjudicating Authority (AA). The company with its relatively small debt, needed a quicker resolution. The Adjudicating Authority, seeing the nature of the case and the total debt, thought that a faster process would be better for everyone involved—the creditors, the company, and the economy.

In the light of above information, answer the following questions stating the relevant provisions of the IBC, 2016 :

- (i) What are the timelines for Fast Track Corporate Insolvency Resolution Process as prescribed under IBC, 2016 ?
- (ii) What are the maximum debt limits for a company to be eligible for the Fast-Track process under Section 55 of the IBC ?
- (iii) How did the decision to use a fast-track process benefit both the company and its creditors in the given case ?

(2 marks each)

- (b) XenZee Ltd. was undergoing insolvency proceedings under the Corporate Insolvency Resolution Process (CIRP), and Raveendra, the appointed Resolution Professional (RP), was overseeing the entire process. Raveendra, known for his diligence and expertise, was focused on moving the process forward without delays.

As part of his responsibilities, Raveendra needed to convene a Committee of Creditors (COC) meeting to discuss the future steps regarding the resolution of the company's debt. With time running out and the need for urgent decisions, Raveendra set the meeting date for five days later. He quickly crafted a detailed notice for the meeting, ensuring that it contained all the necessary information, including the date, time, location (or virtual meeting link), and agenda.

To expedite communication, Raveendra chose to send the notice via e-mail. He attached the agenda and meeting details in an editable document and sent it to all members of the COC, ensuring that the notice was dispatched within the required timeframe. The clock

was ticking, and Ravi was confident that the 5-day notice period would meet the legal requirements for calling the meeting.

However, as the day of the meeting drew nearer, Sharma, one of the creditors, raised a concern. He questioned the validity of the notice, specifically pointing out that it had been sent in an editable format and whether the 5-day notice period was sufficient. Sharma was unsure if Raveendra's approach adhered to the strict guidelines outlined under the Insolvency and Bankruptcy Code (IBC). As a Company Secretary provide your view.

(6 marks)

Answer 2(a)

(i) Section 56 of the Insolvency and Bankruptcy Code, 2016 prescribes the time period for completion of fast track corporate insolvency resolution process. It provides that

- (1) Subject to the provisions of sub-section (3), the fast-track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.
- (2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast-track corporate insolvency resolution process beyond ninety days if instructed to do so by a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy-five percent of the voting share.
- (3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order, extend the duration of such process beyond the said period of ninety days by such further period, as it thinks fit, but not exceeding forty-five days:

Provided that any extension of the fast-track corporate insolvency resolution process under this section shall not be granted more than once.

The Adjudicating Authority (NCLT) decided to convert TechWave Ltd.'s regular CIRP into a fast-track process because the company's total debt was under ₹1 crore, and the fast-track process would allow for a quicker resolution of the insolvency. Given the small debt size, the NCLT felt that a 90-day resolution period was more appropriate to resolve the case efficiently.

(ii) As per Section 55 of the Insolvency and Bankruptcy Code, 2016

In Fast track corporation insolvency resolution process. –

- (1) A corporate insolvency resolution process carried out in accordance with this Chapter shall be called as fast track corporate insolvency resolution process.
- (2) An application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely: -
 - (a) a corporate debtor with assets and income below a level as may be notified by the Central Government; or
 - (b) a corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or
 - (c) such other category of corporate persons as may be notified by the Central Government.

In exercise of its powers under the above provision, the Central Government, vide notification No. S.O. 191 I(E) dated 14th July, 2017, has notified the following CDs in respect of which fast track CIRP can be initiated, namely:

- (i) a small company, as defined under the Companies Act, 2013;
- (ii) a Startup (other than partnership firm), as defined in the notification dated 23.05.2017 of the Government of India in the Ministry of Commerce and Industry; and
- (iii) unlisted company with total assets, as per the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

There is no criterion of maximum debt for fast track CIRP.

- (iii) The decision to use a fast-track process benefited TechWave Ltd. and its creditors by allowing for a quicker resolution of the insolvency. The company could resolve its financial troubles in a shorter period (90 days), which gave it a chance for a fresh start. For the creditors, this meant they could recover their dues more quickly, avoiding prolonged legal processes.

Answer 2(b)

Regulation 19 of IBBI(CIRP) Regulations, 2016 provides for timeline and sending of notice of meeting of CoC as follows:

- Subject to this Regulation, a meeting of the committee shall be called by giving not less than five days' notice in writing to every participant, at the address it has provided to the interim resolution professional or the resolution professional, as the case may be, and such notice may be sent by hand delivery, or by post but in any event, be served on every participant by electronic means in accordance with Regulation 20.
- The committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit:

Regulation 20 of Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 deals with Service of notice by electronic means. It states that:

A notice sent through electronic mode is valid subject to fulfilment of following conditions:

1. A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to email or as a notification providing electronic link or Uniform Resources Locator for accessing such notice.
2. The subject line in e-mail shall state the name of corporate debtor, the place, if any, the time and the date on which the meeting is scheduled.
3. If notice is sent in the form of a non-editable attachment to an e-mail, such attachment shall be in the Portable document format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.
4. When notice or notifications of availability of notice are sent by an e-mail, the resolution professional shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained as "proof of sending".
5. The obligation of the resolution professional shall be satisfied when he transmits the email and he shall not be held responsible for a failure in transmission beyond its control.

6. The notice made available on the electronic link or Uniform Resource Locator shall be readable, and the recipient should be able to obtain and retain copies and the resolution professional shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.
7. If a creditor, other than a member of the committee, fails to provide or update the relevant e-mail address to the resolution professional, the non-receipt of such notice by such participant of any meeting shall not invalidate the decisions taken at such meeting.

Thus, meeting called through notice sent by electronic mode is valid, but above notice is not valid because notice was sent through editable mode instead of non-editable mode and also it requires 7 days' notice instead of 5 days, But COC have power to reduce the notice from seven days to such other periods he deemed fit but not less than 24 hours.

Question 3

As per Section 240A of the IBC, 2016, which was introduced by the 2018 Amendment to the Code, makes an exception for MSMEs from Section 29A, which specifies the Non- MSME Corporate persons not eligible to be resolution applicants, implying that the Code will apply to MSMEs and that MSMEs are eligible to be Resolution Applicants. But, given an MSME's low Capital and simplified Company structure, it might not be very practical to provide for Resolution under the Code, particularly through CIRP.

In addition to the raised default threshold from ₹ 1 Lakh to ₹ 1 Crore which then effectively excluded MSMEs from the Code's provisions, a more practical approach to resolving Stressed Assets was needed. Therefore, a new concept of the Insolvency Resolution Process known as the PPIRP was introduced by the Ordinance on 4.4.2021.

Consequently, an efficient alternative Insolvency Resolution Process known as Pre-Packaged Insolvency Resolution Process (PPIRP) was introduced under the IBC, 2016 aiming to achieve swifter, cost-effective, and value-maximizing outcomes for all stakeholders involved while minimizing disruptions to business continuity and preserving jobs.

Based on the above facts answer the following Questions :

- (a) Elucidate the merits of the Pre-Packaged Insolvency Resolution Process (PPIRP) in comparison to the Corporate Insolvency Resolution Process (CIRP).
- (b) Briefly explain the main differences between the Corporate Insolvency Resolution Process (CIRP) and the Pre-Packaged Insolvency Resolution Process (PPIRP).
- (c) What are the prerequisites for Pre-Commencement in the context of the Pre-Packaged Insolvency Resolution Process ?

(4 marks each)

Answer 3(a)

- i. **Cost-effective and speedier:** Pre-Packaged Insolvency Resolution Process (PPIRP) may be preferred because it combines the benefits of informal and formal processes. It helps resolve corporate distress, swiftly and cost-effectively as it minimizes state intervention and avoids the stigma of formal insolvency.
- ii. **Role of Corporate Debtor (CD) in the Resolution Process:** The best people to solve a company's money problems are the people who run the company. The company's management has a close understanding of the business and is in the best position to determine the process of recovery. Their voluntary initiation of the pre-pack process, with stakeholder consent also mitigates the risk of liquidation.

- iii. **Management with CD:** In CIRP, the RP takes ownership of the company. However, it is extremely difficult for the RP to effectively manage a company that they are unfamiliar with. In contrast, under the PPIRP, management stays with the CD. This means there will be little disruption to the company's regular operations, thereby lowering the chance of job losses.
- iv. **Burden of NCLT reduced:** Approval will happen quicker because there isn't likely to be an issue with the resolution plan as Financial Creditors and Corporate debtors have already reached an informal understanding.
- v. **Preliminary Work:** PPIRP commences only upon meeting specific prerequisites: obtaining approval from at least sixty-six per cent of Financial Creditors for the proposal and confirming the name RP; passing of a special resolution with approval of 75% of members of the company; drafting a Base Resolution Plan by the CD; and confirming the RP's name through approval from both parties. However, there are fewer preliminary steps involved before initiating a CIRP which extends the timeline.

Answer 3(b)

Basis	CIRP	PPIRP
Legal Framework More in statute and less in	Legal Framework More in statute and less in	Legal Framework More in statute and less in
Threshold for initiating the process	Default above INR 1 Crore	Default above INR 10 Lakhs
Initiation by	Financial Creditor, Operational Creditor or Corporate Debtor	Corporate Debtor with consent of majority of unrelated FCs
Management of Corporate Debtor	IP in possession with creditor in Control	Debtor in possession with creditor in control
Invitation and collation of claim	IRP to invite and collate the claims	Corporate Debtor to submit list of claims to RP and Resolution Professional also to invite and collate the claims
Information Memorandum	Prepared by Resolution Professional	Draft prepared by Corporate Debtor and finalised by Resolution Professional
Process Resolution Cost	Includes cost of running the operations of the corporate debtor	Doesn't include the cost of running the operations of the corporate debtor
Swiss Challenge	May/not to be followed while calling resolution plan	Swiss Challenge is followed while calling the resolution plan
Right of promoter to offer resolution plan	If eligible under Section 29A and promoter is at par with other resolution applicants	Promoters have first right to offer resolution plan subject to eligibility under Section 29A

Basis	CIRP	PPIRP
Early closure of the process	By withdrawal under Section 12A or at the request of applicant	Suo moto by CoC or with approval of 66% of voting share of members of CoC present and voting
Consequence of the failure of the process	Liquidation	Closure or termination
Role of RP and Adjudicating Authority	Relatively more	Relatively less
Timeline of the process	180 days followed by 90 days extension subject to Adjudicating Authority approval	120 days

Answer 3(c)

Pre-requisites for initiation of Pre-packed Insolvency Resolution Process:

- PPIRP may be initiated only by a Corporate Debtor which is an MSME under Section 7(1) of the MSME Development Act, 2006.
- According to Form-1 specified in the Insolvency and Bankruptcy (PPIRP) Rules, 2021, only MSMEs Registered as Companies or Limited Liability Partnerships have the eligibility to commence PPIRP.
- In order to prove the status of Corporate Debtor as an MSME, the application for PPIRP must provide either a Current Udyam Registration Certificate or documentation showing investment in Plant and Machinery or Equipment, along with turnover details.
- Before initiating a PPIRP, a Corporate Debtor is required to fulfil certain requirements which include eligibility criteria such as being an MSME with a minimum default amount of at least ₹ 10 Lakhs, and eligible to submit resolution plan under Section 29A of the Insolvency and Bankruptcy Code (IBC).
- Additionally, the Corporate Debtor cannot initiate a PPIRP if it has undergone CIRP or PPIRP within the last three years, if it is currently undergoing CIRP, or if a liquidation order has been issued against it under section 33 of the Code.

Furthermore, before beginning the Pre-pack Process, the Corporate Debtor must:

- Choose Resolution Professional: The Corporate Debtor convenes a meeting of its unrelated financial creditors to propose and approve the appointment of an insolvency professional as the RP.
- Declaration by majority of the directors/partners: Majority Partners or Directors of the debtor must make a declaration specifying the application timeline (max 90 days), PPIRP is not initiated to defraud creditors and the name of proposed insolvency professional as resolution professional by Financial Creditors in their meeting.
- Special Resolution: Additionally, members must pass a Special Resolution (patterns by 3/4th majority in case of LLP) to approve the initiation of PPIRP.
- Obtain Creditor Approval: Unrelated Financial Creditors (FCs) must approve filing of

application of initiating PPIRP by a 66% majority at a meeting of the Unrelated Financial Creditors convened by the CD as per Section 54A(3) of the Code

- v. *In case there are no Unrelated Financial Creditors (UFCs)*, a meeting of Unrelated Operational Creditors (UOCs) (10 largest Operational Creditors by value and one representative of workmen and employee each) may be convened where UOCs perform the duties and functions of the UFCs according to the Regulations.

Question 4

Voluntary Liquidation pursuant to section 59(7) of IBC, 2016-Solvent Company Voluntary liquidation is a process of winding up voluntarily without the Court / NCLT intervention. Members of the Company and Creditors, if any, will appoint a liquidator to liquidate all assets and pay to all its creditors. Surplus amount, if any, after meeting all costs and expenses shall be distributed to the members as per the mechanism provided in Section 53 of IBC, 2016. Voluntary liquidation process has to be completed as per Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. With amendment to IBBI regulations for voluntary liquidation dated 31.1.2024, the process for voluntary liquidation has become more transparent, efficient and faster. These amendments have also brought some additional safeguards to protect interest of stakeholders. Based on the above facts answer the following Questions :

- (a) What are the new timelines under different circumstances as per amended Regulations ?
In case, if the timelines exceeded what are the further course of action available for the Liquidator.

(4 marks)

- (b) Is the Company required to continue with ROC Filings Post Commencement of Voluntary Liquidation ?

(2 marks)

- (c) What effects do Voluntary Liquidation Procedures have on Existing Contracts ?

(2 marks)

- (d) What are the various Intimations to be made upon the Company moving into Voluntary Liquidation ?

(4 marks)

Answer 4(a)

IBBI notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2024. As per Regulation 37 of the IBBI (Voluntary Liquidation Process) Regulations, 2017 previously provided that if the liquidation process continues for more than 90 days when there is no claims and 270 days in case of claims from Creditors, the liquidator shall hold a meeting of the corporate person's contributories and present the status report of the liquidation process.

However, with the Amendment Regulations, the timeline has been amended to provide that if the liquidation process continues beyond 90 (Ninety) days or 270 (Two Hundred and Seventy) days from the Liquidation Commencement Date where creditors have approved the resolution and 90 (ninety) days from the liquidation commencement date in other cases then, the liquidator shall:

- a) Hold a meeting of the contributories of the corporate person within 15 (Fifteen) days from the end of 270 (two hundred and seventy) days or 90 (Ninety) days, as the case maybe and thereafter, periodically, at the end of every such succeeding period till submission of application for dissolution of the Corporate Person; and

- b) Present a status report highlighting the liquidation progress and the reasons for non-completion of the process within the stipulated and the required additional time period for completion of the process.

The Status Report shall enclose the audited accounts of the liquidation showing the receipts and payments pertaining to liquidation since the liquidation commencement date.

The Amendment Regulations has further inserted Regulation 37(4) which provides that the Liquidator shall file the Status Report with IBBI within 7 (seven) days of the meeting of contributories.

Thus, in view of the above provisions, the requirement of meeting with shareholders comes only upon completion of twelve months from liquidation commencement date, and the fact that now the management of the Company rests in the hands of the liquidator and no decisions are to be taken by the shareholders with respect to the company or for approval of accounts, it is understood that the requirement to hold an Annual General Meeting of the Company is no longer applicable to the Company.

Answer 4(b)

The e-filing status of the Company, on successful filing of Form GNL-2 and Form MGT-14, is changed to 'Under Liquidation'. It should be pursued with office of concerned Registrar for change in status. However, in practice that hard copies are insisted by Registrar's office for the attachments to the said Forms i.e., Hard Copy of Declaration of Solvency executed by all the Directors, the Board and Special Resolution passed for approval of VL and appointment of Liquidator, Creditors Approval, if any, Public Announcement in Form A and any other document as may be deemed necessary.

Once the hard copies are taken on record by the ROC, the status of the Company is changed to 'Under Liquidation' and thereafter the Company is not required / cannot file any e-forms except GNL Forms, if required.

Answer 4(c)

For the purposes of liquidation, the liquidator forms an estate of the assets and holds the liquidation estate as a fiduciary for the benefit of all the creditors. The liquidation estate assets include the contractual rights of the Company as well.

If any contractual liability is there, it needs to be exited either before commencement of liquidation by the then management of the company and such liability shall be made as part of Declaration of Solvency (DoS). If there is a requirement of goods or services under such contract during the liquidation for the beneficial liquidation, the liability for such future payments should also be covered under DoS. All other contracts come to end on commencement of liquidation.

Answer 4(d)

To the Existing Bank: For not to accept any debit instruction signed by any previous signatory and to give effect to the change in signatories of the Bank from the previous signatory to the Liquidator or a person so authorized by him / her. Once a new account for Liquidation is opened, a request be sent for closure of existing bank account.

It is recommended to have clear instructions in the closure letter regarding change of existing signatories to the Liquidation and thereafter transfer of funds from existing bank account to the new bank account.

To the IBBI: Publication on the IBBI website in Form A of IBBI (Voluntary Liquidation Process) Regulations, 2017) i.e Public Announcement for disclosure of commencement of liquidation and appointment of liquidator.

To the Income Tax Department: Pursuant to Section 178 of the IT Act, the Liquidator has to intimate the IT Department about his appointment. Thereafter, the Department will raise demands, if any and issue a 'No Objection Certificate' within a time window of 3 months.

Company cannot part away with its assets until this NOC is received from the IT Department.

To the ROC: Intimation of appointment of Liquidator in Form MGT 14; Intimation of commencement of Liquidation along with executed Declaration of Solvency in Form GNL-2.

To GST Department/Ward: Pursuant to Section 88 of the CGST Act, and Intimation is to be submitted with the jurisdictional GST Department with respect to appointment of Liquidator within 30 days of his appointment. The Departments can require provision of debt certificate from the Company and status of GST Returns, in order to ascertain the GST Liability and calculation of GST Refund, if any.

Question 5

- (a) Arun Verma had built a name for himself as one of the most reputable Insolvency Professional in the city. With years of experience in handling bankruptcy and insolvency cases, he was the go-to expert for several high-profile businesses in financial distress. His reputation for efficiently managing complex insolvency cases was unmatched.

But behind his professional facade, a series of ethical missteps were quietly beginning to surface.

It all started with a case that came across his desk a few months ago—The Patel Group of Industries, a well-known manufacturing company, was facing severe financial troubles and had entered into insolvency proceedings. Arun was appointed as the Insolvency Resolution Professional (IRP) by the National Company Law Tribunal (NCLT). The pressure to resolve the case efficiently and to maintain his high standing in the industry weighed heavily on him.

What the stakeholders, including the creditors and shareholders, did not know, however, was that Arun was not as transparent as he should have been. He had been accepting additional fees from the debtor company, outside of the formal arrangement, which was against the professional conduct expected of someone in his position. Arun had a habit of not disclosing these additional payments to the NCLT or other involved parties.

But that wasn't all. As the case progressed, Arun found himself entangled in a web of favors that went beyond monetary transactions. During meetings with senior executives of Patel Group, he began accepting expensive gifts, ranging from luxury watches to designer handbags, as a form of gratitude for his services. To make matters worse, at the same time, he accepted lavish hospitality, including stays at five-star hotels and exclusive dinners, all paid for by the very company whose insolvency he was supposed to manage impartially.

At first, Arun believed these small indulgences were harmless. "After all," he thought, "it's just a token of appreciation. Everyone does it." But soon, these "tokens" began to blur the line between ethical practice and corruption. Arun had become too comfortable with the perks and began to overlook the conflict of interest they created. He was no longer just the impartial professional managing an insolvency case; he had become a part of the very company he was meant to oversee.

The tipping point came when one of the creditors raised a red flag. They had noticed some irregularities in the fees Arun had been receiving, particularly a lack of transparency in the invoices submitted by Arun. A detailed investigation by the creditor revealed that Arun had indeed been taking payments beyond what was disclosed to the NCLT and had been accepting personal gifts and excessive hospitality from the Patel Group, which could create a bias in his professional decisions.

The creditor filed a formal complaint with the Insolvency and Bankruptcy Board of India (IBBI), which led to a thorough investigation into Arun's practices. Who was once a respected professional was now under scrutiny for violating the principles of transparency, integrity, and fairness.

In the light of above information, answer the following questions stating the relevant provisions of the IBC, 2016.

- (i) What are the guidelines about Remuneration, Gifting and other income by Resolution Professional.

(2 marks)

- (ii) How did Arun Verma's acceptance of gifts and hospitality affect his professional duties?

(1 mark)

- (iii) What were the consequences of Arun Verma's unethical behaviour in the insolvency case ?

(3 marks)

- (b) Crest Assets Reconstruction Company (Crest ARC) came into existence with the vision of one man — Anil Mehta. Anil, a seasoned professional with years of experience in banking and finance, had seen firsthand the devastating impact of distressed assets and non-performing loans (NPAs) on both financial institutions and businesses. Instead of seeing these bad loans as a burden, Anil recognized their potential for recovery and renewal.

Driven by this insight, Anil set out to create Crest ARC, a company dedicated to reviving distressed assets and helping struggling businesses get back on their feet. His vision was simple : to create a bridge between troubled companies and the financial institutions holding their NPAs. He saw this as an opportunity to not only recover bad loans but also provide these companies with a second chance at life.

Early Years : Steady Growth and Success

The first few years were a period of remarkable success and earning profit continuously except last financial year for Crest ARC. With a highly skilled and motivated team, Crest quickly earned a reputation in the industry for identifying undervalued and distressed assets with the potential for recovery and their net owned fund is ₹ 1.5 crore. They had a knack for taking struggling businesses, carefully managing them, and bringing them back to profitability.

Thanks to their strategic vision and a well-executed business model, Crest ARC became a trusted partner for many financial institutions. Banks and other lenders sought them out to help restructure and recover their NPAs. As the years went by, Crest's track record became solid – consistently profitable, and recognized for the value it created by turning around distressed businesses.

Anil and his team felt a sense of pride as they watched the company grow. Crest had become a name associated with success in asset reconstruction, and the future looked bright. With a clear path ahead, Crest ARC was poised to continue its upward trajectory, helping more institutions and companies recover from financial distress.

However, for Crest ARC to expand and operate at a larger scale, they needed official recognition from the regulatory authorities. That recognition came in the form of registration under Section 3 of the SARFAESI Act, 2002. This registration would grant Crest the legal right to buy, reconstruct, and manage distressed assets from financial institutions, thus allowing them to fully function as an Asset Reconstruction Company (ARC).

Now as a company secretary provide your view about registration under section 3 of SARFESAI Act as follow :

- (i) What financial criteria does Crest ARC need to meet to gain official registration under Section 3 of the SARFAESI Act, 2002 ?

(2 marks)

- (ii) What is the significance of "Net Owned Fund" in the context of Crest ARC's application for registration under the SARFAESI Act ?

(2 marks)

- (iii) How does the loss in the last financial year impact Crest ARC's application for registration under Section 3 of the SARFAESI Act ?

(2 marks)

Answer 5(a)

Schedule I of IBBI (Insolvency Professionals) Regulations, 2016 deals with Code of Conduct for the Insolvency professional:

Remuneration and Costs

25. An insolvency professional must provide service for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.

25A. An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

25B. An insolvency professional shall raise bills or invoices in its name towards its fees, and such fees shall be paid to it through banking channel.

25C. An insolvency professional shall ensure that the insolvency professional entity or the professional engaged by it raises bills or invoices in their own name towards their fees, and such fees shall be paid to them through banking channel.

26. An insolvency professional shall not accept any fees or charges other than those which are disclosed to and approved by the persons fixing its remuneration.

26A. An insolvency professional shall not accept /share any fees or charges from any professional and/or support service provider who are appointed under the processes.

27. An insolvency professional shall disclose all costs towards the insolvency resolution process costs, liquidation costs, or costs of the bankruptcy process, as applicable, to all relevant stakeholders, and must endeavour to ensure that such costs are not unreasonable.

27A. An insolvency professional shall, while undertaking assignment or conducting processes, exercise reasonable care and diligence and take all necessary steps to ensure that the corporate person complies with the applicable laws.

27B. An insolvency professional shall not include any amount towards any loss, including penalty, if any, in the insolvency resolution process cost or liquidation cost, incurred on account of non-compliance of any provision of the laws applicable on the corporate person while conducting the insolvency resolution process, fast track insolvency resolution process, liquidation process or voluntary liquidation process, under the Code.

Gifts and Hospitality

28. An insolvency professional, or his relative must not accept gifts or hospitality which undermines or affects his independence as an insolvency professional.

29. An insolvency professional shall not offer gifts or hospitality or a financial or any other advantage to a public servant or any other person, intending to obtain or retain work for himself, or to obtain or retain an advantage in the conduct of profession himself.

(ii) Arun Verma's acceptance of gifts and lavish hospitality created a conflict of interest, undermining his impartiality and objectivity. As an insolvency professional, he was expected to act in the best interests of all stakeholders and maintain transparency, but his actions raised questions about his integrity and the fairness of his decisions in the insolvency proceedings.

(iii) Consequences of Arun Verma's Unethical Behaviour:

1. **Removal from the Case:** Arun Verma's actions came to light after an investigation, and as a result, he was removed from his role as the insolvency resolution professional (IRP). His unethical behaviour undermined the trust and integrity of the insolvency process, and therefore, the creditors and the Adjudicating Authority decided to appoint a new, impartial IRP to ensure that the process would continue in a transparent and fair manner.
2. **Legal and Professional Consequences:** Arun Verma faced legal action for his unethical conduct. He was charged with misconduct and breach of duty, which could lead to significant legal consequences, including fines or even criminal charges depending on the nature and severity of the fraudulent activities. Additionally, his actions would have severely impacted his professional reputation. He might have faced suspension or disbarment from the professional body overseeing insolvency practitioners.
3. **Reputation Damage:** The damage to Arun Verma's reputation in the industry would be significant. As an insolvency resolution professional, credibility and integrity are essential. His unethical behaviour would lead to a loss of confidence from both creditors and stakeholders, making it difficult for him to secure future appointments in similar roles. Insolvency professionals are trusted with sensitive financial matters, and any breach of this trust can have long-lasting effects on their career.
4. **Increased Scrutiny on the Insolvency Process:** The unethical conduct also led to scrutiny and challenges in the overall insolvency resolution process for XYZ Ltd. Other creditors and stakeholders questioned the legitimacy of the entire process, potentially delaying or complicating the resolution. The National Company Law Tribunal (NCLT) might have intervened to reassess the fairness of the proceedings, which could prolong the resolution and increase costs for all involved parties.
5. **Impact on Stakeholders:** The unethical behaviour affected various stakeholders, including creditors, employees, and investors. Since the bidding process was skewed, certain creditors did not receive a fair share of the settlement, leading to dissatisfaction. The employees of XYZ Ltd. were also impacted by the delays and uncertainty, potentially facing prolonged periods of job insecurity. Unethical behaviour can have a ripple effect that harms all stakeholders in the insolvency process.

Answer 5(b)

(i) As per Section 3 of SARFAESI ACT, 2002

- (1) No Asset Reconstruction Company shall commence or carry on the business of securitization or asset reconstruction without –

- (a) Obtaining a certificate of registration granted under this section and
- (b) Having net owned fund of not less than two crore rupees or such other higher amount as the Reserve Bank, may, by notification, specify.

Provided that the Reserve Bank may, by notification, specify different amounts of owned fund for different class or classes of asset reconstruction companies.

Reserve Bank of India vide its notification has raised minimum threshold of net owned funds to ₹ 100 cr . With further notification, the threshold has been increased to ₹ 300 cr. ₹ 200 cr to be met by 31st March 2024 and ₹ 300 cr by 31st March 2025.

To gain official registration under Section 3 of the SARFAESI Act, 2002, Crest ARC needs to meet certain financial criteria, the most important being that it should have a minimum net owned fund of ₹200 crores by 31st March, 2024. Crest currently has ₹1.5 crore in net owned funds, which does not meet the required amount.

- (ii) The Net Owned Fund (NOF) is a key financial requirement for an Asset Reconstruction Company (ARC) to obtain registration under the SARFAESI Act. It represents the company's capital base, which ensures the company has sufficient financial stability to acquire and manage distressed assets. For Crest ARC, having ₹1.5 crore in NOF instead of the required threshold means they will need to raise additional funds or work with the RBI to meet this requirement.
- (iii) As per Section 3 (3) (a) of the SARFAESI ACT, 2002 the Reserve Bank may, for the purpose of considering the application for registration of a asset reconstruction company to commence or carry on the business of securitisation or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such asset reconstruction company, or otherwise, that the following conditions are fulfilled, namely:
 - that the asset reconstruction company has not incurred losses in any of the three preceding financial years;

Although Crest ARC has been profitable for many years, this recent loss may negatively impact their application. However, the company can explain that the loss was an exceptional event and does not reflect their overall performance, which has been strong for years.

Question 6

There was a major steel manufacturing company called 'Tough Steel Industries Limited' ('Tough Steel' or 'the Company'). For many years, Tough Steel was a leading name in the steel industry, known for producing high-quality steel that was used in critical infrastructure projects worldwide. However, over time, Tough Steel found itself in serious financial trouble due to a mix of rising production costs, market volatility, and mismanagement. As a result, the company defaulted on its massive debt obligations, putting its future at risk.

Faced with growing debt and no way to repay it, Tough Steel was forced into the insolvency resolution process under the Insolvency and Bankruptcy Code (IBC). A Resolution Professional (RP) was appointed to manage the proceedings and oversee the search for a solution. Several potential buyers came forward with offers to resolve the insolvency, but one stood out: Steel Global, an international steel conglomerate, which presented an offer that could clear all of Tough Steel's debts and inject fresh capital to restore the company.

The Committee of Creditors (CoC), which included both financial and operational creditors, had to approve the resolution plan. However, a key issue emerged : who should have the final say in approving the resolution plan? Was it the financial creditors, who had the largest share of Tough Steel's debts, or should operational creditors, who provided goods and services to the company,

have a more significant influence ?

In the light of the above case study inputs and referring to the decisions of applicable case laws with reasons and the provisions of Insolvency and Bankruptcy Code ,2016 (IBC, 2016) and the Regulations made thereunder, answer the following questions :

- (i) In the Tough Steel insolvency case, how did the legal framework of the Insolvency and Bankruptcy Code (IBC) influence the decision-making powers of the Committee of Creditors (CoC), particularly regarding the voting rights of financial creditors versus operational creditors in approving a resolution plan ?
- (ii) What are the potential implications for the insolvency resolution process if operational creditors are granted equal voting rights to financial creditors in the Committee of Creditors (CoC), and how could this shift affect the approval process of resolution plans in future cases?
- (iii) How does the role of the Resolution Professional (RP) in the Tough Steel case demonstrate the balance between independence and stakeholder influence in recommending a resolution plan, and what legal challenges could arise if their recommendation is contested by creditors with differing interests ?

(4 marks each)

Answer 6(i)

In the Essar Steel case (Committee of Creditors of Essar Steel India Ltd. vs. Satish Kumar Gupta, 2019), the Supreme Court reinforced the legal framework under the Insolvency and Bankruptcy Code (IBC), which grants financial creditors greater voting rights compared to operational creditors. The Committee of Creditors (CoC), composed primarily of financial creditors, has the authority to approve or reject a resolution plan, which allows them to play a dominant role in the decision-making process. The Court held that the CoC's decision is binding, and it cannot be disregarded by other creditors, including operational creditors, who have a relatively minor role.

Overturning the NCLAT Order, the Supreme Court held that the principle of "equality" could not be interpreted to mean that all creditors (irrespective of their security interest or their status as operational or financial creditor) should get equal recovery under a resolution plan. The Supreme Court further held that even within a class of secured financial creditors, differential treatment based on the value of security of such creditors would be permissible. The Supreme Court observed that if the security interest of the creditors was disregarded during the CIRP, many creditors would be incentivized to vote for liquidation rather than resolution. This would defeat the key objective of the IBC, i.e. to ensure resolution of the distressed asset. Further, any bankruptcy law which delays, weakens or de-prioritizes security on insolvency, would destroy the purpose of creation of security in the first place. The Supreme Court noted that financial creditors and operational creditors by virtue of their business relations with the corporate debtor can never be equally placed and that the IBC itself contemplates operational creditors as a separate class of creditors. However, the IBC provides for certain safeguards, such as priority in repayment to ensure the fair and equitable dealing of such operational creditors' rights. Therefore, the Supreme Court held that as long as the provisions of the IBC were complied with, the CoC could approve and even negotiate for a resolution plan which provided for differential payment to financial and operational creditors.

Therefore, hierarchy is rooted in the IBC to ensure that those who have the most significant financial interest and exposure in a distressed company are the primary decision-makers. In the Tough Steel scenario, just like in Essar Steel, the financial creditors would have the majority of the say in approving the resolution plan, ensuring the process is controlled by those with the greatest financial stake in the outcome.

Answer 6(ii)

If operational creditors were granted equal voting rights to financial creditors in the Committee of Creditors (CoC), it could potentially disrupt the existing framework under the IBC. In the Essar Steel case, the Supreme Court ruled that financial creditors should have a predominant role in the decision-making process, recognizing their larger stake in the company's financial health and recovery.

Allowing operational creditors to have equal voting rights could lead to several complications:

- **Delays in Resolution:** Operational creditors, who typically have smaller claims, could slow down the resolution process by opposing plans favored by financial creditors, potentially leading to protracted negotiations and delays in debt resolution.
- **Divergent Interests:** The interests of financial and operational creditors often diverge, with financial creditors primarily focused on recovering large amounts of debt and operational creditors concerned with the continuity of their business relationships. This could create conflicting priorities, complicating the approval of resolution plans.
- **Increased Litigation:** Giving operational creditors equal voting power could lead to more disputes, as smaller creditors might challenge the resolution plan in court, as seen in Essar Steel when operational creditors contested the proposed resolution.

Ultimately, the Essar Steel case set a clear precedent that prioritizing financial creditors in the CoC is essential to maintaining the efficiency of the insolvency process and ensuring timely resolution. Granting operational creditors equal voting rights could undermine this efficiency.

Answer 6(iii)

In the Essar Steel case, the Resolution Professional (RP) was tasked with reviewing the various bids and recommending the best resolution plan for the company. The Supreme Court in Essar Steel emphasized the importance of the RP's independence, as the RP's role is to act impartially and prioritize the interests of all creditors, without being influenced by any single group.

In the Tough Steel case, if the RP's recommendation of the best resolution plan, such as that from Steel Global, were contested by creditors—whether financial or operational—legal challenges could arise. For example, operational creditors could argue that the RP's recommendation does not adequately address their interests, as they often have different priorities compared to financial creditors. As was evident in Essar Steel, the Supreme Court ruled that the RP's recommendations should be given significant weight, but it also clarified that the final decision rests with the Committee of Creditors (CoC), which represents the collective interests of the majority creditors.

If the RP's recommendation is contested by a minority of creditors, legal challenges may center around whether the RP acted fairly and in accordance with the principles of the IBC. In Essar Steel, the Court reinforced that the CoC had the ultimate authority, and that the RP's role is advisory in nature, meant to support, not dictate, the decision of the creditors.

NOTES

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