

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

DECEMBER 2023

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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

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

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EXECUTIVE PROGRAMME EXAMINATION

DECEMBER 2023

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

- (a) *“Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, that requirement may be excluded under certain exceptional circumstances.” Discuss.*
- (b) *Sameer finds ₹10,000 on the high road, not knowing to whom the rupees belong, he picks up the rupee. Has Sameer committed the offence of dishonest misappropriation of property under Section 403 of The Indian Penal Code, 1860? Explain.*
- (c) *According to Austin, “Law is the command of sovereign that is backed by sanction.” Discuss.*
- (d) *Discuss the rules with respect to permissible classification as evolved in various decisions and have been summarised by Supreme Court in Ram Kishan Dalmiya V. Justice Tendolkar, AIR 1958 SC, 538.*

(5 marks each)

Answer 1(a)

While the general principle is that a person impacted by administrative action has the right to request natural justice, there are certain exceptional circumstances where this requirement can be waived. These are as under:

1. Statutory Exclusion

The principle of natural justice may be excluded by the statutory provision. The statute may exclude them. When the statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate. But one thing may be noted that in India, Parliament is not supreme and therefore statutory exclusion is not final. The statute must stand the test of constitutional provision. Even if there is no provision under the statute for observance of the principle of natural justice, courts may read the requirement of natural justice for sustaining the law as constitutional.

2. Emergency

In exceptional cases of urgency or emergency where prompt and preventive action is required the principles of natural justice need not be observed. Thus, the pre-decisional hearing may be excluded where the prompt action is required to be taken in the interest of the public safety or public morality and any delay in administrative order because of pre-decisional hearing before the action may cause injury to the public interest and public safety.

In *Maneka Gandhi v. Union of India* AIR 1978 SC 597 the Supreme Court observed that a passport may be impounded in public interest without compliance with the principles of natural justice but as soon as the order impounding the passport has been made, an opportunity of post decisional hearing, remedial in aim, should be given to

the person concerned. In the case, it has also been held that “public interest” is a justiciable issue and the determination of administrative authority on it is not final.

3. Interim disciplinary action

The rules of natural justice are not attracted in the case of interim disciplinary action. For example, the order of suspension of an employee pending an inquiry against him is not final but interim order and the application of the rules of natural justice is not attracted in the case of such order.

In *Abhay Kumar v. K. Srinivasan AIR 1981 Delhi 381* an order was passed by the college authority debaring the student from entering the premises of the college and attending the class till the pendency of a criminal case against him for stabbing a student. The Court held that the order was interim and not final. It was preventive in nature. It was passed with the object to maintain peace in the campus. The rules of natural justice were not applicable in such case.

4. Academic evaluation

Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded. The Supreme Court has made it clear that if the competent academic authority assesses the work of a student over the period of time and thereafter declare his work unsatisfactory the rule of natural justice may be excluded but this exclusion does not apply in the case of disciplinary matters.

5. Impracticability

Where the authority deals with a large number of persons it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice.

In *P. Radhakrishna v. Osmania University, AIR 1974 AP 283*, the entire M.B.A. entrance examination was cancelled on the ground of mass copying. The court held that it was not possible to give all the examinees the opportunity of being heard before the cancellation of the examination.

Answer 1(b)

According to Section 403 of the Indian Penal Code, 1860, whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or fine, or with both.

A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it, or of restoring it to the owner does not take or misappropriate it dishonestly, and is not guilty of an offence. He is guilty of an offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used, he has reasonable means to discover and give notice to the owner and has kept the property a reasonable time to enable the owner to claim it. What are reasonable means or what is a reasonable time in such a case, is a question of fact.

It is not necessary that the finder should know who the owner of the property is or that any particular person is the owner of it; it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found.

Further, according Illustration (a) of Explanation 2 of section 403 of Indian Penal Code, 1860 provides as under:

A finds a rupee on the high road, not knowing to whom the rupee belongs, A picks up the rupee. Here A has not committed the offence defined in section 403.

Since, Sameer found the amount of Rs.10,000 lying on the road, he has not committed the offence of dishonest misappropriation of property under Section 403 of the Indian Penal Code, 1860.

Answer (c)

John Austin, a noted English legal theorist is known for the Command Theory of law. Austin differentiated between 'Laws properly so called' and 'laws improperly so called' and said that laws properly so called are general commands but not all of it is given by men for men. A specie 'Laws properly so called' are given by political superiors to political inferiors.

According to John Austin, "Law is the aggregate of rules set by man as politically superior, or sovereign, to men as political subject." In other words, law is the "command of the sovereign". It obliges a certain course of conduct or imposes a duty and is backed by a sanction (punishment). Thus, law has three main features:

- i. It is a command.
- ii. It is given by a sovereign authority.
- iii. It has a sanction behind it.

The conceptions of command and sovereign are explained hereunder:

1. Command

It is an expression of wish or desire of an intelligent person, directing another person to do or to forbear from doing some act, and the violation of this wish will be followed by evil consequences on the person so directed. Command requires the presence of two parties- the commander (political superior) and the commanded (political inferior).

2. Sovereign

In Austin's theory, sovereign is politically superior. He has defined sovereign as an authority that receives habitual obedience from the people but itself does not obey some other authority habitually. According to him, the sovereign is the source of all laws.

3. Sanction

It is the evil consequence that follows on the violation of a command. To identify a law, the magnitude of the sanction is not relevant but the absence of sanction disentitles an expression of the sovereign from being a law in Austinian sense. Sanction should not also be confused with a reward that might be on offer if a given conduct is followed or refrained from. Reward confers a positive right whereas a sanction is a negative consequence.

Answer 1(d)

The rules with respect to permissible classification as evolved in various decisions have been summarised by the Supreme Court in *Ram Kishan Dalmiya v. Justice Tendolkar*, AIR 1958 SC, 538 as follows:

- (i) Article 14 forbids class legislation, but does not forbid classification.
- (ii) Permissible classification must satisfy two conditions, namely, (a) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (b) the differentia must have a relation to the object sought to be achieved by the statute in question.

- (iii) The classification may be founded on different basis, namely geographical, or according to objects or occupations or the like.
- (iv) In permissible classification, mathematical nicety and perfect equality are not required. Similarly, non- identity of treatment is enough.
- (v) Even a single individual may be treated a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others; a law may be constitutional even though it relates to a single individual who is in a class by himself.
- (vi) Article 14 condemns discrimination not only by substantive law but by a law of procedure.
- (vii) There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

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

Question 2

- (a) *Discuss in brief the applicability and non-applicability of the doctrine of sufficient cause under section 5 of The Limitation Act, 1963.*
(4 marks)
- (b) *What is a statute ? Discuss the various classes of a statute.*
(4 marks)
- (c) *What is Malicious Prosecution under Law of Torts and what are its essential elements?*
(4 marks)
- (d) *What do you mean by preventive detention ? Article 22 contains certain safeguards against preventive detention. Explain.*
(4 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Discuss the provisions related to effect of repeal of any enactment under the General Clauses Act, 1897.*
- (ii) *PQR Construction Co. enters into a contract with the State Government for construction of a bridge. The contract was made in the name of the Governor. Examine the following with help of constitutional provisions :*
 - (a) *Whether the contract is valid ?*
 - (b) *Is the Governor personally liable in respect of breach of the contract by the State Government ?*
- (iii) *Discuss in brief the important stages in the proceedings of a suit under The Code of Civil Procedure, 1908.*
- (iv) *Discuss the sentences which can be passed by various courts under Sections 28 and 29 of the Criminal Procedure Code, 1973.*

(4 marks each)

Answer 2(a)

Section 5 of the Limitation Act, 1963(Limitation Act) allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. This is known as doctrine of "sufficient cause" for condonation of delay which is embodied in Section 5 of the Limitation Act.

Applicability

Section 5 provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

It is clarified by the explanation appended to Section 5 that the fact that the appellant or applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the prescribed period may be a sufficient cause within the meaning of this section. The prescribed period means any period prescribed by any law for the time being in force.

Non-applicability

Section 5 is not applicable to applications made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 and also to suits. The Court has no power to admit a time barred suit even if there is a sufficient cause for the delay. It applies only to appeals or applications as specified therein. The reason for non- applicability of the Section to suits is that, the period of limitation allowed in most of the suits extends from 3 to 12 years whereas in appeals and application it does not exceed 6 months. For the applicability of Section 5, the "prescribed period" should be over.

The party applying for condonation of delay should satisfy the Court for not making an appeal or application within the prescribed period for sufficient cause. The term sufficient cause has not been defined in the Limitation Act. It depends on the circumstances of each case.

However, it must be a cause which is beyond the control of the party. In *Ramlal v. Rewa Coal Fields Ltd.*, AIR 1962 SC 361, the Supreme Court held that once the period of limitation expires then the appellant has to explain the delay made thereafter for day by day and if he is unable to explain the delay even for a single day, it would be deemed that the party did not have sufficient cause for delay.

It is the Court's discretion to extend or not to extend the period of limitation even after the sufficient cause has been shown and other conditions are also specified. However, the Court should exercise its discretion judicially and not arbitrarily.

Answer 2(b)

A statute has been defined as "the will of the legislature" (*Maxwell, Interpretation of Statutes, 11th ed. p. 1*). Normally, it denotes the Act enacted by the legislature.

A statute is thus a written "will" of the legislature expressed according to the form necessary to constitute it as a law of the State, and rendered authentic by certain prescribed forms and solemnities. (*Crawford, p. 1*)

According to *Bouvier's Law Dictionary*, a statute is "a law established by the act of the legislative power, i.e., an Act of the legislature. The written will of the legislature. The term 'statute' is generally applied to laws and regulations of every sort, law which ordains, permits or prohibits anything which is designated as a statute, without considering from what source it arises".

The Constitution of India does not use the term 'statute' but it employs the term "law" to describe an exercise of legislative power.

Statutes are commonly divided into following classes:

1. *Codifying*, when they codify the unwritten law on a subject;
2. *Declaratory*, when they do not profess to make any alteration in the existing law, but merely declare or explain what it is;
3. *Remedial*, when they alter the common law, or the judge made (non-statutory) law;
4. *Amending*, when they alter the statute law;
5. *Consolidating*, when they consolidate several previous statutes relating to the same subject matter, with or without alternations of substance;
6. *Enabling*, when they remove a restriction or disability;
7. *Disabling or restraining*, when they restrain the alienation of property;
8. *Penal*, when they impose a penalty or forfeiture.

Answer 2(c)

Malicious prosecution consists in instigating judicial proceedings (usually criminal) against another, maliciously and without reasonable and probable cause, which terminates in favour of that other and which results in damage to his reputation, personal freedom or property.

The following are the essential elements of this tort:

- i. There must have been a prosecution of the plaintiff by the defendant.
- ii. There must have been want of reasonable and probable cause for that prosecution.
- iii. The defendant must have acted maliciously (i.e., with an improper motive and not to further the end of justice).
- iv. The plaintiff must have suffered damages as a result of the prosecution.
- v. The prosecution must have terminated in favour of the plaintiff.

To be actionable, the proceedings must have been instigated actually by the defendant. If he merely states the fact as he believes them to a policeman or a magistrate, he is not responsible for any proceedings which might ensue as a result of action by such policeman or magistrate on his own initiative.

Answer 2(d)

Preventive detention means detention of a person without trial. The object of preventive detention is not to punish a person for having done something but to prevent him from doing it. No offence is proved nor any charge formulated and yet a person is detained because he is likely to commit an act prohibited by law. Parliament has the power to make a law for preventive detention for reasons connected with defence, foreign affairs or the security of India. Parliament and State Legislatures are both entitled to pass a law of preventive detention for reasons connected with the security of State, the maintenance of public order, or the maintenance of supplies and services essential to the community.

Safeguards against Preventive Detention

Article 22 of the Indian Constitution contains following safeguards against preventive detention:

- (a) such a person cannot be detained for a longer period than three months unless:
 - (i) An Advisory Board constituted of persons who are or have been or are qualified to be High Court judges has reported, before the expiration of the said period of three months that there is, in its opinion sufficient cause for such detention.
 - (ii) Parliament may by law prescribe the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention and the procedure to be followed by an Advisory Board.
- (b) The authority ordering the detention of a person under the preventive detention law shall:
 - (i) communicate to him, as soon as may be, the grounds on which the order for his detention has been made, and
 - (ii) afford him the earliest opportunity of making the representation against the order.

It may, however, be noted that while the grounds for making the order are to be supplied, the authority making such order is not bound to disclose those facts which it considers to be against the public interest.

Answer 2A(i)

According to Section 6 of the General Clauses Act, 1897, where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Answer 2A(ii)

- (a) The Constitution of India allows the Central and the State Governments to enter into contracts. According to Article 299(1) of the Constitution of India a contract

with the Government of the Union or State will be valid and binding only if the following conditions are followed:

1. The contract with the Government must be made in the name of the President or the Governor, as the case may be.
2. The contract must be executed on behalf of the President or the Governor of the State as the case may be. The word executed indicates that a contract with the Government will be valid only when it is in writing.
3. A person duly authorized by the President or the Governor of the State, as the case may be, must execute the contract.

Thus, in the given situation, the contract is valid as it was made in the name of the Governor.

- (b) Article 299 (2) of the Constitution of India makes it clear that neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of the Constitution or for the purposes of any enactment relating to the Government of India.

Therefore, in the given situation, the Governor is not personally liable in respect of breach of contract by the State Government.

Answer 2A(iii)

The important stages in the proceedings of a civil suit under the Code of Civil Procedure, 1908 are as follows:

- (i) **Presentation of Pleat** - According to Order 4, of CPC, every suit shall be instituted by Presentation of Pleat.
- (ii) **Service of Summons** - According to Order 5, when a suit has duly been instituted, a summons may be issued to the defendant by the court.
- (iii) **Filling of Written Statement, set off and Counter claims** - According to order 8, the defendant shall, within 30 days from the date of service of summons on him, present a written statement to his defence. This is subject to the proviso to said rule, which may allow to file within 120 days on payment of costs.
- (iv) **Appearances of Parties** - According to Order 9, the parties should appear on the day fixed by summons.
- (v) **Examination of Parties** - Order 10, the court examines the parties to the court.
- (vi) **Framing of Issues** - The court frames the Issues according to Order 14.
- (vii) **Hearings** - The court hears the parties according to Order 18.
- (viii) **Judgement** - The court pronounces the decree according to Order 20.

Answer 2A(iv)

The sentences which the High Courts and Sessions Judge may pass under Section 28 of the Criminal Procedure Code, 1973

- (1) A High Court may pass any sentence authorised by law.
- (2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

- (3) An Assistant Sessions Judge may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years.

The sentences which the Magistrates may pass under Section 29 of the Criminal Procedure Code, 1973

- (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.
- (2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees, or of both.
- (3) The Court of Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both.
- (4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

Question 3

- (a) *Vijay used to run a grocery store. Sanjay was one of his customers. One day, Vijay and Sanjay had an argument over something. With the intention of causing loss to Vijay, Sanjay opened a grocery store right in front of Vijay's shop. As a result, Vijay lost some customers, and he suffered heavy losses. Can Vijay recover damages from Sanjay ? Explain.*
- (b) *What do you mean by stamp under The Indian Stamp Act, 1899 ? Which instruments are stamped with adhesive stamps ?*
- (c) *Discuss the rights available to a person under the Right to Information Act, 2005 who does not receive a decision within the specified time or is aggrieved by a decision of the PIO.*
- (d) *'There are exceptional circumstances under which mens rea is not required in criminal law'. Discuss.*

(4 marks each)

Answer 3(a)

It is not that every damage is a damage in the eyes of law. It must be a damage which the law recognizes as such. In other words, there should be a legal injury or invasion of the legal right. In the absence of an infringement of a legal right, an action does not lie.

The situation asked in the question is related to *damnum sine injuria*. Damnum means harm, loss or damage in respect of money, comfort, health, etc. Injuria means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts. Therefore, causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff. Common examples are, where the damage results from an act done in the exercise of legal rights. Thus, if I own a shop and you open a shop in the neighbourhood, as a result of which I lose some customers and my profits fall off, I cannot sue you for the loss in profits, because you are exercising your legal right. [**Gloucester Grammar School case, (1410)**]

In view of the above, in the given situation Vijay was running a grocery store but due to some argument Sanjay also opened a grocery store right in front of his shop due to which Vijay lost some of his customers and suffered losses. Vijay cannot sue Sanjay for his losses as there is no legal damage done by Sanjay and he was exercising his legal right. Therefore, Vijay cannot recover any damages from Sanjay.

Answer 3(b)

According to section 2(26) of the Indian Stamp Act, 1899, "Stamp" means any mark, seal or endorsement by any agency or person duly authorized by the State Government and includes an adhesive or impressed stamp for the purposes of duty chargeable under this Act.

Section 11 deals with the use of adhesive stamps. This Section provides that the following instruments may be stamped with adhesive stamps, namely:

- (i) Instrument chargeable with a duty not exceeding 10 naya paise except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (ii) Bills of exchange and promissory notes drawn or made out of India;
- (iii) Entry as an advocate, vakil or attorney on the roll of a High Court;
- (iv) Notarial acts;
- (v) Transfers by endorsement of shares in any incorporated company or other body corporate.

The use of the words 'may be stamped' really connotes 'shall be stamped'. The rules framed under the Stamp Act as well as under the relevant state laws invariably provide that the adhesive stamps shall carry special words, to indicate the use to which the stamps can be put.

Answer 3(c)

Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under section 19 of the Right to Information Act, 2005 as follows:

- a. First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).
- b. Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown).

According to section 19 of Right to Information Act, 2005, Burden of proving that denial of information was justified lies with the PIO. First Appeal shall be disposed of within 30 days from the date of its receipt or within such extended period not exceeding a total of forty-five days from the date of filing thereof, for reasons to be recorded in writing.

Answer 3(d)

Mens rea is defined as the mental element necessary to constitute criminal liability. It is the attitude of mind which accompanies and directs the conduct which results in the '*actus reus*'. The act is judged not from the mind of the wrong-doer, but the mind of the

wrong-doer is judged from the act. 'Mens rea' is judged from the external conduct of the wrongdoer by applying objective standards.

There are many exceptional cases where *mens rea* is not required in criminal law. Some of them are as follows:

- (i) Where a statute imposes liability, the presence or absence of a guilty mind is irrelevant. The classical view of that 'no *mens rea*, no crime' has long been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishment even where the offences have been defined to exclude *mens rea*. Many laws passed in the interest of public safety and social welfare imposes absolute liability. This is so in matters concerning public health, food, drugs, etc. There is absolute liability (*mens rea* is not essential) in the licensing of shops, hotels, restaurants and chemists establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act, offences against the State like waging of war, sedition etc.
- (ii) Where it is difficult to prove *mens rea* and penalties are petty fines. In such petty cases, speedy disposal of cases is necessary and the proving of *mens rea* is not easy. An accused may be fined even without any proof of *mens rea*.
- (iii) In the interest of public safety, strict liability is imposed and whether a person causes public nuisance with a guilty mind or without guilty mind, he is punished.
- (iv) If a person violates a law even without the knowledge of the existence of the law, it can still be said that he has committed an act which is prohibited by law. In such cases, the fact that he was not aware of the law and hence did not intend to violate it is no defence and he would be liable as if he was aware of the law. This follows from the maxim 'ignorance of the law is no excuse'.

Question 4

- (a) *What do you mean by Electronic Signature Certificate under the Information Technology Act 2000 ? Discuss the procedure to obtain Electronic Signature Certificates under the Act.*
(4 marks)
- (b) *Discuss the provisions relating to appeal from the orders of Tribunal under Section 421 of the Companies Act, 2013 ?*
(4 marks)
- (c) *Define 'Arbitration Agreement'. Briefly state the essential features of an 'Arbitration Agreement' under Section 7 of the Arbitration and Conciliation Act, 1996.*
(4 marks)
- (d) *Rajendra Singh, aged 56, was appointed on 1st July 2018 as Information Commissioner by the Central Government for a period of 5 years. On 1st July 2020, he was promoted and appointed as Chief Information Commissioner for 5 years. Discuss the validity of appointment as Chief Information Commissioner under The Right to Information Act, 2005.*
(4 marks)

Answer 4(a)

According to Section 2(1) (tb) of the Information Technology Act, 2000(the Act), "Electronic Signature Certificate" means an Electronic Signature Certificate issued under Section 35 and includes Digital Signature Certificate.

As per section 35 of the Act, Certifying authority issues electronic signature Certificate. Following is the procedure of obtaining electronic signature Certificate:

- (1) Any person may make an application in prescribed form to the Certifying Authority for the issue of electronic signature Certificate in such form as may be prescribed by the Central Government.
- (2) Every such application shall be accompanied by prescribed fees.
- (3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.
- (4) On receipt of an application, the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the electronic signature Certificate or for reasons to be recorded in writing, reject the application.

It may be noted that no application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Answer 4(b)

Section 421 of the Companies Act, 2013 deals with appeal from orders of Tribunal as follows:

- (1) **Appeal to NCLAT** - Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.
- (2) **No appeal in consent orders** - No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) **Limitation period for appeals** - Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

However, the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

- (4) **Order after reasonable opportunity** - On the receipt of an appeal, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) **Copies to parties**- The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Answer 4(c)

According to Section 2(1)(b) of the Arbitration and Conciliation Act, 1996 "Arbitration Agreement" means an agreement referred to in Section 7.

Under Section 7, the Arbitration agreement has been defined to mean an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Following are some of the essential elements of Arbitration Agreement:

- a) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- b) An arbitration agreement shall be in writing.
- c) An arbitration agreement is in writing if it is contained in:
 - a document signed by the parties;
 - an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
 - an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- d) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Answer 4(d)

Section 13 of the Right to Information Act, 2005(the Act) deals with terms of office and conditions of service of Central Information Commission.

According to Section 13 (1) of the Act, the Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment. However, no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

According to Section 13 (2) of the Act, every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty- five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner.

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for his appointment as the Chief Information Commissioner.

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

In the given situation, Rajendra Singh was appointed as Information Commissioner on 1st July, 2018 and was promoted as appointed as Chief Information Commissioner on 1st July, 2020. Therefore, although Rajendra Singh can be validly appointed as Chief Information Commissioner but he cannot hold office of Chief Information Commissioner after 30th June 2023, because his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

Question 5

- (a) *“Under the Indian Evidence Act, 1872, there are some facts of which evidence cannot be given though they are relevant.” Explain.*
- (b) *Discuss the grounds on which an arbitral award can be set aside under Section 34 of the Arbitration and Conciliation Act, 1996.*

(8 marks each)

Answer 5(a)

Under the Indian Evidence Act, 1872(the Act) there are some facts of which evidence cannot be given though they are relevant, such as facts coming under Sections 121 to 129 of the Act, where evidence is prohibited under those Sections. They are also referred to as 'privileged communications'.

A witness though compellable to give evidence is privileged in respect of particular matters within the limits of which he is not bound to answer questions while giving evidence. These are based on public policy.

(1) Evidence of Judges and Magistrates

Under Section 121 of the Act, no Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as such Judge or Magistrate, or as to anything which came to his knowledge in Court as such Judge or Magistrate.

He may be examined as to other matters which occurred in his presence whilst he was so acting.

(2) Communications during marriage

Under Section 122 of the Act, communication between the husband and the wife during marriage is privileged and its disclosure cannot be enforced. This provision is based on the principle of domestic peace and confidence between the married couple. The Section contains two parts: the first part deals with the privilege of the witness while the second part of the Section deals with the privilege of the husband or wife of the witness.

(3) Evidence as to affairs of State

Section 123 of the Act applies only to evidence derived from unpublished official record relating to affairs of State. According to Section 123, no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

(4) Official Communications

Section 124 of the Act talks about official communications. It states that a public officer cannot be compelled to disclose any communication made to him in official confidence if he believes that such disclosure could harm the public interests.

(5) Secret Informants

Section 125 of the Act states that a Magistrate or a Police Officer cannot be compelled to reveal as to how they got any information regarding the commission of a crime.

The section further states that a Revenue Officer cannot be compelled to reveal as to how he got any information regarding the commission of any offence against the public revenue.

(6) Professional communications

Section 126 to 129 deal with the professional communications between a legal adviser and a client, which are protected from disclosure. A client cannot be compelled and a legal adviser cannot be allowed without the express consent of his client to disclose oral or documentary communications passing between them in professional confidence. The rule is founded on the impossibility of conducting legal business without professional assistance and securing full and unreserved communication between the two. Under Sections 126 and 127 neither a legal adviser i.e., a barrister,

attorney, pleader or vakil (Section 126) nor his interpreter, clerk or servant (Section 128) can be permitted to disclose any communication made to him in the course and for the purpose of professional employment of such legal adviser or to state the contents or condition of any document with which any such person has become acquainted in the course and for the purpose of such employment.

Answer 5(b)

Section 34(2) of the Arbitration and Conciliation Act, 1996 states that an arbitral award may be set aside by the Court only if,

- a. the party making the application establishes on the basis of the record of the arbitral tribunal that-
 - i. a party was under some incapacity, or
 - ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
 - iii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
 - v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
- b. the Court finds that,
 - i. the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
 - ii. the arbitral award is in conflict with the public policy of India.

Explanation 1 provides as under:

For the avoidance of any doubt, it is clarified in the explanation appended to the Section that

an award is in conflict with the public policy of India, only if,

- i. the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- ii. it is in contravention with the fundamental policy of Indian law; or
- iii. it is in conflict with the most basic notions of morality or justice.

Explanation 2 provides as under:

For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

As per Section 34(2A), an arbitral award arising out of arbitrations, other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award.

However, an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

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

(a) Answer the following with help of legal provision of The Indian Registration Act, 1908.

(i) On 20th January, 2023, Anil made a will in favour of his nephew Ronak. Anil submits the documents for registration on 25th July, 2023. Will Anil be successful?

(ii) Nandita leased her premises to Sohan for a period of 8 months. Is registration of lease deed compulsory ?

(4 marks)

(b) Explain the Rule of Noscitur a Sociis. What are the conditions when this rule will not apply ?

(4 marks)

(c) What are the exemptions of certain documents executed by or in favour of Government under The Registration Act, 1908 ?

(4 marks)

(d) Answer the following with legal provisions under The Indian Stamp Act, 1899 :

(i) There is a contract of exchange, in which, Amit transfers his land to Sanjay, in return Sanjay transfers his house to Amit. By whom will the stamp duty be paid ? If it was a contract to sell and Sanjay paid money in return, would your answer be same ?

(ii) Three brothers A, B and C are joint owners of a land. They divide this land in the ratio of 1 : 1 : 2 through a mutual agreement. By whom will the stamp duty be paid ?

(4 marks)

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

(i) "Under the Limitation Act, 1963, the period of limitation starts only after fraud or mistake is discovered by the affected party." Comment.

(ii) Discuss the inherent powers of the High Court under Section 482 of Criminal Procedure Code, 1973.

(iii) What are the essential requisites of a valid custom to be legal and binding ?

(iv) Under the Information Technology Act, 2000, Controller of Certifying Authorities issued an order on 1st April, 2023. Deepak received the certified copy of the order on 3rd April, 2023. Deepak is dissatisfied with a decision issued by the

Controller of Certifying Authorities and subsequently filed an appeal on 3rd May, 2023 against this decision to the Appellate Tribunal. Examine the validity of the appeal.

(4 marks each)

Answer 6(a)

- (i) Section 27 of the Registration Act, 1908(the Act) provides that a will may be presented for registration at any time or deposited in a manner provided in Sections 40 and 41. Registration of a will is optional under Section 18(e). Therefore, in this case registration of will is optional and Anil can get it registered any time.

Hence, Anil can present his documents for registration on 25th July, 2023.

- (ii) Section 18 of the Registration Act, 1908(the Act) specifies documents, the registration of which is optional. As per Section 18 (c) of the Act, leases of immovable property for any term not exceeding one year is optional.

Therefore, in this given situation where Nandita has leased her premises to Sohan for a period of 8 months only, the registration of lease deed is not compulsory.

Answer 6(b)

'*Noscitur a Sociis*' means "It is known by its associates". In other words, meaning of a word should be known from its accompanying or associating words. It is not a sound principle in interpretation of statutes, to lay emphasis on one word disjuncted from its preceding and succeeding words. A word in a statutory provision is to be read in collocation with its companion words. The pristine principle based on the maxim '*noscitur a sociis*' has much relevance in understanding the import of words in a statutory provision (*K. Bhagirathi G. Shenoy v. K.P. Ballakuraya*, AIR 1999 SC 2143).

The rule states that where two or more words which are susceptible of analogous meaning are coupled together, they are understood in their cognate sense. It is only where the intention of the legislature in associating wider words with words of narrower significance, is doubtful that the present rule of construction can be usefully applied. The same words bear the same meaning in the same statute.

The above mentioned rule will not apply:

- (i) When the context excluded that principle.
- (ii) If sufficient reason can be assigned, it is proper to construe a word in one part of an Act in a different sense from that which it bears in another part of the Act.
- (iii) Where it would cause injustice or absurdity.
- (iv) Where different circumstances are being dealt with.
- (v) Where the words are used in a different context.

Answer 6(c)

According to the Registration Act, 1908, following are the exemptions available on documents registered by or in favour of government:

- (1) Documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land revenue and which form part of the records of such settlement.

- (2) Documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land which form part of the record of such survey.
- (3) Documents which, under any law for the time being in force are filed periodically in any revenue office by patwaris or other officers charged with the preparation of village records.
- (4) Sanads, inam, title deeds and other documents purporting to be an evidence, grants or assignments by Government, of land or of any interest in land.
- (5) Notices given under Section 74 or Section 76 of the Bombay Land Revenue Code, 1879 of relinquishment of occupancy by occupants or of land by holders of such land.

Answer 6(d)

- (i) Section 29 of the Indian Stamp Act, 1899(the Act) deals with the persons responsible for payment of duty. According to Section 29(e), In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne in the case of an instrument of exchange including swap by the parties in equal shares

Therefore, in the first situation expenses of duty will be borne by both Amit and Sanjay equally.

According to Section 29 (f) of the Act, in the case of a certificate of sale the expense of providing the proper stamp duty shall be borne by the purchaser of the property in which such certificate relates.

Therefore, in the second situation where Sanjay pays money in return then the expenses of duty will be borne by Sanjay only.

- (ii) According to Section 29(g) of the Indian Stamp Act, 1899, in the case of an instrument of partition the proper stamp duty shall be borne by the parties thereto in proportion to their respective shares in the whole property partitioned or, when the partition is made in execution of an order passed by a Revenue Authority or Civil Court or arbitrator, in such proportion as such authority, Court or arbitrator directs.

In this given situation as the property is partitioned by mutual agreement in the ratio of 1:1:2 between A, B and C, the expense of stamp duty will be borne by A, B and C in the ratio of 1:1:2 respectively.

OR (Alternate question to Q. No. 6)

Answer 6A(i)

Where the suit or application is based upon the fraud or mistake of the defendant or respondent or his agent or in other cases as mentioned in Section 17 of the Limitation Act, 1963(the Act), the period of limitation shall not begin to run until the plaintiff or applicant has discovered fraud or mistake or could, with reasonable diligence have discovered it or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production. These rules are subject to certain exceptions as provided in proviso to Section 17(1).

According to section 17(2) of the Act, when a judgment-debtor by fraud or force prevented the execution of a decree or order within the period of limitation, the court may extend the period for execution of the decree or order on the application of Judgement Creditor. Such application shall be made within one year from the date of the 'discovery of the fraud' or the 'cessation of force'.

Answer 6A(ii)

Section 482 of the Criminal Procedure Code, 1973 (Cr. P.C.) is one of the most important sections of the Code. It says that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The powers of the High Court under section 482 Cr.P.C are partly administrative and partly judicial. Inherent powers under section 482 of Cr.P.C. include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under section 482 of Cr.P.C. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly and with caution.

The Supreme Court in *Madhu Limaye v. State of Maharashtra, 1978 AIR 47*, has held that the following principles would govern the exercise of inherent jurisdiction of the High Court:

1. Power is not to be resorted to, if there is a specific provision in the Code for redress of grievances of aggrieved party.
2. It should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.
3. It should not be exercised as against the express bar of the law engrafted in any other provision of the code.

It is well settled that the inherent powers under section 482 can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. If an effective alternative remedy is available, the High Court may not exercise its powers under this section, especially when the applicant may not have availed of that remedy.

Answer 6A(iii)

The essential requisites of a valid custom to be legal and binding are:

- (a) **Immemorial (Antiquity):** A custom to be valid must be proved to be immemorial; it must be ancient. According to *Blackstone*, "A custom, in order that it may be legal and binding must have been used so long that the memory of man runs not to the contrary, so that, if anyone can show the beginning of it, it is no good custom". English Law places a limit to legal memory to reach back to the year of accession of Richard I in 1189 as enough to constitute the antiquity of a custom. In India, the English Law regarding legal memory is not applied. All that is required to be proved is that the alleged custom is ancient.
- (b) **Certainty:** The custom must be certain and definite, and must not be vague and ambiguous.
- (c) **Reasonableness:** A custom must be reasonable. It must be useful and convenient to the society. A custom is unreasonable if it is opposed to the principles of justice, equity and good conscience.
- (d) **Compulsory Observance:** A custom to be valid must have been continuously observed without any interruption from times immemorial and it must have been regarded by those affected by it as an obligatory or binding rule of conduct.

- (e) **Conformity with Law and Public Morality:** A custom must not be opposed to morality or public policy nor must it conflict with statute law. If a custom is expressly forbidden by legislation and abrogated by a statute, it is inapplicable.
- (f) **Unanimity of Opinion:** The custom must be general or universal. If practice is left to individual choice, it cannot be termed as custom.
- (g) **Peaceable Enjoyment:** The custom must have been enjoyed peaceably without any dispute in a law court or otherwise.
- (h) **Consistency:** There must be consistency among the customs. Custom must not come into conflict with the other established customs.

Answer 6A(iv)

Section 57 of the Information Technology Act, 2000 (IT Act) provides that any person aggrieved by an order of the Controller of Certifying Authorities or of the adjudicator can appeal to the Appellate Tribunal within 45 days.

In the given situation, Deepak received the certified copy of the order on 3rd April, 2023 and filed an appeal against the decision with the Telecom Disputes Settlement and Appellate Tribunal on 3rd May, 2023. As the appeal have been filed within the stipulated time of 45 days, the appeal is valid.

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART I

Question 1

- (a) Explain the exceptions, if any to the principle of "Limited Liability" under the Companies Act, 2013.
(5 marks)
- (b) ABC Limited is a subsidiary company of XYZ Limited. Deepak is working as an executive director in ABC Limited. XYZ Limited passed an ordinary resolution in its general meeting to issue Sweat equity Shares to Deepak for providing his professional services. Pankaj who is Company Secretary in XYZ Ltd., objected the following :
- (i) Sweat equity shares cannot be issued to Deepak, who is an executive director in Subsidiary company i.e., ABC Limited.
- (ii) Special resolution is required to be passed in the general meeting, of XYZ Ltd. Examine the validity of objection of Company Secretary of XYZ Limited under the provisions of Companies Act, 2013.
(5 marks)
- (c) Venus Hospitality Limited is an unlisted public company. The following information is given as per the financial statements of the company as on 31st March, 2023:
- Paid-up capital : ₹5 crore
Security premium : ₹2 crore
Revaluation reserve : ₹10 crore
Reserves and surplus : ₹1 crore
Long-term loans : ₹8 crore
- The Board of Directors of the company have resolved by a board resolution to borrow a further long-term loan of ₹5 crore.
- The Articles provide that the company cannot borrow beyond its net worth. Referring to the provisions of Companies Act, 2013, examine the validity of the Board Resolution.
- Will your answer differ, if it is a private company ?

(5 marks)

(d) *Peacock Home Appliances Limited, an unlisted public company was incorporated in the year 2015 to manufacture domestic pressure cookers. In the year 2017, the company issued six-years, 7%, non-convertible, cumulative preference shares for ₹ 15 crore to another company called Classic Appliances Limited. Due to intense competition in the home appliances market, the company was just able to break even. The company did not declare any dividend (both on equity shares and preference shares) since incorporation and unable to redeem preference shares during the year 2023 on maturity. Referring to the provisions of the Companies Act, 2013 explain the way for redemption of unredeemed preference shares and how the outstanding preference dividend can be discharged, as the profit is not available for the redemption of preference shares and payment of outstanding dividend.*

(5 marks)

Answer 1(a)

Exceptions to the principle of "Limited Liability" are as under-

- If at any time the number of member of a company is reduced, in the case of a public company, below seven, in the case of private company, below two and company carries on business for more than six months while the number of member is also reduced, every member of the company during the time that it so carries on business after the those six months and is cognizant of the fact that it is carrying on business with less than seven or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefore. [Section 3A of the Companies Act, 2013]
- When the company is incorporated as an Unlimited Company under section 3(2)(c) of the Act.
- Where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members of such company shall be unlimited. [Section 7(7)(b)]
- Where in the course of winding up it appears that any business of the company has been carried on with an intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the Tribunal may declare the persons who were knowingly parties to the carrying on of the business in the manner aforesaid as personally liable, without limitation of liability, for all or any of the debts/liabilities of the company. [Section 339]
- Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person who was director at the time of issue of prospectus or has been named as a director in the prospectus or every person who has authorized the issue of prospectus or every promoter or a person referred to as an expert in the prospectus shall be personally liable, without any limitation of liability, for all

or any of the losses or damaged that may have been incurred by any person who subscribed to the securities on the basis of such prospectus. [Section 35(3)]

- Where a company fails to repay deposit or part thereof or any interest thereon referred in section 74 within the time specified or further time as may be allowed by the Tribunal and it is proved that deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible, without any limitation of liability, for all or any of the losses or damaged that may have been incurred by the depositors. [(Section 75(1)]
- Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in form of any asset, property or cash or in any other manner, the Central Government may file an application before Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability. [Section 224(5)]

Answer 1(b)

According to section 2(88) of the Companies Act, 2013, sweat equity shares means such equity shares issued by company to its directors or employees at a discount or for consideration, other than cash for providing their know how of available rights in the nature of intellectual property rights or value additions, by whatever name called.

According to explanation to Rule 8(l) of the Companies (Shares Capital and Debentures) Rules, 2014:

For the purpose of this rule the expression "Employee" means-

- A permanent employee of the company who has been working in India or outside India;
- A director of the company, whether a whole-time director or not; or
- An employee or a director as defined in sub clause (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company.

Further, section 54(1) provides that notwithstanding anything contained in Section 53, a company can issue sweat equity shares of a class of shares already issued, if the issue has been authorised by a special resolution by the company in the general meeting.

As per the above provisions of the Companies Act, 2013, the analysis of the objections of Company Secretary of XYZ Limited is as below-

- (i) Sweat equity shares can be issued to the executive director of ABC Limited which a subsidiary company of XYZ Limited. Hence, the objection of Pankaj is not correct.
- (ii) Special resolution is required to be passed to issue of sweat equity shares. Ordinary resolution is not sufficient. Hence, the objection of Pankaj is correct.

Answer 1(c)

Section 180(1)(c) of the Companies Act, 2013 restricts the borrowing powers of the Board of Directors. The powers to borrow has to be exercised by the Board in a duly convened Board Meeting. The Board cannot borrow beyond its authority as stipulated by the Articles of Association of the company and by the Act. Section 180(1) prescribes that the Board shall, inter alia, borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed the aggregate of the paid-up capital, free reserves and security premium only with the consent of members in a general meeting by passing a special resolution.

In the instant case, the aggregate of paid-up capital and free reserves and security premium of the company is $5+2+1 = \text{Rs. } 8$ crore. As the company already has an outstanding long-term loan of Rs. 8 crore, no further loan can be borrowed just by passing a Board Resolution. To borrow any further sum, the approval of members by a special resolution is necessary. Thus, as Venus Hospitality Limited is a public company, the Board Resolution is not valid as per the above mentioned provisions.

If the company is a private limited company, as per exemption given vide Notification dated 05/06/2015 the private companies are exempted from complying with the requirements of Section 180 of the Act. Even then the company cannot borrow a further sum of Rs. 5 crore as in this case as, the Articles provide that the company cannot borrow beyond its net worth.

The net worth of the company is $5+2+1=\text{Rs. } 8$ crore. Revaluation reserve is not taken into account for ascertaining the net worth of a company as per Section 2(57). The long-term loan outstanding is Rs. 8 crore. Hence, the company cannot borrow the additional loan of Rs. 5 crore as the stricter provisions of Articles will prevail even if it is a private company.

Answer 1(d)

According to second proviso to Section 55(2) of the Companies Act, 2013 (the Act), no preference shares shall be redeemed except out of the profits of the company which would otherwise be available for the purpose of payment of dividend or out of fresh issue of preference shares made specifically for the purpose of redemption of existing preference shares.

According to Section 55(3) of the Act, where a company which has issued preference shares is not in a position to redeem any of its preference shares or pay dividend on the preference shares, it may, with the consent of 3/4th of in value of such preference shares and with the approval of Tribunal, issue further redeemable preference shares equal to the amount of outstanding preference shares including outstanding dividend.

Where the profit is not available for payment of dividend and redemption of unredeemed preference shares on maturity, the only way available to the company is to opt for rollover of the existing preference shares along with accumulated preference dividend when it becomes due for redemption in the year 2023.

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

Question 2

(a) *ABC Limited has created floating charge against debentures issued for ₹100*

crore. The Board of Directors (BOD) is willing to know the circumstances under which floating charge crystallizes and the security becomes fixed. As a Company Secretary advise the BOD in light of the provisions of Companies Act, 2013.

- (b) The Chairman of a listed company wants to know from you the details required to be entered in the register of contracts in which a director is interested and the requirement of the period of maintaining the said register. Explain with reference to the provisions of the Companies Act, 2013.
- (c) "The provisions of appointment of Company Secretary in United Kingdom are same as in India under the Companies Act, 2013". Comment.
- (d) Can the following persons or institutions become member of a company under the provisions of Companies Act, 2013 :
- (i) MK Associates, which is a Partnership Firm.
 - (ii) Devid, who is a Foreigner and resident of Japan.
 - (iii) HUF.
- (e) Can the Investor Education and Protection Fund be utilized for the activities related to "Har Ghar Tiranga" a campaign under the aegis of Azadi Ka Amrit Mahotsav, under the provisions of Companies Act, 2013 ?

(3 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Authorised, issued and paid-up share capital of XYZ Ltd., is ₹499 crore divided into 49.90 crore shares of ₹ 10 each. 74% of shares of XYZ Ltd. is held by Central Government, and the balance shares are held by the retail investors. The date of incorporation of XYZ Ltd. is 1st April, 2023. First Auditor of XYZ Ltd. is appointed on 16th May, 2023. As a Company Secretary, examine the validity of appointment of first auditor in XYZ Ltd. in light of the provisions of the Companies Act, 2013.

(3 marks)

- (ii) The Board of Directors (BOD) of ABC Ltd., is planning to invite deposits from public for the purpose of meeting its short-term requirements of ₹20 crore in its scheduled meeting to be held on 1st October, 2023. Deposits will be repayable within 4 months from the date of such deposit. The paid-up share capital and free reserves of ABC Ltd., is ₹225 crore and ₹375 crore respectively as per audited accounts as on 31st March, 2023. The Company Secretary of ABC Ltd. opposed the above proposal of BOD with the contention that the Company cannot accept deposits, which is repayable earlier than 6 (six) months from the date of such deposits. Advise BOD of ABC Ltd. as per the provisions of the Companies Act, 2023.

(3 marks)

- (iii) The Board of Directors of Glass Making Ltd. have decided to declare interim dividend @ 18% for the current financial year of 2023-24. The company has

incurred a loss of ₹ 107 crore during the current financial year up-to quarter ended on 30th September, 2023. The company has declared dividend in the last four financial years, as below :

<i>Financial Year</i>	<i>Rate of Dividend</i>
2019-20	15%
2020-21	12%
2021-22	15%
2022-23	24%

Examine the decision of the Board of Directors of Glass Making Ltd. as per the provisions of the Companies Act, 2023.

(3 marks)

- (iv) Fine Industry Ltd. is registered under the Companies Act, 2013 having registered office at New Delhi. Company is engaged in manufacturing of various household products. Main manufacturing unit of the company is located in Singrauli District of Madhya Pradesh. The Board of Directors (BOD) has decided to keep books of account of the company at its Singrauli manufacturing unit. The Company Secretary of the company objected and states that the books of account of the company can be kept at its registered office only. Referring to the provisions of the Companies Act, 2023, examine, whether the objection of the Company Secretary is valid ?*

(3 marks)

- (v) Agro Food Ltd. is a listed company under Companies Act, 2013. Sumit is a shareholder of the company who holds 101 shares of ₹100 each. The email id of Sumit is not registered with the company but registered with the depository of the company. Company held its annual general meeting on 15th September, 2023 as per the provisions of the Companies Act, 2013. The company sent a soft copy of annual report on 20th September, 2023, through email to all its shareholders whose email id are registered with the company excluding Sumit on the contention that email id of Sumit is not registered with the company. Examine the contention of the company with respect to the manner of sending annual report to the shareholders referring to the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.*

(3 marks)

Answer 2(a)

Floating charge crystallizes and the security becomes fixed in the following cases:

- When the company goes into liquidation;
- When the company ceases to carry on its business;
- When the creditors or the debenture holders take steps to enforce their security i.e., by appointing receiver to take possession of the property charged;
- On the happening of the event specified in the deed.

In the aforesaid circumstances, the floating charge is said to become fixed or to have crystallised. BOD may be advised, accordingly.

Answer 2(b)

- i. Section 189(1) of the Companies Act, 2013 read with Rule 16 of the Companies (Meeting of Board and its Powers) Rules, 2014, requires that every company shall keep a register giving separate details of contracts or arrangements referred to in Section 184(2) and under section 188 in Form MBP-4.
- ii. The register should contain details of:
 - a. company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under sub-section (1) of section 184: However, the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent. or less of the paid-up share capital would not be required to be entered in the register;
 - b. contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and
 - c. contracts or arrangements with a related party with respect to transactions to which section 188 applies.

Such register or registers shall be placed before the next meeting of the Board and signed by all the Directors present at the meeting.

- iii. The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

Answer 2(c)

According to Section 203 of Companies Act, 2013 read with rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every company with a paid- up capital of at least Rs. Ten Crore shall have, inter alia, a whole time company secretary who is a member of ICSI as per Sec 2(1) (c) of Company Secretaries Act, 1980.

Thus, only a qualified company secretary can be appointed as the company secretary of a company in India. On the other hand Section 270, 271 and 273 of UK Companies Act, 2006, govern the provisions pertaining to appointment and qualifications of company secretary as below:

A Private Company is not required to have a Secretary. However, a public company must have a Secretary. It is the duty of the Directors of a public company to take all reasonable steps to secure that the Secretary (or each Joint Secretary) of the company–

- (a) is a person who appears to them to have the requisite knowledge and experience to discharge the functions of Secretary of the company, and
- (b) has one or more of the following qualifications.

The qualifications are–

- (a) that he has held the office of Secretary of a public company for at least three of the five years immediately preceding his appointment as Secretary;
- (b) that he is a member of any of the bodies specified as below–
 - a. the Institute of Chartered Accountants in England and Wales;
 - b. the Institute of Chartered Accountants of Scotland;
 - c. the Association of Chartered Certified Accountants;
 - d. the Institute of Chartered Accountants in Ireland;
 - e. the Institute of Chartered Secretaries and Administrators;
 - f. the Chartered Institute of Management Accountants;
 - g. the Chartered Institute of Public Finance and Accountancy.
- (c) that he is a barrister, advocate or solicitor called or admitted in any part of the United Kingdom;
- (d) that he is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the Directors to be capable of discharging the functions of Secretary of the company.

Thus, the provisions of appointment of Company Secretary in United Kingdom are not exactly same as in India under the Companies Act, 2013.

Answer 2(d)

Answer of the given question is as below-

- a) A partnership firm is not a legal person and as such it cannot, in its own, become a member of a company. MK Associates, which is a partnership firm, cannot be a member of Company.
- b) A foreigner may take the shares in an Indian Company and become a member subject to the provisions of the Foreign Exchange Management Act, 1999, but in the event of war with his country, he become an alien enemy and his power of voting and his rights to receive notices are suspended. Thus, Devid can be a member of Company.
- c) HUF is not a juristic person, although it is a person for purpose of the Income Tax Act, 1961. HUF is represented by its Karta. There is no legal bar on HUF to invest its money in shares and securities and the Companies Act does not prohibit membership of HUF. In case of an HUF, the shares can be registered in the name of Karta of HUF.

Answer 2(e)

Section 125(3) of the Companies Act, 2013, provides the Investor Education and Protection Fund shall be utilised for-

- a) The refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;

- b) Promotion of investor's education, awareness and protection;
- c) Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the order made by the Court which had ordered disgorgement;
- d) Reimbursement of legal expenses incurred in pursuing class action suits under section 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- e) Any other purpose incidental thereto, in accordance with Rule of IEPF authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Thus, as per above provisions, Investor Education and Protection Fund cannot be utilised for the activities related to "Har Ghar Tiranga" a campaign under the aegis of Azadi Ka Amrit Mahotsav, under the provisions of Companies Act, 2013.

Answer 2A(i)

The appointment of auditor of Government Company or Government controlled (directly or indirectly) company shall be held in accordance with the provision of section 139(5) and (7) of the Companies Act, 2013. The First auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint within next 30 days and on failure to do so by the Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extra ordinary general meeting (EGM), who shall hold office till the conclusion of the first annual general meeting.

74% of shares of XYZ Ltd, is held by Central Government, thus XYZ Ltd., will be a Government Company. First auditor of XYZ Ltd is appointed on 16th May 2023, i.e., within 60 days from the date of incorporation i.e., 1st April 2023.

The appointment of first auditor of XYZ Ltd., is valid and within the time specified under the provisions of the Companies Act, 2023.

Answer 2A(ii)

As per section 73 of the Companies Act, 2013 read with proviso to rule 3 of the Companies (Acceptances of Deposits) Rules, 2014, a company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for the repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that-

- a) Such deposits shall not exceed ten percent of aggregate of the paid-up share capital, free reserves and securities premium account of the company, and
- b) Such deposits are repayable not earlier than three months from date of such deposit or renewal thereof.

BOD of ABC Ltd., is planning to invite deposits of Rs. 20 crore which is not more than Rs. 60 crore (10% of i.e., Rs. 600 crore) and repayment period is not earlier than three months from the date of such deposits. Proposal of BOD of ABC Ltd., does not contravene any provision of the Companies Act, 2023. BOD of ABC Ltd., may accept the

deposits of Rs. 20 crore. The contentions of Company Secretary of ABC Ltd., is not correct. Accordingly, BOD of ABC Ltd. may be advised.

Answer 2A(iii)

Section 123(3) of the Companies Act, 2023 provides that the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from the closure financial year till holding of the annual general meeting out of the surplus profit and loss account or out of the profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In case the company has incurred loss during the current financial year upto the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years.

In the given question, Glass Making Ltd. has incurred loss of Rs. 107 crore during the current financial year till the end of quarter ended on 30th September, 2023, thus company cannot declare interim dividend at a rate higher than the average dividends declared by the company during immediately preceding three financial years of 2020-21, 2021-22 and 2022-23. Dividend rate of financial year of 2019-20 is not relevant for the declaration of interim dividend. Average rate of dividends during immediately preceding three financial years is 17%, while company has decided to declare interim dividend @18%, which is higher than the average rate of dividend during the immediately preceding three financial years.

Thus, the decision of Board of directors is not as per the provisions of Companies Act, 2023.

Answer 2A(iv)

Section 128(1) of the Companies Act, 2013 read with rule 2A of the Companies (Accounts) Rules, 2014, requires every company to prepare and keep the books of accounts and other relevant books and papers and financial statements at its registered office. However, all or any of the books of accounts may be kept at such other place in India as the Board of Directors may decide. When the Board so decides, the company is required within seven days of such decision to file with the Registrar of Companies (RoC) a notice in writing giving full address of that other place. Such intimation is to be made in form AOC-5 to the Registrar of Companies.

Thus, in the given case the objection of the Company Secretary is not in accordance with the above provisions of the Companies Act, 2013 and hence not valid. Fine Industry Ltd., can keep its books of accounts at its Singrauli manufacturing unit by following the mentioned process.

Answer 2A(v)

According the Regulation 36 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations], the listed company shall send the annual report in the following manner to the shareholders:

- a) Soft copies of full annual report to all those shareholders(s) who have registered

their registered their email address(es) either with the listed company or with any depository;

- b) Hard copy of the statement containing the silent features of all the documents, as prescribed in the Section 136 of Companies Act, 2013 or rules made thereunder to those shareholders(s) who have not so registered;
- c) Hard copies of full annual reports to those shareholders, who request for the same.

The listed entity shall send annual report to the holders of securities, not less than twenty- one days before the annual general meeting.

Agro Food Ltd., sent annual report after annual general meeting concluded while it is required to be sent not less than 21 days before the annual general meeting i.e., on or before 24th August, 2023. Further, company did not send annual report to Sumit, while it is required to be sent to all shareholders whose email id is registered with the company or its depository.

Thus, in the given case, the contention of Agro Food Ltd., is not correct and it has not complied with the above Regulation 36 of SEBI (LODR) Regulations.

Question 3

- (a) *PQR Ltd. has convened a Board Meeting on 25th September, 2023 with one of the items of the agenda is to approve grant of loan of ₹125 crore to XYZ Ltd. for making new plant of Mug manufacturing with annual capacity of 5 lakh mugs. At the Board Meeting of PQR Ltd., out of total seven directors, five directors were present and all present directors, except one present director who recorded his dissent, approved grant of loan of ₹125 crore to XYZ Ltd. XYZ Ltd. has also taken loans from a public financial institution and deposits from public which is still outstanding. Examine the validity of loan proposal of PQR Ltd. with reference to the provisions of the Companies Act, 2013. (5 marks)*
- (b) *A company incorporated in 2010, furnished the following information in respect of the financial years (FY) as detailed below :*

	(₹ in crore)		
Item	FY 2019-20	FY 2020-21	Fy 2021-22
<i>Equity share capital</i>	100	120	120
<i>Preference share capital</i>	140	140	140
<i>General reserve</i>	120	130	150
<i>Revaluation reserves</i>	240	240	240
<i>Profit & Loss Account</i>	14	24	34
<i>Securities premium account</i>	200	240	240
<i>Annual turnover</i>	920	1040	400
<i>Net profit</i>	14	24	4

From the above information answer the following referring to the provisions of the Companies Act, 2013 :

(i) *Is the company required to constitute CSR Committee? Show the relevant computation/working in support of your answer.*

(ii) *What must be the minimum spending on CSR in FY 2022-23 ?*

(5 marks)

(c) *ABC Ltd. and PQR Ltd. both are registered under the Companies Act, 2013. ABC Ltd. is a wholly owned subsidiary of PQR Ltd. ABC Ltd. and PQR Ltd. both are engaged in the business of manufacturing of steel. The Board of Directors of both the companies unanimously decided to merge ABC Ltd., into PQR Ltd. to get the benefit of market synergy as both are engaged in the same business area and will increase its market size. BOD of PQR Ltd., dispensed with the meeting of equity shareholders, secured and unsecured creditors as the rights of the equity shareholders of the company are not being affected. The Company Secretary of the company objected that in the case of corporate reorganisation meeting of the equity shareholders, and the secured and unsecured creditors cannot be dispensed with. Examine the validity of objection of the Company Secretary with reference to the provisions of the Companies Act, 2013.*

(5 marks)

Answer 3(a)

As per section 186 of the Companies Act, 2013 there are some conditions on the Company to grant loan to any other body corporate or person. These conditions are as under-

- 1) A resolution is to be passed in the Board Meeting with the consent of all the directors present in the board meeting and the prior approval of the public financial institution (PFI) concerned where any term loan is subsisting, is obtained. However, prior approval of PFIs is not required in case aggregate of loans and guarantees so made alongwith the amount of loan or guarantees proposed to be made does not exceed the limit prescribed under section 186(2) and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution. [Section 186(5)]
- 2) Approval of the members by special resolution required, if the limit specified under section 186(2) is exceeded. [Section 186(3)]
- 3) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting. [Section 186(8)]
- 4) The lending company shall make the required disclosure in its financial statements. [Section 186(4)]
- 5) The company shall, within 7 days, enter the prescribed particulars in the register maintained as per section 186(9)

In the given case, PQR Ltd. is the lending company which intends to grant a loan of Rs. 125 crore to XYZ Ltd. (borrowing company), the fact that XYZ Ltd. has taken loan from public financial institution or has accepted deposits from public are not relevant for the purpose of section 186.

In the Board meeting of PQR Ltd. the approval to grant a loan of Rs 125 crore was passed with consent of 4 directors out of 5 directors present in the Board meeting. However, section 186 provides that unanimous approval is required to make a loan to body corporate or person, thus the approval of 4 directors does not comply the requirement of section 186.

Hence, PQR Ltd. cannot make a loan of Rs. 125 crore to XYZ Ltd.

Answer 3(b)

- i. According to Section 135(1) of the Companies Act, 2013, the CSR provision is applicable to companies which fulfill any of the following criteria during the immediately preceding financial year:
 - a. Companies having a net worth of rupees 500 crore or more; or
 - b. Companies having turnover of rupees 1000 crore or more; or
 - c. Companies having a net profit of rupees 5 crore or more.

According to Section 2(57), net worth means the aggregate value of the paid-up share capital and all reserves created out of profits and securities premium account after deducting the aggregate value of accumulated losses, deferred revenue expenditure and miscellaneous expenditure not written off (but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation).

Computation of net worth and information of turnover and net profit is tabulated as below:

<i>(Rupees in crore)</i>			
<i>Item</i>	<i>FY 2019-20</i>	<i>FY 2020-21</i>	<i>FY 2021-22</i>
Equity share capital	100	120	120
Preference share capital	140	140	140
General reserve	120	130	150
Revaluation reserves	-	-	-
Profit and loss account	14	24	34
Securities premium account	200	240	240
Net worth	574	654	684
Annual turnover	920	1040	400
Net profits	14	24	4
Eligibility u/s135	Yes	Yes	Yes

As more than one condition viz., net worth or turnover or net profit is getting satisfied from FY 2019-20 onwards, the Board is required to constitute the CSR Committee from FY 2020-21 and onwards to formulate CSR Policy for approval by the Board and for recommending CSR projects.

- ii. The minimum CSR spend for FY 2022-23 is two percent of average adjusted net profit for the last three financial years = $(2\% \text{ of } (14+24+4)/3) = \text{Rupees } 28 \text{ lakhs}$ in FY 2022-2023.

Answer 3(c)

In the matter of Mohit Agro Commodities & Ors, the NCLAT has observed that section 232(1) of the Companies Act, 2013 uses the word 'may' which introduces an element of discretion to the Tribunal to be exercised in the interest of justice in appropriate situations. Section 232 is a specific provision carved out by the Legislature when both conditions maintained in clauses (a) and (b) of the sub section (l) of section 232 are met.

In the given case the merger sought for is between a wholly owned subsidiary and the holding company. The points which need to be noted is:

- Whether such amalgamation/merger alters the rights of the stakeholders of the company?
- Whether such an amalgamation/merger has any bearing internally on Creditors/ Members of both the companies?
- Whether not holding the subject meeting would amount to violation of any of the provisions of the Companies Act, 2013
- Whether the Tribunal can exercise their discretion when the "Transferor Company" is wholly owned subsidiary of the "Transferee Company" and financial position of the Transferee Company is positive and the merger is not affecting the rights of the Shareholders or Creditors?

Therefore, it is held that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any Secured and Unsecured Creditors of the 'Transferee Company'. Hence, when the 'Transferor and Transferee Company' involve a Parent Company and a Wholly Owned Subsidiary the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the rights of the Equity Shareholders of the 'Transferee Company' are not being affected.

With reference to above case law and provisions, the Tribunal may in the interest of justice direct dispensing with the meeting of Equity shareholders, Secured and Unsecured Creditors as the rights of the Equity Shareholders of the company are not being affected, Hence, it is clear that the objection of the Company Secretary is not correct.

BOD of PQR Ltd., may dispense with the meeting of Equity shareholders, Secured and Unsecured Creditors as the rights of the Equity Shareholders of the "Transferee Company" are not being affected.

PART II**Question 4**

- (a) (i) *What do you mean by proxy ? Explain the circumstances where a proxy or representative is counted for quorum.*
- (ii) *Can a director appoint a person as proxy to attend a Board Meeting on his behalf ?*

(5 marks)

- (b) *Mamta is a women director in ABC Ltd. a listed company. On 15th July, 2023 she resigned from the post of women director. The Board of Directors of ABC Ltd., appointed Sanchi as a women director in the board meeting held on 16th September, 2023 to fill the vacancy of women director, which had occurred as a result of resignation of Mamta. Examine the validity of appointment of Sanchi as a women director with reference to the provisions of Companies Act, 2013. What would be your answer, if Sanchi is appointed as a women director in the board meeting held on 1st October, 2023 ?*

(5 marks)

- (c) *Amit, who has vast experience in the area of managing a steel manufacturing company for more than 20 years and he has a qualification of MBA from the Indian Institute of Management, Ahmedabad. He is also a qualified Chartered Accountant. PQR Private Limited, engaged in the business of steel manufacturing, appointed Amit as Managing Director for life time, The Articles of Association of the Company provides for appointment of managing director for life time. Examine, in the light of the provisions of the Companies Act, 2013, whether such appointment is valid ? What would be your answer, if the company is a Government company in which he is appointed for the period till he retires from the Government service pursuant to such provision in the Articles of Association of the company ?*

(5 marks)

- (d) *Diamond Ltd. issued a notice for holding its annual general meeting on 5th September, 2023. The notice was sent to all members on 14th August, 2023 through e-mail which was received by them on the same day. Suneeta, who is a member of the company, holding 10% of share capital, alleged that the company has defaulted the provisions of the Companies Act, 2013 with regard to the length of notice and such meeting was not validly called. Referring to the provisions of the Companies Act, 2013, examine, whether the length of notice convening the annual general meeting is valid ? What will be your answer, if Diamond Ltd. is a section 8 company (i. e., a company not for profit) ?*

(5 marks)

Answer 4(a)

- (i) *Meaning of proxy* : Under Section 105(1) of the Companies Act, 2013, any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf. However, a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

As per rule 19 of the Companies (Management and Administration) Rules, 2014, a person can act as proxy on behalf of members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying voting rights:

A member holding more than ten percent, of the total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall not act as proxy for any other person or shareholder.

Circumstances where a proxy / representative is counted for quorum:

- 1) Para 3.2 of SS-2 stipulates that a duly authorized representative of President of India or the Governor of the State shall be deemed to be a member personally present and enjoys all the rights of a member present and enjoys all the rights of a Member present in person. Such a representative is counted for quorum in a General Meeting.
 - 2) According to proviso to Section 97(1) of the Act, where default is made in holding the Annual General Meeting of a company as per Section 96 of the Act, the National Company Law Tribunal (NCLT) may order that one member present in person or by proxy will constitute quorum.
 - 3) Again, according to proviso to Section 98(1) of the Act, where it is impracticable to call a General Meeting as per the Act or the Articles, NCLT may order that one member present in person or by proxy will constitute quorum.
- (ii) The concept of proxy is alien to meetings of the Board. A director has only two options —
1. to attend the meeting of the Board of Directors either in person or by video conference; or
 2. to absent himself from the Board Meeting with or without the permission of the Chairman.

A director cannot appoint a proxy to attend the meeting of the Board on his behalf.

Answer 4(b)

As per second proviso to section 149(1) read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014, any vacancy in the office of women director shall be filled by the board at the earliest but not later than-

- i. Immediately in the next board meeting; or
- ii. 3 months from the date of such vacancy

Whichever is later.

In the given case, vacancy in the office of women director arose on 15th July, 2023 and vacancy was filled by the Board in the board meeting held on 16th September, 2023. The period of three months will expire on 15th October, 2023. The Board has filled the vacancy well before the expiry of three months i.e., 15th October, 2023. Thus, appointment of Sanchi as a women director is as per the provision of the Companies Act, 2013.

If, Sanchi is appointed as a women director in the board meeting held on 1st October, 2023, then also her appointment is within the provisions of the Companies Act, 2023, as her appointment is before the expiry of 3 months i.e., 15th October, 2023.

Answer 4(c)

Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. Further, a company shall not appoint or reappoint any person as its Managing Director, Whole Time Director or Manager for a term exceeding five years at a time and no reappointment shall be made earlier than one year before the expiry of his term. Section 196(2) relates to term of managing director not to exceed five years. Section 196(2) applicable to all companies whether public or private, but is not applicable to Government Company.

With reference to above provisions, in the given case, if Amit is appointed as Managing Director for life time in PQR Private Limited then such appointment is in contravention of section 196(2). PQR Pvt. Ltd. cannot appoint Amit as Managing director for a period exceeding five years at a time.

If the Company is a Government Company, then section 196(2) is not applicable vide Notification No. GSR 463(E) dated 05-06-2015. In such a case, his appointment can be made for a period till he retires from Government service.

Section 6(2) of the Companies Act, 2013 states that any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be. Hence, even though articles provide the provision for appointment of Managing Director for longtime, it is contrary to the provisions of the Act and hence invalid. Therefore, in case of PQR Pvt. Ltd., MD can't be appointed for life time.

Answer 4(d)

As per section 101 of the Company Act, 2013 read with para 1.2.6 of the Secretarial Standard-2 a general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice through electronic mode shall be given in such manner as may be prescribed. Where notice of meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after, the letter containing the same is posted. Each of 21 days must be a full and complete days.

The expression "21 clear days" means that the day of service of notice and date of the meeting are to be excluded while calculating the period of 21 days. [*N.V.R. Naggappa Chettair Vs. Madras Race Club (1949) 19 Comp cas. 175 (Mad)*]

With reference to above provisions the conclusion of the given case is as under-

- 1) Date of holding the AGM is 05th September, 2023 and date of dispatch of notice through email is 14th August, 2023. So, 05th September 2023 and 14th August 2023 are to be excluded while calculating period of notice. Since, the notice has not been sent by post there is no need to add further 2 days as a transit period. The length of notice is, therefore, of 21 days which meet the requirement of law and hence, valid.
- 2) If Company is section 8 company, in such case number of days' notice required

as per section 101 of the Companies Act, 2013 is 14 days. Thus, in this case also the length of notice is valid.

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

Question 5

- (a) *Bhupesh is a director of ABC Ltd. which is a Government Company. The company has accepted deposits from public in the financial year 2020-21. As on 31st March 2022, deposits of ₹51 crore were outstanding and due date of repayment of deposit was 1st September, 2022. The financial position of ABC Ltd., turned bad and the company failed to repay the deposits which was due for repayment on 1st September, 2022 and such repayment was not made till date. Another company TNC Ltd. wants to appoint Bhupesh as a director in TNC Ltd. in its Annual General Meeting (AGM) to be held on 15th October, 2023. As a Company Secretary, advise to TNC Ltd., with reference to the provisions of the Companies Act, 2013, whether Bhupesh can be appointed as a director of TNC Ltd. ?*

(4 marks)

- (b) *The Board Meeting of Western India Fertilizers & Chemicals Ltd., an unlisted public company, with Registered Office at Mumbai, was called at 6.00 p.m. on Sunday, the 2nd April, 2023 at Shimla after issuing due notice. The total strength of the Board was 12. Position of two directors was vacant. Five directors attended the Board meeting—two directors including the chairman in person and three other directors through video conferencing from Los Angeles, USA. Having taken the first roll call and, after the chairman confirmed the presence of quorum, the internet connection of the three directors attending through video conferencing got disrupted and they did not attend the rest of the Board meeting. The chairman proceeded with the business of the meeting and declared that all the resolutions listed for the meeting were duly passed as the agenda papers and draft resolutions were already circulated to the directors along with the notice. Referring to the provisions of the Companies Act, 2013, decide the validity of the place of the board meeting and resolutions passed.*

(4 marks)

- (c) *“The role of audit committee on oversight of internal audit functions of a listed company is wider than the requirements of Companies Act, 2013”. Explaining which companies are required to constitute an audit committee and appoint an internal auditor, comment on the statement, referring to the relevant provisions of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.*

(4 marks)

- (d) *The meeting of Board of Directors (BOD) of Amarchand Lalchand Exports limited, a listed company was called on Sunday, the 9th July, 2023 for consideration of quarterly financial results. One of the directors has recently shifted his residence and his present contact details have not been provided to the company. Referring to the provisions of the Companies Act, 2013 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 explain the period of notice, mode of service of notice to all directors including the director whose changed*

contact details are not available with the company and compliance requirement of intimating the stock exchange/s.

(4 marks)

- (e) Gem Quartzite Ltd., a top 100 listed company, is having 1,20,000 equity shares of face value Rs. 100, fully paid-up. The Annual General Meeting of the company was convened on 31st August, 2023 after due notice. Fifty members holding 1,00,000 equity shares attended the meeting. The resolution to appoint Shubudhi as an independent director was put to vote. 70,000 votes (including 60,000 votes by the promoter group) were cast in favour of the resolution and 30,000 votes were cast against the resolution. The chairman declared the resolution to appoint Shubudhi as Independent Director as passed. Referring to the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, state, whether the decision of the chairman that resolution is passed is correct? State your assumptions, if any.

(4 marks)

OR (Alternate question to Q. No. 5)

Question 5A

- (i) The Annual General Meeting (AGM) of Trimetal Bearings Limited, a listed company, was called on 31st August, 2023 after issuing due notice. 120 members were personally present at the AGM. After the chairman declared the presence of quorum, a section of the members disrupted the proceedings demanding bonus shares and higher dividend. After waiting the half an hour, as the members continued to disrupt the proceedings, the chairman adjourned the AGM to 15th September, 2023. Referring to the provisions of the Companies Act, 2013, state, whether the chairman of Annual General Meeting can adjourn the meeting suo motu ?
- (4 marks)
- (ii) The COVID-19 pandemic has shifted India towards the digital businesses and the MCA and SEBI has allowed the companies to conduct their Board meetings as well as general meetings to hold virtually. As a Company Secretary answer the following questions of Board of Directors of Digital Ltd. (Listed Company) which is planning to conduct their Board meeting and General meeting through Video-Conferencing.
- (a) How to accommodate the shareholders who wants to ask questions in view of the large attendance of shareholders throughout the length and breadth of the country.
- (b) Why the proxy provisions are dispensed with in case of General meetings held through video-conferencing ?
- (c) Is it required to mention venue of the meeting in the notice ? If so, what would be the venue of the meeting, for meeting held through video conferencing?

(4 marks)

- (iii) The Board of Directors of Omega Computer Systems Limited, a listed company, consisted of twelve directors out of which the position of two directors were

vacant, The Company Secretary, under the authority of the Chairman, sent a circular resolution on 1st July, 2023 to all directors both by registered post and email. By 7th July, 2023, out of ten directors, six directors assented to the proposal while four directors (including two interested directors) requested convening a proper Board meeting to decide the issue. Referring to the provisions of Companies Act, 2013, decide, whether the resolution by circulation is passed?

(4 marks)

- (iv) *The following information is given as per audited accounts as on 31st March, 2023 :*

(Rupees in crore)

<i>Name</i>	<i>Status</i>	<i>Paid-up Capital (₹)</i>	<i>No. of Debenture-holders</i>	<i>No. of Shareholders</i>
<i>Sun Ltd.</i>	<i>Unlisted</i>	<i>125</i>	<i>Nil</i>	<i>1001</i>
<i>Moon Ltd.</i>	<i>Listed</i>	<i>575</i>	<i>1001</i>	<i>11000</i>
<i>Neptune Ltd.</i>	<i>Unlisted</i>	<i>9</i>	<i>1250</i>	<i>999</i>

With respect to above answer the following :

- (i) Which companies are required to constitute Stakeholders Relationship Committee (SRC) ?*
- (ii) What is the minimum number of meetings to be held by SRC in a financial year.*
- (iii) What is the minimum number of members in the constitution of SRC ?*
- (iv) Who can be the Chairperson of the SRC ?*

(4 marks)

- (v) *Answer the following :*

- (a) Sudipto was appointed as Director of Pragati CNC Machines Limited. He already holds directorship in nine public companies and one private company which is a subsidiary of a public company. Decide the validity of his appointment.*
- (b) Debanand did not attend any Board Meeting of Albatross Refrigeration Limited for 16 months due to a severe medical condition with the permission of the Board. Can Debanand continue to be a director in the company ?*
- (c) Ratan, a director of Amaranth Seeds Limited did not pay the last call amount of ₹ 5 lakhs for the past seven months. The Call Notice never reached him due to loss in postal transit and hence it is his contention that he is not disqualified to be a director of the company. Decide the validity of his contention.*

(4 marks)

Answer 5(a)

Section 164(2) of the Companies Act, 2013 provides that no person who is or has been a director of a company which-

- a) Has not filed financial statements or annual returns for any continuous period of 3 financial years; or
- b) Has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continuous for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Further, in case of Government Companies, section 164(2) shall not apply vide Notification No. GSR 463(E) dated 05-06-2015.

In the given case ABC Ltd., is a Government Company, so the above said section 164(2) is not applicable to ABC Ltd. In such company, directors are not disqualified for the appointment or reappointment as a director in the same company or any other company. So, Bhupesh who is a director in the Government Company is eligible to be appointed as a director in TNC Ltd.

Answer 5(b)

According to Para 1.2.2 of SS-1, the board meeting could be held at any place, on any day and at any time. Hence, conducting the meeting away from Registered Office at Shimla on a Sunday at 6.00 pm is in order. As per Para 3.3 of SS-1, directors participating through electronic mode are also counted for quorum. However, Para 3.1 of SS-I stipulates that Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.

In this case, the quorum is 1/3rd of current strength of the board (rounded off to the next higher number) or 2 directors whichever is higher. Hence, the quorum of 4 was present at 6.00 pm when the board meeting started. However, as the quorum for voting on resolutions was not present due to communication problems, the chairman cannot proceed with the Board Meeting and the resolutions thereat can't be passed at the meeting. According to Section 174 of the Companies Act, 2013 read with Para 1.1.2 of SS-1, the chairman is required to adjourn the board meeting with the concurrence of the other director present in person at the meeting, to the next week, same place, same day. Hence, all the board resolutions passed without valid quorum are void.

Answer 5(c)

Every listed company and every public company with a paid-up capital of Rs. 10 crore or more or turnover of Rs. 100 crore or more or outstanding loans of Rs. 50 crore or more is required to constitute an Audit Committee under section 177 of the Companies Act, 2013.

Every listed company and every unlisted public company having a paid-up capital of

Rs.50 crore or more or turnover of Rs. 200 crore or more or outstanding loans of Rs. 100 crore or more or outstanding deposit of Rs. 25 crore or more is required to appoint an internal auditor under section 138 of the Act read with Rule 13 of Companies (Accounts) Rules, 2014. Private companies with a turnover of Rs.200 crore or more or outstanding loans of Rs. 100 crore or more are also required to appoint an internal auditor.

The role of audit committee of a listed company is prescribed under Part C of Schedule II of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The audit committee of a listed company shall evaluate the internal financial controls and risk management systems as per section 177 of the Companies Act, 2013 and the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 [SEBI (LODR) Regulations]. In addition, the SEBI (LODR) Regulations, 2015 requires that the audit committee shall review the structure of the internal audit department, staffing, scrutiny of officials handling the internal audit department, reporting structure and frequency of conducting internal audits.

Thus, the role and scope of internal audit function in a listed company is much wider than the requirements of the Companies Act, 2013.

Answer 5(d)

Period of Notice : According to Section 173(3) of the Companies Act, 2013, read with Para 1.3.6 of SS-1, not less than 7 days of Notice in writing shall be given to every director at their address registered with the company and such Notice shall be sent by hand delivery or by registered post or by electronic means. Provided that a meeting of the Board may be called at shorter Notice to transact urgent business provided at least one independent director, if any, shall be present at the meeting.

Mode of Notice : As the meeting of Board of Director (BOD) is scheduled on 9th July, 2023, Sunday, the last date for giving Notice is 02nd of July 2023 if the Notice is sent by electronic means like email or fax.

If a director does not have an email id or the current email id of the director has not been furnished to the company, the Notice is to be sent two more days earlier by Registered Post or Speed Post by 30th June 2023.

In the absence of details of the postal or email address or any change thereto of a director, the notice of BOD meeting shall be sent by Registered Post or Speed Post by 30th June 2023 to the address appearing in the DIN registration of the director.

Compliance Requirement of Stock Exchange:

As the company is a listed company, as per Regulation 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the company shall give prior intimation to the stock exchange at least 5 working days in advance excluding the date of intimation and the date of meeting of BOD. And such intimation shall include the date of such board meeting.

Answer 5(e)

Appointment of Independent Director on the Board of a listed company requires a special resolution to be passed under Regulation 25(2A) of the SEBI (Listing Obligation

and Disclosure Requirements) Regulations, 2015. In this case, the votes cast in favour of the resolution is only 60,000 votes as against the requirement of at least 75,000 votes to pass a special resolution. Hence, the special resolution is not passed. However, with effect from 14th November, 2022, proviso to Regulation 25(2A) of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 states that where the special resolution to appoint an independent director fails to get 3/4th majority of members present and voting, if-

- a. The votes cast in favour of the resolution exceed the votes cast against the resolution and
- b. The votes cast by the public shareholders in favour of the resolution is more than the votes cast against the resolution the independent director is deemed to be appointed.

In this case, the votes cast in favour of the resolution by public shareholders is only 10,000 votes whereas the votes cast against the appointment by public shareholders is 30,000 votes. Hence, the requisite condition fails.

Hence, the decision of the Chairman to declare that Shubudhi is appointed as Independent Director is not correct. The independent director has not been appointed as per the provisions of the aforesaid regulations.

Answer 5A(i)

Para 15.1 of SS-2 provides that a duly convened general meeting shall not be adjourned unless the circumstances so warrant. The chairman may, at his discretion, adjourn the general meeting in the event of disorder or other like causes when it becomes impossible to conduct the general meeting and complete its business.

Demand for more dividend and issue of frequent bonus shares is a common occurrence in the AGMs of many companies. However, the members hardly ever disrupt the proceedings of the General Meeting. In this case, even after half an hour, order is not restored, the chairman can adjourn the AGM. Thus, the action of chairman to adjourn the AGM suo motu is well within his powers and is in order.

Answer 5A(ii)

The Ministry of Corporate Affairs (MCA) and Securities and Exchange Board of India (SEBI) has allowed the companies to conduct their Board meetings as well as hold general meetings virtually. As a Company secretary the following are the answers of the questions asked by the Board of the Digital Ltd., which are planning to conduct their Board meeting and General meeting through video conferencing -

- a. In the notice of the AGM, it may be mentioned that if any member wants to speak, they may get their names registered with the company and it will be at the discretion of the chairman to allow the speakers to speak depending upon the availability of time.

(As per Para 5.2 of SS-2, the Chairman shall provide a fair opportunity to Members who are entitled to vote to seek clarifications and/or offer comments related to any item of business and address the same, as warranted.)

- b. As per Annexure XX of SS-2 Procedure to conduct General Meetings through VC or OAVM, it is stipulated that in case of Video Conferencing meeting there is no question of proxy attendance. A shareholder can himself attend the general meeting from wherever he is located. Same applies to the case with e-voting. In case of e-voting also there is no proxy to vote on behalf of the shareholder.
- c. Yes, place of meeting shall be provided in the Notice. In case of virtual meetings deemed venue is to be given.

Answer 5A(iii)

According to Section 175 of the Companies Act, 2013, a company may pass resolutions by circulation. However, no resolution by circulation shall be deemed to have been passed unless the resolutions have been circulated in draft form together with necessary papers to all directors at their registered address in India by hand delivery or by speed post or by courier or through email. The resolution by circulation must be passed by majority of directors entitled to vote. In this case, two interested directors are not entitled to participate or vote on the resolution. As six out of eight eligible directors, have approved the resolution, in an ordinary course, the resolution by circulation is deemed to be passed.

According to Para 6.5 of SS-1, passing of Resolution by circulation shall be considered as if it had been passed at a duly convened Meeting of the Board.

However, as per Para 6.3.2 of SS-1, if not less than one third of the total number of directors of the company require that a resolution must be decided only at a duly convened Board meeting, the Chairman should convene a Board Meeting to decide on the issue.

Interested directors are also entitled to demand that a circular resolution be decided in a regular Board Meeting.

As four directors including two interested directors have requested convening a proper Board Meeting to consider the issue which is more than 1/3th of the current strength of the Board, the chairman has no option other than calling a Board Meeting to decide the issue.

Answer 5A(iv)

Answer of the given question is as below under the provisions of the Companies Act, 2013-

- i. Section 178(5) of the Companies Act, 2013 provides the constitution of the Stakeholders relationship committee. The Board of directors of company which consist of more than 1000 shareholders, debenture holders, deposit holders and any other security holders at any time during a financial year shall constitute a Stakeholders relationship Committee. All Company i.e., Sun Ltd., Moon Ltd. and Neptune Ltd. meets the above criteria. Hence, all are required to constitute SRC.
- ii. As per SS-1, Stakeholders Relationship Committee shall meet as often as necessary subject to the minimum number and frequency prescribed any law or any authority or as stipulated by the Board. Under the regulation 20(3A) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 [SEBI (LODR)

Regulations], the Stakeholders Relationship Committee shall meet at least once in a year.

- iii. As per Section 178(5) of the Companies Act, 2013, Stakeholders Relationship Committee shall consist of chairperson who shall be a non-executive director and such other members as may be decided by the Board. Under Regulation 20 of SEBI (LODR) Regulations, 2015 the listed company shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders, and other security holders. It shall consist of at least 3 directors, with at least 1 being an independent director.
- iv. As per Section 178(5) of the Companies Act, 2013, the chairperson of this committee shall be a non-executive director.

Answer 5A(v)

- a. According to Section 2(71) of the Companies Act, 2013, a subsidiary of a public company is deemed to be a public company even when it continues as a private company in its Articles. A director can hold a maximum of 10 directorships in public companies as per Section 165(1) of the Act and as per its Explanation I — For reckoning the limit of public companies in which a person can be appointed as director, Directorship in private companies that are either holding or subsidiary company of a public company shall be included. Sudipto is already holding directorship in 10 public companies including one private company which is deemed to be a public company. Hence, Sudipto cannot be appointed as director in Pragati CNC Machines Limited. His appointment is invalid.
- b. According to Section 167(1)(b) of the Act, the office of director is vacated when he absents himself from all the meetings of the Board of Directors (BOD) held during the period of 12 months with or without seeking leave of absence from the company. Hence, despite his medical condition, the position of directorship of Debanand in Albatross Refrigeration Limited has become vacant and he cannot continue to be a director of the company.
- c. Ratan cannot take refuge in the fact that he has not received the final call Notice from the company due to loss in postal transit. A director of a company has collective responsibility for all the decisions of the Board of Directors. Call Notice is sent with the approval of the Board. All the decisions of BOD are circulated to all the Directors whether they attended the meeting of BOD or not. Hence, Ratan cannot take refuge under the non-receipt of call Notice. He stands disqualified from holding directorship in Amaranth Seeds Limited under section 164(1)(f) of the Act, as he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call.

PART III

Question 6

- (a) *A newly qualified Company Secretary has just started practice. The first assignment he received was certification of Annual Return of an existing listed company. He wants to know from you whether communicating with the earlier company secretary of the listed company about this assignment is mandatory*

and also the permitted mode of communication viz., telephone, certificate of posting, SMS, WhatsApp message and registered post acknowledgment due (RPAD). Referring to the provisions of the Companies Act, 2013 :

- (i) *Advise, a newly qualified Company Secretary.*
 - (ii) *Will your answer differ, if the assignment is in respect of a certification of Change of Directors or filing of Annual Financial Statements ?*
- (b) *State those circumstances, under which a "postal ballot form" can be considered invalid according to the provisions of Secretarial Standard-II.*

(5 marks each)

Answer 6(a)

- i. According to Clause 8 of Part I of Schedule I of the Company Secretaries Act, 1980, a company secretary in practice shall be deemed to be guilty of professional misconduct if he accepts the position of company secretary in practice (PCS) which was previously held by another PCS without first communicating with the previous practicing company secretary in writing.

Communication with the previous PCS to be effective shall be in writing and shall fulfill the requirements of Section 114 of Indian Evidence Act, 1872. This is to ensure the proof of delivery to the previous PCS. Oral communication is no communication. Hence, informing the previous PCS over telephone is not permitted under Clause 8 of Part I of First Schedule of CS Act and the current PCS shall be guilty of professional misconduct under Clause 8 of Part I of First Schedule of CS Act, 1980.

However, use of tools of modern technology like WhatsApp is permitted subject to the condition that the current PCS taking up the assignment is able to establish that the message was delivered to the previous PCS indicating the details of assignment being taken over by him.

In a decided case *I.S.Bhatti v. Council of ICAI*, the Rajasthan High Court ruled that sending a letter to the previous incumbent by certificate of posting does not fulfill the requirements of Clause 8 of Part I of Schedule I as the positive proof of delivery of the letter to the addressee as required u/s 114 of Indian Evidence Act, 1872 are not fulfilled.

The communication was by SMS or by certificate of posting. However, sending a letter to the previous PCS by registered post acknowledgement due (RPAD) is permitted.

- ii. Accepting the position of PCS and sending a communication to the earlier incumbent PCS arises only in case of exclusive areas of practice of a PCS. For example, attestation of certificate in Form MGT-8 or Annual Return of a company in Form MGT-7 u/s 92 of the Companies Act, 2013 is the exclusive domain of PCS. Hence, sending a prior communication to the earlier PCS is not mandatory under Clause 8 of Part I of First Schedule of CS Act for certifying routine forms like DIR-12, AOC-4, AOC-4-XBRL which are permitted to be certified by any practicing professionals including PCA, PCA (Cost).

Answer 6(b)

As per para of 16.5.3 of Secretarial Standard-II, a postal ballot form shall be considered invalid if:

- a) A form other than one issued by the company has been used;
- b) It has not been signed by or on behalf of the member;
- c) Signature on the postal ballot form doesn't match the specimen signature with the company;
- d) It is not possible to determine without any doubt the assent or dissent of the member;
- e) Neither assent nor dissent is mentioned;
- f) Any competent authority has given directions in writing to the company to freeze the voting rights of the member;
- g) The envelope containing the postal ballot form is received after the last date prescribed;
- h) The postal ballot form, signed in a representative capacity, is not accompanied by a certified copy of the relevant specified authority;
- i) It is received from a member who is in arrears of payment of calls;
- j) It is defaced or mutilated in such a way that its identity as genuine form cannot be established;
- k) Member has made any amendment to the Resolution or imposed any condition while exercising his vote.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART A

Question 1

(a) *Alok Nidhi Ltd., a Nidhi Company, desires to appoint M as the Director of the company. M has been convicted of an offence involving moral turpitude and sentenced to imprisonment for a period of six months, 4 years ago. Alok Nidhi Ltd. seeks your advice for appointment of M as Director of the Company. Referring the provisions for appointment of Directors in a Nidhi Company under Nidhi Rules, 2014, advise Alok Nidhi Ltd.*

(5 marks)

(b) *KC Pvt., Ltd. has been incorporated recently under the Companies Act, 2013. The Directors of KC Pvt. Ltd. seeks your advice on the requirement in context of 'publication of name and address of the company'. Referring the provisions of section 12(3) of the Companies Act, 2013, advise KC Pvt. Ltd.*

(5 marks)

(c) *KPS Trust is a trust registered under the Indian Trusts Act, 1882. The trust desires to register itself as a Company Limited by Guarantee under Section 8 of the Companies Act, 2013. Describe the documents required to be submitted by KPS Trust for registration as a company limited by guarantee under Section 8 of the Companies Act, 2013.*

(5 marks)

(d) *Karan and Rajdeep two friends decided to start a business of Biryani Chain, it's a start up with some blend of technology for which they aim to collect funding from Venture Capitalists. While Karan is of the opinion to incorporate Limited Liability partnership, Rajdeep wants to go ahead with formation of Private Limited Company. As a Professional Consultant, you are required to advise on the basis of merits of both the proposals as which type of organization is most suitable as per the requirement ?*

(5 marks)

Answer 1(a)

Rules relating to directors of Nidhi Company have been given in Rule 17 of Nidhi Rules 2014. As per Rule 17(5), the person to be appointed as director shall comply with requirements of Sub-section (4) of Section 152 of the Companies Act, 2013 and shall not

have been disqualified from appointment as provided in Section 164 of the Companies Act, 2013.

As per Section 164(1)(d) of the Companies Act, 2013, a person shall not be eligible for appointment as a director of a company if such person has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company.

Since M has been convicted of an offence involving moral turpitude and sentenced to imprisonment for a period of six months and a period of five years has not elapsed from the date of expiry of the sentence, M is not eligible for appointment as director of Alok Nidhi Ltd.

Answer 1(b)

According to Section 12(3) of the Companies Act, 2013, the company shall —

- (a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefore are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
- (b) have its name engraved in legible characters on its seal, if any;
- (c) get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
- (d) have its name printed on negotiable instruments such as hundies, promissory notes, bills of exchange and such other document as may be prescribed.

According to Rule 26 of the Companies (Incorporation) Rules, 2014, every company which has a website for conducting online business or otherwise, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and the name of the person who may be contacted in case of any queries or grievances on the landing/home page of the said website. The Central Government may as and when required, notify the other documents on which the name of the company shall be printed.

However, where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years.

Further, in case of One Person Company, the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Ministry of Corporate Affairs (MCA) has clarified that display of its name in English in addition to the display in the local language will be a sufficient compliance with the requirements of the section.

If any default is made in complying with the requirements of Section 12 of the Companies Act, 2013, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

Accordingly, KC Pvt. Ltd. may be advised to comply with the above-mentioned provisions.

Answer 1(c)

In accordance with Section 366 of the Companies Act, 2013 read with Rule 3 of the Companies (Authorised to Registered) Rules, 2014, the following documents are required in case an application is made by a trust for registration as a company limited by guarantee under section 8 of the Companies Act, 2013-

- (i) a list showing the names, addresses and occupations of all persons, who on a day, not being more than six clear days before the day of seeking registration, were trustees of the trust with proof thereof;
- (ii) a list showing the particulars of persons proposed as the first directors of the company, along with DIN, passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;
- (iii) a certified copy of the certificate of registration of the trust and the trust deed;
- (iv) No Objection Certificate from secured creditor along with charge holder, if applicable;
- (v) details of the objects of the company along with a declaration from all the members that the restrictions and prohibitions as mentioned in clause (b) and clause (c) of sub-section (1) of section 8 of the Companies Act, 2013 shall be complied.

An undertaking from all the trustees providing that in the event of registration as a company under Part I of Chapter XXI of the Companies Act, 2013, necessary documents or papers shall be submitted to the registering or other authority with which the company was earlier registered, for its dissolution.

The list of members and directors and any other particulars relating to the company which are required to be delivered to the Registrar shall be duly verified by the declaration of any two or more proposed directors.

Accordingly, KPS Trust is advised to submit the above-mentioned documents for registration as a company limited by guarantee under Section 8 of the Companies Act, 2013.

Answer 1(d)

Private Companies

A Private Limited company is legally recognized and generally favoured by investors.

Private Limited Company can bring significant benefits to startups. Firstly, it offers limited liability protection, shielding the personal assets of the founders from the company's liabilities and financial risks. This provides a sense of security and encourages entrepreneurs to take calculated business risks including, a Private Limited Company enjoys a separate legal entity status, instilling credibility and trust among investors, partners, and customers. Startups often require external funding, and being a registered company enhances their chances of attracting investors and securing financial support. However, it has stricter compliance and may have a higher cost of incorporation.

Limited Liability Partnership

Whereas LLP is easier to start and manage and the process has fewer formalities. It has a lesser cost of registration as compared to a Company. LLP have its separate existence other than its partners. LLP can be started with minimum capital. The partners would have limited liability to their agreed contribution in the LLP. A LLP whose turnover does not exceed, in any financial year, forty lakh rupees, or whose contribution does not exceed twenty-five lakh rupees shall not be required to get its accounts audited.

However, the main drawback of an LLP is that if a partner wants to transfer his ownership rights, then he has to obtain the consent of all the partners. A limited liability partnership must have at least two members. If one member chooses to leave the partnership, the LLP may have to be dissolved (in case mentioned in the LLP Agreement). It is also important to note that FDI in LLP is allowed only with the prior approval of the Reserve Bank of India (RBI).

Perpetual existence of a Private Limited Company ensures the continuity of the startup's operations, even if the founders change or new investors join. This stability is crucial for long-term planning, execution, and sustainable growth, flexibility of raising capital is another advantage for startups, Private Limited Companies can issue shares, bring in investors, and access various funding options like bank loans or venture capital, enables startups to obtain the necessary financial resources for expansion and market penetration.

Hence, the registration of a Private Limited Company provides startups with a strong legal framework, access to funding, credibility, and growth opportunities.

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

Question 2

- (a) *The Articles of Association of RC Stock Exchange Ltd., registered under the Companies Act, 2013, has the provision empowering the Board of Directors to expel any member of the stock exchange. In accordance with this provision, the Board of Directors of RC Stock Exchange Ltd. expelled K being the member of RC Stock Exchange Ltd. K objected to such expulsion stating that it is against the provisions of the Companies Act, 2013. In the light of decided case law, examine the validity of objection of K.*

(4 marks)

- (b) *XPS Limited, a company of Chennai, have issued non-convertible debentures and got listed their debt securities on BSE. After listing of the above-mentioned debentures, the Managing Director prefers to use the word "Listed" under its*

name. Can XPS Limited use it ? Also enlist the types of Companies which are not to be considered as Listed Companies.

(4 marks)

- (c) *Shree Vishnu Permanent Fund Limited, is a Nidhi Company incorporated on 17th August, 2023. The promoters being the new business entrant is not aware to file any kind of declaration. Hence the management seeks your advice to explain what form to be filed as Declaration of Nidhi Company and also explain the time limit of such filing. Further explain the consequences of non-filing of such declaration.*

(4 marks)

- (d) *Rakesh and Vishesh are in the process of forming a new company under the name of "Money Grow Private Limited". The Company would be an NBFC. While drafting the object clause in Memorandum, a clause related to power to sell and dispose of the whole of a company's undertaking was not mentioned. Later the management argues that this power is implied power of Board and need not be mentioned separately. Is management right in its contention ? Also mention powers which are not considered as "Implied Powers."*

(4 marks)

- (e) *Plastocare Limited, a Public Limited Company wanted to appoint Ashish Kothari as its Managing Director, for which a notice of EGM has been sent to all the members. However, the notice did not contain any information about the interest of other Directors in such appointment. Does this missing information render the notice as invalid ? Will your answer be changed in case the company is a Govt company ?*

(4 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Describe the purposes for which the Societies can be formed under Section 20 of The Societies Registration Act, 1860.*
- (ii) *What do you mean by 'Systemically Important Core Investment Company (CIC-ND-SI)' ?*
- (iii) (a) *Mudra Nidhi Limited, a Chennai based company, wants to acquire another company Prakrit Private Limited through change in management, can it do so ? Will your answer change if it wants to acquire Prakrit Private Limited by way of purchase of securities ?*
- (b) *'Every Nidhi Company shall have to ensure certain compliance requirements within one year of incorporation. Enumerate those compliance requirements to be ensured within one year of incorporation.*
- (iv) *Global Pen and Plastic Limited was incorporated on 01st August, 2017. The company wishes to acquire the Start-up status. The management approached a Practising Company Secretary for the assignment. Prepare a Board Note guiding the management as to when an entity will be considered a Start-up.*

- (v) *RICE group of companies wants to establish an SPV. It has 4 companies and 2 LLPs in the group. The management is in dilemma whether to use a company or LLP as an SPV. As an experienced professional in Business Collaboration matter, advise the management as to which form of organization would be best to register as an SPV ?*

(4 marks each)

Answer 2(a)

Section 6 of the Companies Act, 2013 provides that: -

- a. the provisions of the Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
- b. any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

In the light of above provisions, if there is a provision in the Articles empowering the Directors of the company to expel any member of the company under any of the given conditions, then such a provision shall be totally inconsistent with the provisions of Section 6 of the Companies Act, 2013. It is opposed to the fundamental principles of the company's jurisprudence and is ultra vires of the company.

However, the Stock exchanges, registered under the provisions of the Companies Act, 2013 can carry such a provision in its Articles. The regulation of stock exchanges is mainly governed by Securities Contracts (Regulation) Act, 1956 (SCRA) and SEBI, Act, 1992 which are Special Acts. Hence, the Articles of Stock Exchange may provide for additional matters as per SCR Act, which may not be possible for inclusion in the Articles of a company, as per the provisions of the Companies Act, 2013. [*Madras Stock Exchange Ltd. v. S.S.R. Rajkumar (2003)*].

In view of the above stated case law, the objection of K is not valid.

Answer 2(b)

Section 2(52) of the Companies Act, 2013 stipulates that a listed company means a company which has any of its securities listed on any recognized stock exchange. Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

For the purposes of the proviso to clause (52) of section 2 of the Companies Act, 2013, the following classes of companies shall not be considered as listed companies, namely: -

- a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their —
 - (i) non-convertible debt securities issued on private placement basis in terms

of SEBI (Issue and Listing of Debt Securities) Regulations, 2008 [Now the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021]; or

- (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 [Now the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021]; or
- b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 [Now the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021];
- c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in Section 23(3) of the Companies Act, 2013.

Assumption 1: Issuance of non-convertible debentures on private placement

Since XPS Limited, is a public company which has issued non-convertible debentures on private placement basis and got listed its debt securities on BSE, shall not be considered as Listed Company in accordance with the above-mentioned provisions and hence cannot use the word Listed in its name.

Assumption 2: Issuance of non-convertible debentures through public issuance

Since XPS Limited, is a public company which has issued non-convertible debentures on public issuance basis and got listed its debt securities on BSE, shall be considered as Listed Company in accordance with the above-mentioned provisions and hence can use the word Listed in its name.

Answer 2(c)

Rule 3B of the Nidhis Rules, 2014 provides that on and after commencement of Nidhi (Amendment) Rules, 2022, public company desirous to be declared as a Nidhi shall apply, in Form NDH-4, within a period of one hundred twenty days of its incorporation for declaration as Nidhi, if it fulfils the following conditions, namely:-

- (i) it has not less than two hundred members; and
- (ii) it has Net Owned Funds of twenty lakh rupees or more.

The company shall also attach, along with Form NDH-4, the declaration with regard to fulfilment of fit and proper person criteria, as per this sub-rule, by all the promoters and directors of the company.

In case a company does not comply with the requirements mentioned above, it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of allotment).

If a company falling under rule 2 of the Nidhis Rules, 2014, contravenes any of the provisions of the rules prescribed herein, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees,

and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

Accordingly, Shree Vishnu Permanent Fund Limited is advised.

Answer 2(d)

The powers exercisable by a company are to be confined to the objects specified in the memorandum. While the objects are to be specified, the powers exercisable in respect of them may be express or implied and need not be specified.

Every company may necessarily possess certain powers which are implied, such as, a power to appoint and act through agents, and where it is a trading company, a power to borrow and give security for the purposes of its business, and also a power to sell. Such powers are incidental and can be inferred from the powers expressed in the memorandum. The principle underlying the exercise of such powers is that a company, in carrying on the business for which it is constituted, must be able to pursue those things which may be regarded as incidental to or consequential upon that business.

Powers which are not Implied

The following powers have been held 'not to be implied' and it is, therefore, prudent to include them expressly in the objects clauses:

1. Acquiring any business similar to the company's own business;
2. Entering into an agreement with other persons or companies for carrying on business in partnership or for sharing profit, joint venture or other arrangements. Very clear powers are necessary to justify such transactions;
3. Taking shares in other companies having similar objects;
4. Taking shares of other companies where such investment authorizes the doing indirectly that which will not be *intra vires* if done directly;
5. Promoting other companies or helping them financially;
6. A power to sell and dispose of the whole of a company's undertaking;
7. A power to use funds for political purposes;
8. A power to give gifts and make donations or contribution for charities not relating to the objects stated in the memorandum;
9. Acting as a surety or as a guarantor.

Therefore, in light of the above stated points, the contention of the management is not right as the clause related to power to sell and dispose of the whole of a company's undertaking is not an implied power of Board and should be written expressly in the objects clause of the Memorandum of Association.

Answer 2(e)

As per provisions of first proviso to Section 196(4) of the Companies Act 2013, a notice convening the Board or General Meeting for considering appointment of Managing Director shall include the terms and conditions of such appointment, remuneration payable

and such other matters including, interest, of a Director or Directors, in such appointment, if any. Hence, the notice not containing the information about the interest of other directors in the appointment of Mr. Ashish Kothari as Managing Director by Plastocare Limited is invalid.

However, government companies are exempt from the provisions of Section 196(4) of the Companies Act, 2013. Therefore, if Plastocare Limited would have been a Government Company the notice would not be rendered invalid due to the missing information about the interest of other directors in the appointment of Mr. Ashish Kothari as Managing Director of the Company.

Answer 2A(i)

According to Section 20 of the Societies Registration Act, 1860, societies can be formed for the following purposes:

- (i) Charitable societies,
- (ii) the military orphan funds or societies established at the several presidencies of India,
- (iii) societies established for the promotion of science, literature, or the fine arts for instruction, the diffusion of useful knowledge,
- (iv) The diffusion of political education,
- (v) the foundation or maintenance of libraries or reading-rooms for general use among the members or open to the public,
- (vi) public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments, or designs.

Besides these purposes, the respective State Governments may provide for any other objects by their legislations.

Answer 2A(ii)

Systemically Important Core Investment Company (CIC-ND-SI): CIC-ND- SI is an NBFC carrying on the business of acquisition of shares and securities which satisfies the following conditions: -

- (a) It holds not less than 90% of its Total Assets in the form of investment in equity shares, preference shares, debt or loans in group companies;
- (b) Its investments in the equity shares (including instruments compulsorily convertible into equity shares within a period not exceeding 10 years from the date of issue) in group companies constitutes not less than 60% of its Total Assets;
- (c) It does not trade in its investments in shares, debt or loans in group companies except through block sale for the purpose of dilution or disinvestment;
- (d) It does not carry on any other financial activity referred to in Section 45I(c) and 45I(f) of the RBI Act, 1934 except investment in bank deposits, money market instruments, government securities, loans to and investments in debt issuances of group companies or guarantees issued on behalf of group companies;

- (e) Its asset size is Rs. 100 crore or above; and
- (f) It accepts public funds.

Answer 2A(iii)

- (a) Pursuant to the provisions of Rule 6(d) of the Nidhi Rules, 2022, no Nidhi shall acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management.

Therefore, Mudra Nidhi Limited cannot acquire Prakrit Private Limited either by purchase of securities or through change in management.

- (b) According to Rule 5 of the Nidhi Rules, 2014, every Nidhi shall within a period of one year from the date of its incorporation, ensure that it has:
 - i. Not less than two hundred members;
 - ii. Net Owned Funds of ten lakh rupees or more;
 - iii. Unencumbered term deposits of not less than ten per cent of the outstanding deposits as specified in rule 14; and
 - iv. Ratio of Net Owned Funds to deposits of not more than 1:20.

However, the provisions of this rule shall not be applicable for the companies incorporated as Nidhi on or after the commencement of the Nidhi (Amendment) Rules, 2022.

Further, Nidhi Companies that are incorporated on or after the commencement of Nidhi (Amendment) Rules, 2022 i.e., 19th April 2022, must comply with the following requirements within 120 days of their incorporation –

- It shall have at least 200 members.
- The Net Owned Funds of the company shall be equal to Rs. 20 lakhs or more.

Answer 2A(iv)

To,
The Board of Directors
Global Pen and Plastic Limited

Start-Up as defined vide Notification No. G.S.R. 127 (E), dated 19th February 2019 by DPIIT as:

An entity shall be considered as a Start-up:

1. Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
2. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs 100 crore.

3. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.

An entity shall cease to be a Startup on completion of ten years from the date of its incorporation/registration or if its turnover for any previous year exceeds one hundred crore rupees.

In the given case, since the entity being a Public Limited Company hence cannot be treated as a Start Up.

(Name)

(Designation)

Answer 2A(v)

A Limited Liability Partnership (LLP) Firm combines the simplicity of a partnership firm with the advantage of limited liability as available in the case of a company. Before the passing of the Limited Liability Partnership Act in 2008, a foreign company intending to participate in tender or some other project in consortium with an Indian company had only the option of setting up a company (whether private or public) as a Special Purpose Vehicle (SPV). The disadvantage was that winding up such a company is difficult.

LLP as an SPV has the advantage of being easy to wind up after the purpose is over and the liability of the partner is limited. Key advantages of using an LLP as an SPV as compared to a company are as follows:

- i. Low cost of incorporation of an LLP;
- ii. Flexibility of rules of management and governance based on Agreement between the contracting Partners;
- iii. Partners can be companies while management is by Designated Partners who are individuals. By this, there is divorce between ownership and management;
- iv. Low annual maintenance cost;
- v. There may not be any necessity of getting the accounts audited before the project takes off;
- vi. An LLP firm does not have to pay Dividend Distribution Tax (DDT) on share of profits transferred to the Partners, which makes it tax efficient;
- vii. Voluntary winding of an LLP firm which has no creditors is very easy and can be done without intervention of any court or tribunal;
- viii. Investment in LLP Firms is permitted only in sectors in which 100% FDI is permitted through automatic route without any performance linked conditions.

Both company and LLP are suitable mode of SPV. However, in view of the above, it is advisable to use any of the two LLPs that are in the group instead of the companies, to register as an SPV.

PART B**Question 3**

- (a) *TM Power Ltd. is supplying power to the public. The workmen and management are planning for a strike and lock-out respectively. Examining the meaning of Public Utility Services, describe the prohibition of strikes and lock-outs in a Public Utility Service under the Industrial Disputes Act, 1947.*
- (b) *10 friends decided to start a banking business by incorporating a banking company as 8 of them are having banking experience. They have decided to float a small finance bank. Subsequently they applied for licensing to RBI. However, RBI contended that all the required conditions for a small finance bank have not been followed. They approached you to guide on the matter. Prepare the note to management explaining them the required conditions to be fulfilled to start a banking company.*
- (c) *Kavita is planning to write a Poetry-Book and intend to apply for its copyright. However, the copyright has not been granted as of now. She wants to assign the copyright to her friend in the current situation and she is not conversant with the concept of assignment of copyright. Brief her about various provisions pertaining to the assignment of copyright explaining her whether she can assign the same prior to holding copyright ?*
- (d) *EM Finvest Ltd. desires to obtain the Non-Banking Financial Company (NBFC) License from the Reserve Bank of India (RBI). The company approaches to seek your advice on the documents required to be submitted to RBI for obtaining NBFC License. Advise EM Finvest Ltd.*

*(5 marks each)***Answer 3(a)**

In terms of the Industrial Disputes Act, 1947, the public utility service means-

- i. any railway service or any transport service for the carriage of passengers or goods by air;
- ii. any service in, or in connection with the working of, any major port or dock;
- iii. any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;
- iv. any postal, telegraph or telephone service;
- v. any industry which supplies power, light or water to the public;
- vi. any system of public conservancy or sanitation;
- vii. any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification.

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension.

Prohibition of strikes and lock-outs

According to Section 22 of the Industrial Disputes Act, 1947:

- (1) No person employed in a public utility service shall go on strike in breach of contract-
 - (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
 - (b) within fourteen days of giving such notice; or
 - (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
 - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- (2) No employer carrying on any public utility service shall lock-out any of his workmen-
 - (a) without giving them notice of lock-out as hereinafter provided, within six weeks before locking-out; or
 - (b) within fourteen days of giving such notice; or
 - (c) before the expiry of the date of lock-out specified in any such notice as aforesaid; or
 - (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.
- (3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.
- (4) The notice of strike shall be given by such number of persons to such person or persons and in such manner as may be prescribed.
- (5) The notice of lock-out shall be given in such manner as may be prescribed.
- (6) If on any day an employer receives from any person employed by him any such notices or gives to any persons employed by him any such notices, he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

Answer 3(b)

To

The Board of Directors
XYZ Banking Limited

To be registered as a banking company, the entity must be a company registered under the Companies Act, 2013 or previous company laws or a foreign company having the prescribed minimum paid up capital. The minimum paid-up voting equity capital for a

bank shall be Rupees 500 Crore for universal banks and 200 Crore Rupees for small finance banks.

According to Section 12 of the Banking Regulation Act, 1949-

- I. banking company shall not carry on business in India, unless it satisfies the following conditions, namely that:—
 - i. the subscribed capital of the company is not less than one-half of the authorised capital, and the paid- up capital is not less than one-half of the subscribed capital and,
 - ii. if the capital is increased, it complies with the conditions prescribed in this clause within such period not exceeding two years as the Reserve Bank may allow;
 - iii. the capital of such banking company consists of—
 - equity shares only; or
 - equity shares and preferences shares:

Provided that the issue of preference share shall be in accordance with the guidelines framed by the Reserve Bank specifying the class of preference shares, the extent of issue of each class of such preference shares (whether perpetual or irredeemable or redeemable), and the terms and conditions subject to which each class of preference shares may be issued. Provided further that no holder of the preference share, issued by the company, shall be entitled to exercise the voting right.

- II. Person holding shares in a banking company shall not, in respect of any shares held by him, exercise voting rights on poll in excess of ten per cent of the total voting rights of all the shares-holders of the banking company. Provided that the Reserve Bank may increase, in a phased manner, such ceiling on voting rights from ten per cent to twenty-six per cent.
- III. Every chairman, managing director or chief executive officer by whatever name called of a banking company shall furnish to the Reserve Bank through that banking company returns containing full particulars of the extent and value of his holding of shares, whether directly or indirectly, in the banking company and of any change in the extent of such holding or any variation in the rights attaching thereto and such other information relating to those shares as the Reserve Bank may, by order, require and in such form and at such time as may be specified in the order.

(Name)

(Designation)

Answer 3(c)

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or

any part thereof. The assignment mentions the rights, duration, the territorial limits of the assignment and the royalty payable thereon and should be in writing signed by the assignor or by his duly authorized agent.

The Copyright Act, 1957 prescribes that a prospective owner of a copyright in future work may assign the copyright, to any person, either wholly or partially, although the assignment shall take effect only when the work comes into existence.

Therefore, in accordance with the above-mentioned provisions, Kavita can assign the copyright prior to holding it.

Answer 3(d)

The application for NBFC License must be submitted online and offline with the necessary documents to the Regional Office of the Reserve Bank of India. The following are the documents that need to be submitted for NBFC License:

- Information about the management.
- Certified copies of Certificate of Incorporation and Certificate of Commencement of Business in case of public limited companies.
- Certified copies of up-to-date Memorandum and Articles of Association of the company. Details of clauses in the memorandum relating to financial business.
- Copy of PAN/CIN allotted to the company.
- Directors' profile, separately filled up and signed by each director.
- Certificate from the respective NBFC/s where the Directors have gained NBFC experience.
- CIBIL Data pertaining to Directors of the company.
- Financial Statements of the last 2 years of unincorporated Bodies, if any, in the group where the directors may be holding directorship with/without substantial interest.
- Board Resolution specifically approving the submission of the application and its contents and authorizing signatory.
- Board Resolution to the effect that the company has not accepted any public deposit, in the past (specify period)/does not hold any public deposit as on the date and will not accept the same in future without the prior approval of Reserve Bank of India in writing.
- Board resolution stating that the company is not carrying on any NBFC activity/ stopped NBFC activity and will not carry on/commence the same before getting registration from RBI.
- Certified copy of Board resolution for formulation of "Fair Practices Code".
- Statutory Auditors Certificate certifying that the company is/does not accept/is not holding public deposit.
- Statutory Auditors Certificate certifying that the company is not carrying on any NBFC activity.
- Statutory Auditors Certificate certifying net owned fund as on date of the application.

- Details of Authorized Share Capital and latest shareholding pattern of the company including the percentages.
- Copy of Fixed Deposit receipt & banker's certificate of no lien indicating balances in support of Net Owned Funds.
- Details of the bank balances/bank accounts/complete postal address of the branch/bank, loan/credit facilities etc. availed.
- Last three years Audited balance sheet and Profit & Loss account along with directors & auditors report or for such shorter period as are available (for companies already in existence).
- Business plan of the company for the next three years giving details of its (a) thrust of business, (b) market segment and (c) projected balance sheets, cash flow statement, asset/income pattern statement without any element of public deposits.
- Source of the startup capital of the company substantiated with documentary evidence.
- Self-attested Bank Statement/IT returns etc.
- In addition to the above documents, more documents may be required as per the RBIs requirement for NBFC License.

Accordingly, EM Finvest Ltd. is advised.

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

Question 4

- (a) *Shantanu has invented a chemical formulation which may cause serious health issues to the public. He wishes to get the patent registered for his invention. Referring the provisions of Patents Act, 1970, examine the validity of patent application of Shantanu for his invention.*
- (b) *What do you mean by 'Casual Taxable Person' under Central Goods & Service Tax Act, 2017 ?*
- (c) *Describe the types of entities involved in the principal business of financial activity which do not require Non-Banking Financial Company (NBFC) license from the Reserve Bank of India (RBI).*
- (d) *Global Mines Limited established a coke factory in Sindhudurg, Goa. The factory is about to be operative from next month. In the meantime, the management wants to appoint one of its Directors Ashok Sinha as an occupier. Mention the information to be sent by an occupier to Chief Inspector before commencement of the factory.*
- (e) *Pixel Chemicals Private Limited has two factories, one in Madhya Pradesh and other one in Bihar. The management wants to fix different minimum wages for both the States. Is this permissible, if yes, explain the rule for fixation of different wages for different states.*

(3 marks each)

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

- (i) *What documents are required for registration of a Design as per The Design Rules, 2001 ?*
(3 marks)
- (ii) *Describe any three welfare measures to be taken for welfare of the workers under Factories Act, 1948.*
(3 marks)
- (iii) *Sanjiv Shukla plans to incorporate a company in Karnataka with 2 other persons. But none of the promoters have their DIN. Explain what are various services that are offered through integrated SPICe+ form ?*
(3 marks)
- (iv) *Santosh Agarwal is a director in Elon Dairy Limited and also in its holding company Puriton Dairy Private Limited. He wants to acquire some assets of its holding company for a consideration other than cash. Explain the related provision for the non-cash acquisition.*
(3 marks)
- (v) *Describe in brief the contents of Environmental Statement to be submitted to the concerned State Pollution Control Board (SPCB) annually.*
(3 marks)

Answer 4(a)

Section 3 of the Patents Act, 1970, stipulates that any invention which is injurious to public health, is not patentable. In the given case, Shantanu has invented a chemical formulation which may cause serious health issues to the public. Hence, in terms of the above-mentioned provision of the Patents Act, 1970, the patent application of Shantanu for his invention is invalid.

Answer 4(b)

Section 2(20) of the Central Goods & Services Tax Act, 2017 defines “casual taxable person” as a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

Thus, a casual taxable person is someone who has a business in a different state, but comes to a different state for a business purpose temporarily.

For example, a footwear dealer registered in Agra comes for an exhibition at Azad Maidan, Mumbai for participating in the exhibition, then such person would need to register as a casual taxable person at Mumbai and he will be granted registration for a maximum period of 90 days.

Answer 4(c)

The following types of entities that are involved in the principal business of financial activity do not require NBFC License from RBI:

- Housing Finance Companies — Regulated by the National Housing Bank;

- Insurance Companies - Regulated by Insurance Regulatory and Development Authority of India (IRDA);
- Stock Broking — Regulated by Securities and Exchange Board of India;
- Merchant Banking Companies — Regulated by Securities and Exchange Board of India;
- Venture Capital Companies — Regulated by Securities and Exchange Board of India;
- Companies that run Collective Investment Schemes — Regulated by Securities and Exchange Board of India;
- Mutual Funds — Regulated by Securities and Exchange Board of India;
- Nidhi Companies — Regulated by the Ministry of Corporate Affairs (MCA);
- Chit Fund Companies — Regulated by the respective State Governments.

The above types of companies have been exempted from NBFC registration requirements and NBFC regulations of RBI as they are regulated by other financial sector regulators.

Mortgage Guarantee Companies have been notified as Non-Banking Financial Companies under Section 45 I(f)(iii) of the RBI Act, 1934. Core Investment Companies with asset size of less than Rs. 100 crore, and those with asset size of Rs. 100 crore and above but not accessing public funds are exempted from registration with the RBI.

Answer 4(d)

Notice by Occupier

Section 7 of the Factories Act, 1948, provides that the occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing—

- (a) the name and situation of the factory;
- (b) the name and address of the occupier;
- (c) the name and address of the owner of the premises or building (including the precincts thereof);
- (d) the address to which communications relating to the factory may be sent;
- (e) the nature of the manufacturing process—
 - (i) carried on in the factory during the last twelve months in the case of factories in existence on the date of the commencement of this Act; and
 - (ii) to be carried on in the factory during the next twelve months in the case of all factories;
- (f) the total rated horse power installed or to be installed in the factory, which shall not include the rated horse power of any separate stand-by plant;

- (g) the name of the manager of the factory for the purposes of this Act;
- (h) the number of workers likely to be employed in the factory;
- (i) the average number of workers per day employed during the last twelve months in the case of a factory in existence on the date of the commencement of this Act;
- (j) such other particulars as may be prescribed.

Answer 4(e)

Section 3 (3) of the Minimum Wages Act, 1948 provides the provisions for the fixing or revising minimum rates of wages under this section: —

- (a) different minimum rates of wages may be fixed for—
 - (i) different scheduled employments;
 - (ii) different classes of work in the same scheduled employment;
 - (iii) adults, adolescents, children and apprentices;
 - (iv) different localities.
- (b) minimum rates of wages may be fixed by any one or more of the following wage-periods, namely: —
 - (i) by the hour,
 - (ii) by the day,
 - (iii) by the month, or
 - (iv) by such other larger wage- period as may be prescribed;

and where such rates are fixed by the day or by the month, the manner of calculating wages for a month or for a day, as the case may be, may be indicated. Provided that where any wage-periods have been fixed under section 4 of the Payment of Wages Act, 1936, minimum wages shall be fixed in accordance therewith.

Therefore, Pixel Chemical Private Limited may fix different minimum wages for two states where both factories are located i.e. one in Madhya Pradesh and other one in Bihar.

Answer 4A(i)

Documents Required for Design Registration as per the Design Rules, 2001

An application for the registration of design should be submitted along with four specimen copies of the design. A statement of novelty should also be submitted which refers to a statement of how the design is unique. Additional copies of the specimen design may be included. Further, the following documents required for design registration:

- A certified copy of the original or certified copies of extracts from disclaimers;
- Affidavits;

- Declarations; and
- Other public documents can be made available on payment of a fee.

The affidavits should be in paragraph form and should contain a declaration of truth and verifiability.

Answer 4A(ii)

Following provisions under Chapter (V) of the Factories Act, 1948 relate to the measures to be taken for the welfare of workers.

(i) Washing facilities

Section 42 provides that every factory should provide and maintain adequate and suitable washing facilities for its workers. For the use of male and female, such facilities should be separate and adequately screened. Such facilities should be conveniently accessible for all workers and be kept in a state of cleanliness. The State Government is empowered to make rules prescribing standards of adequate and suitable washing facilities.

(ii) Facilities for storing and drying clothing

Section 43 empowers the State Government in respect of any factory or class or description of factories to make rules requiring the provision, therein of (i) suitable places for keeping clothing not worn during working hours, and (ii) for drying of wet clothing.

(iii) Facilities for sitting

There are certain operations which can be performed by the workers only in a standing position. This not only affects the health of a worker but his efficiency also. According to Section 44(1), every factory shall provide and maintain suitable facilities for sitting, for those who work in standing position so that they may make use of them as an when any opportunity comes in the course of their work. If, in the opinion of the Chief Inspector, any work can be efficiently performed in a sitting position, he may direct, in writing, the occupier of the factory, to provide before a specified date such seating arrangements as may be practicable, for all workers so engaged. The State Government, may by a notification in the Official Gazette, declare that above provisions shall not apply to any specified factory or any manufacturing process.

(iv) First aid appliances

As per Section 45, the following arrangements should be made in every factory in respect of first-aid facilities. (1) Provision of at least one first-aid box or cupboard, subject to following conditions, for every 150 workers ordinarily employed at any one time in the factory. (2) It should be equipped with prescribed contents and nothing else should be stored in it. (3) It should be properly maintained and readily accessible during all working hours. (4) A responsible person who holds a certificate in first-aid treatment, recognised by the State Government should be made the in- charge of such first-aid box or cup-board. Such a person should be readily available during working hours of the factory. Where there are different

shifts in the factory, a separate person may be appointed for each shifts provided he is a responsible person and trained in first-aid treatment. (5) Where more than 500 workers are ordinarily employed in a factory, an ambulance room should be provided and maintained by every such factory. Such room should be of prescribed size containing prescribed equipment and is in charge of such medical and nursing staff as may be prescribed.

(v) Canteens

The State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen shall be provided and maintained by the occupier for the use of workers.

(vi) Shelters, rest rooms and lunch rooms

The provision of some sort of shelter is a must, where the workers can take their meals brought by them during rest interval. In every factory where more than 150 workers are ordinarily employed, the occupier should make adequate and suitable arrangements for shelters or rest rooms and lunch-room with provision of drinking water where the workers can take rest of or eat meals brought by them.

(vii) Creches

Following provisions have been made in respect of creches in the factories:

- In every factory wherein more than 30 women workers are ordinarily employed, the facility of suitable room or rooms should be provided and maintained for the use of children under the age of six years of such women.
- There should be adequate accommodation in such rooms.
- These places should be sufficiently lighted and ventilated and kept in clean and sanitary conditions.
- Women trained in the care of children and infants should be made incharge of such rooms.

(viii) Welfare officers

According to Section 49(1), in every factory wherein 500 or more workers are ordinarily employed, the occupier should employ such number of welfare officers as may be prescribed.

Answer 4A(iii)

The Companies (Incorporation) Amendment Rules, 2020 w.e.f. 23rd February, 2020 introduced new web form SPICe+ for incorporation of the Companies replacing the old e-form SPICe.

SPICe+ is an integrated Web Form replacing the earlier version of the e-forms, the form is divided in to two parts viz.:

Various Services offered through SPICe+ are:

- (i) Name Reservation;

- (ii) Incorporation;
- (iii) DIN allotment;
- (iv) Mandatory issue of PAN;
- (v) Mandatory issue of TAN;
- (vi) Mandatory issue of EPFO registration;
- (vii) Mandatory issue of ESIC registration;
- (viii) Mandatory issue of Profession Tax registration (only for companies to be registered in Maharashtra, Karnataka and West Bengal);
- (ix) Mandatory Opening of Bank Account for the Company;
- (x) Allotment of GSTIN (if so, applied for);
- (xi) Allotment of Shops and Establishment Registration (Only for Delhi Location).

Hence, the above-mentioned services can be applied in case of incorporation of a Company in Karnataka.

Answer 4A(iv)

Section 192(1) of the Companies Act, 2013 provides that company shall not enter into an arrangement by which—

- (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or
- (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.

(2) The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.

(3) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless—

- (a) the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or
- (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Answer 4A(v)

Environmental Statement under Environment Protection Act, 1986 – Brief contents are as under:

- i. Basic Information About Company like name and address of the owner/ occupier of the industry, industry category, production category, year of establishment, date of the last environmental statement submitted.
- ii. Comparison of Water and Raw Material consumption for this financial year to previous year.
- iii. Quantity of pollutants discharged to Environment through medium Air and Water.
- iv. Quantity of Hazardous Waste from processes and from Pollution control Facilities
- v. Quantity of solid waste generated by industry. Also details like Quantity recycled, Sold and Disposed
- vi. Any new practices adopted to reduce Hazardous waste.
- vii. Impacts of pollution control measures on natural resources and with Cost of Production.
- viii. Additional Investment / Process / measures to minimization or prevention of pollution.
- ix. Other information / initiatives to improve quality of Environment needs to be given.

PART C**Question 5**

(a) *What do you mean by 'Liquidator' and 'Liquidation Estate' under Insolvency and Bankruptcy Code (IBC), 2016 ?*

(3 marks)

(b) *Describe the manner of publication of Public Notice in Form STK-6 inviting objections for striking off the name of the company by the Registrar of Companies.*

(3 marks)

(c) *XB Limited continuously ran its business in loss. The company has its total outstanding loan including secured loan of Rs. 80 Lakh which as per the latest audited balance sheet has risen to 1 crore. The company want to wind up the business without approaching NCLT. Explain which type of companies can wind up their business without approaching NCLT and whether XB Limited can do the same ?*

(3 marks)

(d) *KPC Limited, a public limited company registered under the Companies Act, 2013 is based in Delhi. Sunita Verma, a relative of one of the directors intends to purchase its 5000 shares @ Rs 100 each for which she wants some financial assistance from the company. The board placed the proposal to grant financial assistance of Rs. 3,00,000 (Three lakh only). Decide validity of the action of Board of Directors in the light of provisions.*

(3 marks)

- (e) *During Resolution process for Corporate Persons, the Insolvency and Bankruptcy Code (IBC), 2016 proposes two independent stages. What are those two independent stages as per the Code ?*

(3 marks)

Answer 5(a)

Liquidator

According to section 5(18) of the Insolvency and Bankruptcy Code, 2016, a “liquidator” means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III (A Pre-Packaged Insolvency Resolution Process) or Chapter V (Voluntary Liquidation of Corporate Persons) of Part II, as the case may be.

Further, Section 34 of the the Insolvency and Bankruptcy Code, 2016 provides the provisions for the appointment of liquidator and the fees to be paid to him. Section 35 provides a non-exhaustive list of powers and duties of the liquidator to ensure orderly completion of the liquidation proceedings.

Liquidation Estate

Section 36 of the Insolvency and Bankruptcy Code, 2016 provides for the creation of a liquidation estate comprising the assets of the corporate debtor as set out in section 36(3). Section 36 also lists out the assets which are to be excluded from the liquidation estate. The Central Government has been given the power to notify assets, in consultation with the appropriate financial sector regulators, which will be excluded from the estate in the interest of efficient functioning of the financial markets.

Section 36(2) further provides that the liquidator shall hold the liquidation estate as a fiduciary for the benefit of all the creditors.

Answer 5(b)

Public Notice by ROC

After filing application for strike off by the company, the ROC shall publish a public notice in Form STK-6 inviting objections to the proposed strike off, if any. The notice will also be published for information to the general public in the following ways:

- (a) Placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
- (b) Published in the Official Gazette;
- (c) Published in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.

The company shall also place the application on its website, if any, till the disposal of the application. A notice issued shall be published in the Official Gazette for the information of the general public.

Answer 5(c)

With a view to systemize the procedure of winding up of a Company under the Act, the Ministry of Corporate Affairs ('MCA') vide notification dated 24th January 2020, had

notified the Companies (Winding Up) Rules, 2020 ('The Rules'). The Rules are applicable to companies going into "winding up for the circumstances mentioned under section 271" as well as "Summary procedure for liquidation under section 361" of the Companies Act, 2013.

It allows the following companies (on the basis of latest audited balance sheet) to wind up their business by making an application to Central Government without approaching NCLT:

Companies accepting deposit and having total outstanding deposits	Upto INR 25 Lakhs
Companies having total outstanding loan including secured loan	Upto INR 50 Lakhs
Companies having total turnover	Upto INR 50 Crore
Companies with Paid up share capital	Upto INR 1 Crore

Above companies are allowed to approach Central Government for summary liquidation only if they have book value of assets upto Rs. 1 crore.

Hence in this case, M/s XB Limited cannot wind up the business without approaching NCLT as the outstanding loan including secured loan exceeds Rs. 50 Lakh.

Answer 5(d)

Section 67(2) of the Companies Act, 2013 provides that public company shall not give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company. An exception being the lending of money by a banking company in the ordinary course of its business {(section 67(3)(a)}, any scheme approved by company through special resolution {(section 67(3)(b)} or loan to employees up to 6 months of salary for beneficial ownership {section 67(3) (c)}.

In light of the above-mentioned provisions, KPC Limited, being a public limited Company cannot give financial assistance for purchase of its shares to Sunita Verma, a relative of one of the directors and hence the proposal of Board of Directors is not valid.

Answer 5(e)

In resolution process for corporate persons, the Insolvency and Bankruptcy Code, 2016 proposes two independent stages:

- (i) Corporate Insolvency Resolution Process (CIRP), during which the creditors assess the viability of debtor's business and the options for its rescue and revival.
- (ii) Liquidation, in case the insolvency resolution process fails or financial creditors decide to wind-up and distribute the assets of the debtor.

Question 6

- (a) *Under what circumstances an applicant shall not be eligible to apply for registration under IRDA (Insurance Regulatory & Development Authority) ?*

- (b) *A garment factory based in West Bengal was having dispute with the management, for which conciliation proceedings is in progress with Labour Court. But management wants to lockout the factory as the dispute was complicated one. Can management declare a lockout ? Advise the Management regarding various prohibitions of strikes and lockouts ?*

(5 marks each)

Answer 6(a)

An applicant shall not be eligible to apply for Registration under IRDA (Insurance Regulatory & Development Authority) in the following circumstances:

- i. Where the requisition for registration application has been rejected by the Authority or withdrawn; or
- ii. Where the foreign investors or Indian Promoter of the existing venture have exited for any reason at any time during the preceding two financial years from the date of requisition for registration application; or
- iii. Where application for registration has been rejected by the Authority or withdrawn by the applicant for any reason at any time during the preceding two financial years from the date of requisition for registration application; or
- iv. Where Certificate of Registration has been cancelled by the Authority; or
- v. Where the name of the applicant does not contain the words 'insurance' or 'assurance'.

Answer 6(b)

Section 23 the Industrial Disputes Act, 1947 provides that no workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out-

- (a) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;
- (b) during the pendency of proceedings before a Labour Court, Tribunal or National Tribunal and two months after the conclusion of such proceedings;
- (c) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under subsection (3-A) of Section 10-A; or
- (d) during any period in which a settlement or award is in operation in respect of any of the matters covered by the settlement or award.

Hence, in light of the above stated provisions, the management of the factory cannot declare the lockout during the pendency of proceedings before the Labour Court.

TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

Total number of Questions : 100

Note : All questions in Part-I relate to the Income Tax Act, 1961 and Assessment Year 2023-24, unless stated otherwise.

PART I

1. Amar, a resident but not ordinarily resident in India, earned the following incomes during the previous year 2022-23 :
 - (i) Capital gain of ₹5,00,000 on sale of a building located in Agra but received in Australia.
 - (ii) Interest of ₹4,00,000 from Canada Development Bonds, 25% of which is received in India.

The amount of income chargeable to tax in India for the Assessment year 2023-24 is :

- (A) ₹9,00,000
 - (B) ₹6,00,000
 - (C) ₹5,00,000
 - (D) ₹4,00,000
2. A deduction of ₹1,00,000 towards unrealised rent was allowed to Z, being the owner of a house in the Assessment year 2018-19. Z sold the house on 14th January, 2020 and subsequently in the previous year 2022-23 he realised ₹80,000 from the tenant. If Z spent ₹10,000 for the realization of the rent, the amount taxable out of the realised rent in the Assessment year 2023-24 is :
 - (A) ₹56,000
 - (B) ₹80,000
 - (C) ₹70,000
 - (D) Nil
 3. Section 2(24) of the Income Tax Act, 1961 defines income as it is :
 - (A) Exhaustive
 - (B) Exclusive
 - (C) Descriptive
 - (D) Inclusive

4. An Individual to be an Ordinary Resident must satisfy the conditions in Section 6(6) of the Income Tax Act, 1961. What are they ?
 - (A) Only the First Condition in Section 6(6)
 - (B) Only the Second Condition in Section 6(6)
 - (C) Either the First or the Second Condition in Section 6(6)
 - (D) Both the Conditions as mentioned in Section 6(6)
5. The effective rate of tax on winning from lotteries under Section 115BB is :
 - (A) 31.2%
 - (B) 41.6%
 - (C) 20.8%
 - (D) 15%
6. Albert aged 75 years mortgages his property with Housing Finance Corporation under "Reverse Mortgage Scheme". During the Financial Year 2022-23 he received ₹30,000 p.m. from the mortgage. Calculate the amount which is taxable under Income Tax Act, 1961.
 - (A) Nil
 - (B) ₹3,60,000
 - (C) ₹2,52,000
 - (D) ₹60,000
7. Which of the following Incomes of a Political Party is exempt from Income Tax under Section 13A of the Income Tax Act ?
 - (A) Income from Other Sources Only
 - (B) Income from House Property Only
 - (C) Voluntary Contributions and Capital Gains Only
 - (D) All the above
8. Partial Integration of Agricultural Income with Non-Agricultural Income arises when both Incomes in case of Senior Citizen are as follows :
 - (A) Agricultural Income Nil, Non- Agricultural Income is above ₹1,00,000
 - (B) Agricultural Income is above ₹5,000, Non-Agricultural Income is above ₹2,50,000
 - (C) Agricultural Income is above ₹5,000, Non-Agricultural Income is above ₹3,00,000
 - (D) Agricultural Income is above ₹1,000, Non-Agricultural Income is above ₹5,00,000

9. Exemption U/S 10(48C) of the Income Tax Act, 1961 is available to:
- (A) Oil and Natural Gas Co. Ltd.
 - (B) Indian Strategic Petroleum Reserves Limited
 - (C) Gas Authority of India Ltd.
 - (D) All the above
10. From the following in which case, Employer- Employee relationship exists and therefore the Income is taxable under the head "Income from Salary" ?
- (A) Partner of a Firm
 - (B) Official Liquidator
 - (C) Member of Parliament
 - (D) Director of a company receiving fees for attending the board meetings
11. As per Section 10(14) of the Income Tax Act read with Rule 2BB of the Income tax Rules, the extent to which Compensatory Modified Field Area Allowance is exempt :
- (A) Up to ₹200 p.m.
 - (B) Up to ₹800 p.m.
 - (C) Up to ₹1,000 p.m.
 - (D) Up to ₹1,600 p.m.
12. Leave encashment at the time of retirement of an employee is exempted for Government Employee under Section 10(10AA). Here Government Employee means :
- (A) Central Government Employee only
 - (B) Central and State Government Employee
 - (C) Central and State Government Employees and Employees of local Authorities
 - (D) Central and State Government Employees and Employees of local Authorities and Employees of statutory corporations
13. Professional Tax if paid by the Employer on behalf of employee is :
- (A) Allowed as deduction
 - (B) Not Allowed as deduction
 - (C) Added to the Income of the Employee and then allowed as deduction
 - (D) None of the above

14. Out of the following which will be deducted from GAV (Gross Annual Value) of a house property ?
- (A) Municipal Taxes of previous years and current year paid by landlord but reimbursed by the tenant
 - (B) Municipal taxes of current year paid by the tenant
 - (C) Municipal taxes of current year payable
 - (D) Municipal taxes of Previous Years and current year paid by the owner during the current previous year
15. Income Computation and Disclosure Standards (ICDS) notified by the Central Government are compulsorily required to be maintained by all assessees following mercantile system of accounting while computing Income under the head “Profits and Gains from Business or Profession” and “Income from Other Sources” except :
- (A) Individual
 - (B) HUF
 - (C) Individuals and HUF who are not covered under the tax audit provisions under Section 44AB
 - (D) Individuals and HUF who are covered under the tax audit provisions under Section 44AB
16. Motor buses, motor lorries and motor taxies used in a business of running them on hire acquired on or after 23.08.2019 but before 01.04.2021 and is put to use before 1.04.2021 will be entitled to a Depreciation @
- (A) 15%
 - (B) 30%
 - (C) 40%
 - (D) 45%
17. AB Ltd is in trading business. It bought out a new machinery for the purpose of its business on 15.09.2022. The additional amount of depreciation available to AB Ltd. will be :
- (A) Nil
 - (B) ₹3,00,000
 - (C) ₹1,50,000
 - (D) ₹75,000
18. P Ltd an infra company issued Zero Coupon Bonds the Face value of which is ₹5,00,000 for ₹3,60,000 which will be matured after 4 years. What will be the deduction p.a. be available to the company ?
- (A) ₹1,25,000

- (B) ₹90,000
(C) ₹35,000
(D) ₹2,15,000
19. Mr. X sold a building for ₹5,00,000 as part of his business. The stamp duty authority valued that building for ₹5,20,000. The valuation officer determines the value for ₹5,70,000. Assessing officer at the time of assessment took the value as per his discretion as ₹6,00,000. What will be the correct value for sale consideration for the purpose of computation of business Income ?
- (A) ₹5,00,000
(B) ₹5,20,000
(C) ₹5,70,000
(D) ₹6,00,000
20. What is the Cost Inflation Index for Financial Year 2022-23 ?
- (A) 328
(B) 329
(C) 331
(D) 335
21. AB Ltd has a building purchased on 12.03.2009 and that building was used for the company's business. The WDV of the building was ₹45,250 (Depreciation rate 10%) and sold for ₹1,10,000. Calculate the Capital Gain in this case ? (The building is the only assets in the block) :
- (A) LTCG ₹64,750
(B) LTCG ₹55,000
(C) STCG ₹64,750
(D) Nil being business Assets
22. Section 50C of the Income Tax Act makes a Special Provision for determining the full value of consideration in case of transfer of :
- (A) Plant and Machinery
(B) Land
(C) Building
(D) Land or Building or both
23. Under which Section, the assessee has to reinvest the entire net consideration to claim full exemption on long term capital gains earned from transfer of long-term capital assets other than a residential house during the previous year :
- (A) 54F
(B) 54E

- (C) 54D
(D) 54C
24. Interest on securities shall be taxable under Income from other sources :
- (A) On Due basis
(B) On Receipt basis
(C) As per the direction of the Assessing Officer
(D) On the basis of method of accounting regularly employed by the assessee
25. Mr. Mithun employed in a Firm where he is regularly receiving consolidated salary of ₹25,000 per month during the year 2022-23 and also received family pension @ ₹15,000 p.m. during the year. His total income for the Financial Year 2022-23 taking that he does not have any deduction under Chapter VI A :
- (A) ₹4,80,000
(B) ₹4,30,000
(C) ₹4,15,000
(D) ₹4,20,000
26. A person has loss from House Property in the current year. It can be set off against Income from :
- (A) Any other head of Income up to a maximum of ₹2,00,000
(B) Only from Income from House Property without any monetary limit
(C) Both (A) and (B)
(D) None of the above
27. Public Provident Fund Account can be opened by an individual for the purpose of deduction under Section 80C in the name of :
- (A) Self
(B) Spouse
(C) Children
(D) All the above
28. Mr. P has interest accrued from NSC (maturity date is after two years) ₹15,600. During the current year 2022-23 he invested ₹1,00,000 and his wife invested ₹50,000 in NSC. What will be the deduction under section 80C assuming that no other investments are made by Mr. P :
- (A) ₹1,00,000

- (B) ₹1,15,600
(C) ₹1,50,000
(D) ₹1,65,600
29. For claiming deduction under Section 80JJAA the assessee must obtain audit report in Form Number 10DA from a Chartered Accountant on or before the :
- (A) End of Previous Year
(B) Due date of filing Return
(C) Due date of filing of Tax Audit Report under Section 44AB of the Income Tax Act, 1961
(D) 31st of December of the relevant Assesment Year
30. Contributions made other than by way of cash by an Indian Company in the previous year to any political party shall be allowed as deduction to the extent of % of contribution made.
- (A) 25%
(B) 50%
(C) 75%
(D) 100%
31. Relief under Section 89 of the Income Tax Act, 1961 is available except :
- (A) Amount received/receivable on Voluntary Retirement
(B) Advance Salary received
(C) Arrear of Salary received
(D) Gratuity Received
32. The amount of rebate of Income tax U/S 87A of the Income Tax Act, available to a resident Individual whose total Income does not exceed ₹5,00,000 for the Financial Year 2022-23 will be :
- (A) ₹12,500 or 100% income tax whichever is less
(B) ₹5,000
(C) ₹2,500
(D) ₹10,000
33. Which of the following is a company under the Income Tax Act, 1961 for income tax purposes ?
- (A) Foreign Company

- (B) Indian Company
 - (C) Closely held Company
 - (D) All the above
34. Section 2(22)(e) of the Income Tax Act, which deems certain payments as dividend, is applicable to the shareholders of :
- (A) A closely-held Company
 - (B) A private Company
 - (C) A widely held Company
 - (D) A Nidhi Company
35. As per Section 115BG of the Income Tax Act, where the total Income of the assessee includes any Income from the transfer of carbon credit then such income shall be taxable at a concessional rate of plus cess on such income tax.
- (A) 5% on the gross amount of such income
 - (B) 5% on the net amount of such income
 - (C) 10% on the gross amount of such income
 - (D) 10% on the net amount of such income
36. Normal tax liability for a company assessee is ₹5,00,000 and tax liability under MAT is ₹8,00,000. In this case the tax payable and MAT Credit c/f will be :
- (A) ₹3,00,000, ₹0
 - (B) ₹8,00,000, ₹3,00,000
 - (C) ₹5,00,000, ₹3,00,000
 - (D) ₹5,00,000, ₹0
37. Equalization levy in case of e-commerce operators is deductible if the aggregate amount of consideration for a specified service in a previous year exceeds :
- (A) ₹25,000
 - (B) ₹50,000
 - (C) ₹75,000
 - (D) None of the above
38. In case of issue of shares at premium by listed companies, Share Premium is :
- (A) Considered as an Income under the Head Capital Gain
 - (B) Considered as an Income under the Head Income from Other Sources
 - (C) Considered as an Income Under the Head Profits and Gains from Business/ Profession
 - (D) Not considered as Income at all

39. The provisions of section 139AA of the Income Tax Act, 1961 shall not apply to which of the following individuals if they do not possess the Aadhaar or enrolment ID :
- (A) The age of the Individual is 80 years or more during the Previous Year
 - (B) A Non-Resident
 - (C) Non-Citizen
 - (D) All the above
40. Form No 12BA of Income Tax Act contains which of the following :
- (A) Details of the Tax Deducted by the Employer
 - (B) Details of Perquisites and Profits in lieu of Salary chargeable U/S 17(3) of Income Tax Act
 - (C) Details of Salary paid to Foreign National by Indian Employer
 - (D) Details of tax collected at source
41. What is the time limit for filing updated return of Income U/S 139(8A) of the Income Tax Act, 1961 ?
- (A) Within 12 months from the end of the Relevant Assessment Year
 - (B) Within 18 months from the end of the Relevant Assessment Year
 - (C) Within 24 months from the end of the Relevant Assessment Year
 - (D) Within 36 months from the end of the Relevant Assessment Year
42. Any person who has not filed a return of Income within the time allowed under Section 139(1) or within the time allowed under a notice issued under Section 142(1) may file a return u/s 139(4) :
- (A) Before 31st December of the relevant Assessment year or before the completion of the Assessment whichever is earlier
 - (B) Before three months prior to the end of the relevant assessment year
 - (C) Before the completion of the Assessment
 - (D) None of the above
43. If there is an apparent error in the intimation dated 15.06.2018 issued by the Assessing officer under section 143(1) then the time limit for filing application for rectification under Section 154 is available up to :
- (A) 30.09.2018
 - (B) 31.03.2019
 - (C) 31.03.2022
 - (D) 31.03.2023

44. A buyer purchases goods liable for TCS for being used in manufacturing processing. The provisions of TCS shall not apply if the buyer gives declaration in duplicate to the seller in FORM NO :
- (A) 27B
 - (B) 27C
 - (C) 27E
 - (D) 28C
45. An assessee who declares his income in accordance with presumptive taxation under Section 44ADA of the Income Tax Act, 1961 for Assessment Year 2023-24 is liable to pay advance tax :
- (A) In four instalments
 - (B) In two instalments
 - (C) In one instalment on or before 15th March of the Financial Year
 - (D) In one instalment on or before 31st March of the Financial Year
46. Interest is payable to the assessee on the amount of refund under the Income Tax Act, 1961 where the amount to Refund is :
- (A) 2.5 percent or more of the tax as determined under section 143(1) of the Income Tax Act, 1961
 - (B) 5 percent or more of the tax as determined under section 143(1) of the Income Tax Act, 1961
 - (C) 7.5 percent or more of the tax as determined under section 143(1) of the Income Tax Act, 1961
 - (D) 10 percent or more of the tax as determined under section 143(1) of the Income Tax Act, 1961
47. After the receipt of order from Income Tax Appellate Tribunal (ITAT), the time limit for filing appeal to the High Court is :
- (A) 120 days
 - (B) 90 days
 - (C) 60 days
 - (D) 30 days
48. What is the penalty provided for under reporting and misreporting of Income respectively under the Income Tax Act, 1961 ?
- (A) 50% of tax payable on under reported income, 200% of tax payable on misreported income
 - (B) 25% of tax payable on under reported income, 100% of tax payable on misreported income

- (C) 10% of tax payable on under reported income, 50% of tax payable on misreported income
 - (D) 5% of tax payable on under reported income, 25% of tax payable on misreported income
49. Advance tax is not required to be paid by :
- (A) a firm of individuals
 - (B) company giving donations to political parties
 - (C) an individual of age 60 years or more and not having any income from business profession
 - (D) Limited Liability Partnership
50. Mr. H has been provided with a servant by his employer whose salary is ₹5,000 p.m. Mr. H is not a specified employee. The amount taxable for the perquisite in the hands of Mr. H is :
- (A) ₹30,000
 - (B) ₹60,000
 - (C) ₹45,000
 - (D) Nil

PART II

51. Which of the following statements is not true in case of GST ?
- (A) GST is a Destination based consumption tax
 - (B) GST ensures seamless flow of ITC
 - (C) GST is levied on goods and services at equal rates
 - (D) GST adorns dual taxation model
52. was the first State in India to pass the State GST Bill.
- (A) Telangana
 - (B) Maharashtra
 - (C) Assam
 - (D) West Bengal
53. The important parameter that constitute supply under CGST Act is/are :
- (A) It involved supply of goods or supply of service or both
 - (B) It is for a consideration
 - (C) It is made in the course of or furtherance of business
 - (D) All the above

54. What would be the rate of tax applicable in case of mixed supply ?
- (A) Average of applicable tax rates on various items in the supply
 - (B) Flat @ 28%
 - (C) Tax rate applicable on supply attracting highest rate of tax
 - (D) Tax rate applicable on supply attracting lowest rate of tax
55. Transactions which are outside the ambit of supply are provided in of the CGST Act, 2017.
- (A) Schedule I
 - (B) Schedule II
 - (C) Schedule III
 - (D) Table I
56. Integrated Goods and Services Tax is payable on :
- (A) Interstate supply
 - (B) Intra state supply
 - (C) Both of (A) and (B)
 - (D) Deemed supply
57. Value of supply under Section 15(1) of the CGST Act is the :
- (A) Wholesale price
 - (B) Maximum retail price
 - (C) Transaction value
 - (D) Assessable value
58. Mr. A is an air travel agent, has provided the following details :
- Basic air fair collected for domestic booking ₹5,00,000
 - Basic air fair collected for international booking ₹10,00,000
- Determine the total value of taxable supply of services :
- (A) ₹1,25,000
 - (B) ₹1,75,000
 - (C) ₹2,00,000
 - (D) ₹3,25,000
59. Which of the following is treated as incidental expense under Section 15(2)(c) of the CGST Act ?
- (A) Packing expenses
 - (B) Weighment charges

- (C) Commission
 - (D) All the above
60. Which of the following is the Rule for residual method of determination of value of supply of goods or services or both ?
- (A) Rule-28
 - (B) Rule-29
 - (C) Rule-30
 - (D) Rule-31
61. Input Tax Credit (ITC) is available in respect of tax paid on :
- (A) Goods used for personal consumption
 - (B) Free samples
 - (C) Services on which tax has been paid under composition levy
 - (D) None of the above
62. E-Way Bill is generated electronically in Form No. on the common portal.
- (A) EWB GST 01
 - (B) EWB GST 02
 - (C) GST EWB 01
 - (D) GST EWB 02
63. E-Invoice is not mandatory in case of which of the following category of persons irrespective of their turnover ?
- (A) Banking company
 - (B) Insurer
 - (C) Person supplying passenger transportation services
 - (D) All the above
64. If there is no business activities during the tax period, then as per the CGST Act:
- (A) No return need to be filed
 - (B) Nil return is to be filed
 - (C) Return may be filed on receipt of the notice from authority
 - (D) Matter of no business activities should be informed by a letter to the authority

65. The power to make rules is given to the Central Government in of the GST (Compensation to States) Act, 2017.
- (A) Section 12
 - (B) Section 13
 - (C) Section 14
 - (D) Section 15
66. The time limit for pronouncing the Advance Ruling under the Customs Act is :
- (A) 30 days
 - (B) 60 days
 - (C) 90 days
 - (D) 120 days
67. The classification of car without tyres as car is a classification according to the principles of of Interpretation Rules under the Customs Tariff Act.
- (A) Rule 2
 - (B) Rule 3
 - (C) Rule 4
 - (D) Rule 5
68. In terms of Section 17(5) of CGST Act, Blocked credit means the inward supply of goods or services on which ITC :
- (A) Shall be allowed provisionally
 - (B) Shall be allowed fully
 - (C) Shall not be allowed forever
 - (D) Shall not be allowed provisionally
69. If a registered person has claimed depreciation on the of the capital goods and plant and machinery under the provisions of the Income Tax Act, the input tax credit on the said tax component shall not be allowed in CGST Act.
- (A) Cost
 - (B) Tax component of the cost
 - (C) WDV
 - (D) Realisable value
70. Transportation of by a goods transport agency in a goods carriage is exempt from GST.
- (A) Agricultural produce

- (B) Organic Manure
 - (C) Milk
 - (D) All the above
71. When can a claim for ITC under GST be made under the reverse charge ?
- (A) After payment of tax liability
 - (B) After issue of invoice
 - (C) Earlier of (A) and (B)
 - (D) Later of (A) and (B)
72. As per Article 279A who is empowered to constitute GST council :
- (A) Prime Minister
 - (B) President
 - (C) Central Government
 - (D) Parliament
73. Which of the following State Tax have been subsumed in GST ?
- (A) Central Sales Tax
 - (B) Central Excise Duty
 - (C) Service Tax
 - (D) All the above
74. The higher eligibility turnover limit of ₹1.5 Crore under composition scheme is not applicable to :
- (A) Assam
 - (B) Himachal Pradesh
 - (C) Uttarakhand
 - (D) Bihar
75. Intimation for withdrawal from composition scheme should be informed by submitting form
- (A) GST CMP-07
 - (B) GST CMP-06
 - (C) GST CMP-05
 - (D) GST CMP-04
76. Out of the following, who is not eligible for the composition scheme under the CGST Act, 2017 ?
- (A) Casual Taxable Person (CTP)
 - (B) Person engaged in inter State outward supplies of goods

- (C) Non-Resident taxable person
 - (D) All the above
77. The prime purpose of place of supply is to determine :
- (A) Whether a supply in inter/intra State
 - (B) Whether CGST + SGST, or IGST or UTGST to be charged
 - (C) Which State/Union Territory will get the tax revenue
 - (D) All the above
78. Mr. R is supplying only services which are exclusively taxable under RCM. The value of such supplies is ₹51,00,000. Which of the following statements is true?
- (A) Compulsory registration is required as supplies are taxable
 - (B) Compulsory registration is required as turnover exceeds ₹50 lakh
 - (C) Registration is not required in this case
 - (D) Compulsory registration is required as the person engaged in supply of services only
79. In IGST Act a supply of service is considered as “Import of Service” when :
- (i) The supplier of service is located outside India
 - (ii) The recipient of service is located in India
 - (iii) The place of supply of service is in India
- (A) (i) only
 - (B) (ii) and (iii)
 - (C) (i) and (ii)
 - (D) (i), (ii) and (iii)
80. The Goods and Services Tax Network (GSTN), a special purpose vehicle, set up by the Government primarily to provide information technology infrastructure is a :
- (A) Public Limited Company
 - (B) Government Company
 - (C) Private Limited Company
 - (D) Statutory Corporation
81. Which of the following activities is a supply of service ?
- (A) Transfer of title in goods
 - (B) Transfer of right in goods without transfer of title in goods
 - (C) Transfer of title in goods with a condition that property shall pass at a future date
 - (D) All the above

82. Actionable claims are neither products nor services, hence they are dealt by of the Central Goods and Services Tax Act.
- (A) Schedule I
 - (B) Schedule II
 - (C) Schedule III
 - (D) None of the above
83. Which of the following is a mixed supply ?
- (A) A soap manufacturer offers a free bucket with detergent
 - (B) A five star hotel provides four days and three night package with breakfast
 - (C) As per a sales contract goods are packed and transported with insurance by the seller
 - (D) All the above
84. Krishnan a registered dealer in Karnataka has opted for composition scheme. He has a taxable turnover of goods for ₹20 lakhs and exempted turnover of goods for ₹15 lakhs within Karnataka in a tax period. If Krishnan is a trader, the GST to be paid by him for the tax period is :
- (A) ₹15,000
 - (B) ₹20,000
 - (C) ₹35,000
 - (D) Nil
85. Input Tax Credit can be availed on the GST paid under :
- (A) Composition scheme
 - (B) Forward charge mechanism
 - (C) Reverse charge mechanism
 - (D) Both Forward and Reverse charge Mechanism
86. Nathan is a resident of Chennai working in Hyderabad travelled to Cochin for business purposes and booked a ticket for an event there in Cochin performed by a team from Delhi. In this case the place of supply is :
- (A) Chennai
 - (B) Hyderabad
 - (C) Cochin
 - (D) Delhi
87. In case of goods supplied on “approval for sale/return basis”, the due date for issue of invoice is :
- (A) Before the time of supply
 - (B) At the time of supply

- (C) Six months from the date of removal
- (D) Earliest of the above three
88. AVM Sounds Ltd. entered into a contract to purchase the copyright of a music album of Priyam, a music composer. The composer finished the work and gave the CD to the music company on 20th July and issued invoice on 24th July. The consideration for the contract ₹2.4 crores was received by the composer on 4th September. If GST is payable under reverse charge basis for this, the time of supply shall be :
- (A) 4th September
- (B) 23rd September
- (C) 20th July
- (D) 24th July
89. An advocate provided legal consultancy services to B for a consideration of ₹50,000 on 14th August, 2023. There was a change in the rate of GST from 20th August, 2023. In this case, if the invoice and the payment for the supply were received after 20th August, 2023, the time of supply shall be :
- (A) The date of receipt of payment
- (B) The date of issue of invoice
- (C) The date of change of rate of tax
- (D) (A) or (B) whichever is earlier
90. Which of the following can avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services of that month ?
- (A) Banking Company
- (B) Non-banking financial company
- (C) Financial institution
- (D) All the above
91. To whom registration under CGST Act, 2017 is compulsory ?
- (i) P is a person making reverse charge supplies only
- (ii) Q is a person required to pay tax under reverse charge
- (iii) R, a casual taxable person making inter-state supply of notified goods upto ₹20 lakhs
- (iv) S an input service distributor
- (A) For P only
- (B) For P and Q only
- (C) For Q and S only
- (D) For Q, R and S only

92. Tax invoice under GST may not be issued if the value of goods or services or both is less than :
- (A) ₹100
 - (B) ₹200
 - (C) ₹500
 - (D) ₹1,000
93. Gail Ltd. of Mumbai supply gas to Copper Ltd. In this supply the supplier is not able to ascertain the quantity at the time of removal from the place of business. In this case the document to be accompanied with the gas supply is :
- (A) Tax Invoice
 - (B) Delivery Challan
 - (C) Bill of supply
 - (D) Payment voucher
94. Consignment value of goods which is used in E-Way Bill includes apart from the value declared in invoice.
- (A) Central tax
 - (B) State tax
 - (C) Cess charged
 - (D) All the above
95. Consulate or Embassy of foreign countries or any other person or class of persons notified U/S 55 of the CGST Act entitled to a refund of tax paid by it on inward supplies may make an application for such refund before the expiry of from the last day of the quarter in which such supply was received.
- (A) One month
 - (B) Three months
 - (C) Six months
 - (D) Twelve months
96. A general audit conducted U/S 65 of the CGST Act is required to be completed within 3 months from the date of Commencement. This period is extendable for another :
- (A) One month
 - (B) Three months
 - (C) Six months
 - (D) Additional period as required by the proper officer

97. The State Jammu and Kashmir has been divided into two Union Territories namely Jammu & Kashmir and Ladakh in 2019. After the reorganisation, the Jammu and Kashmir Goods and Services Tax Act is applicable to :
- (A) The Union Territory of Jammu and Kashmir
 - (B) The Union Territory of Ladakh
 - (C) The Union Territories of Jammu & Kashmir and Ladakh
 - (D) None of the Union Territories
98. The input tax credit in respect of GST compensation to States Cess on supply of goods and services shall be utilised towards the payment of :
- (A) The cess only
 - (B) CGST only
 - (C) IGST only
 - (D) All the above
99. The important purpose of implementation of the Customs Act is to :
- (A) Regulate levy and collection of customs duty
 - (B) Regulating Imports and Exports
 - (C) Conservation and augmentation of foreign exchange
 - (D) All the above
100. Goods for customs duty levy which cannot be classified in accordance with Rules 1, 2 or 3 shall be classified under :
- (A) Character principle
 - (B) Latter and Better principle
 - (C) Akin principle
 - (D) Closest principle

ANSWER KEY
TAX LAWS - SELECT SERIES

Q.No.	Ans	Q.No.	Ans	Q.No.	Ans
	PART I	Q34	A	Q67	A
Q1	B	Q35	C	Q68	C
Q2	A	Q36	B	Q69	B
Q3	D	Q37	D	Q70	D
Q4	D	Q38	D	Q71	A
Q5	A	Q39	D	Q72	B
Q6	A	Q40	B	Q73	A
Q7	D	Q41	C	Q74	C
Q8	C	Q42	A	Q75	D
Q9	B	Q43	D	Q76	D
Q10	B	Q44	B	Q77	D
Q11	C	Q45	C	Q78	C
Q12	B	Q46	D	Q79	D
Q13	C	Q47	A	Q80	B
Q14	D	Q48	A	Q81	B
Q15	C	Q49	C	Q82	C
Q16	B/D	Q50	D	Q83	A
Q17	A		PART II	Q84	B
Q18	C	Q51	C	Q85	D
Q19	A	Q52	A	Q86	C
Q20	C	Q53	D	Q87	D
Q21	C	Q54	C	Q88	A
Q22	D	Q55	C	Q89	D
Q23	A	Q56	A	Q90	D
Q24	D	Q57	C	Q91	C
Q25	A/C	Q58	A	Q92	B
Q26	A/B/C	Q59	D	Q93	B
Q27	D	Q60	D	Q94	D
Q28	B	Q61	D	Q95	C
Q29	C	Q62	C	Q96	C
Q30	D	Q63	D	Q97	A
Q31	A	Q64	B	Q98	A
Q32	A	Q65	A	Q99	D
Q33	D	Q66	C	Q100	C

Notes*

- Q. No. 16 Correct option is D. However, there is a typo error in the question. As the time period of claiming higher deduction is between 23rd Aug, 2019 to 31.03.2020. Therefore, option B is also correct as from 1.4.2000 onwards rates were 30%.
- Q. No. 25 Option A is correct assuming assessee has opted for section 115BAC. Option C is correct assuming assessee has not opted for section 115BAC.
- Q. No. 26 Option A is correct assuming assessee has not opted for section 115BAC. Option B is correct assuming assessee has opted for section 115BAC. Option C may also be considered as correct i.e. (Both Option A and B).

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