

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

DECEMBER 2023

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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

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

CS Examinations	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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PROFESSIONAL PROGRAMME EXAMINATION
DECEMBER 2023
**GOVERNANCE, RISK MANAGEMENT, COMPLIANCES
AND ETHICS**

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

NOTE : Answer **ALL** Questions.

PART I

Question 1

(a) *Bandhan Limited is a Public Limited Company which was incorporated in year 2014. The paid up share capital and bank borrowing of the company for the year ended on 31st March, 2023 is ₹9 crore and ₹60 crore respectively. Mr. X is a practicing Chartered Accountant and he is statutory auditor of the company since 2018-19, he seeks re-appointment as a statutory auditor of the company for F.Y. 2023-24. Explain with relevant provisions of Companies Act, 2013, whether Mr. X can be reappointed as Statutory Auditor of the Company for F.Y. 2023-24?*
(5 marks)

(b) *MNO Limited is an unlisted public limited company having 7 directors on its board. Key financial information of MNO Limited as per audited financial statement for financial year ended 31st March, 2023 is as follows :*

Particulars	FY 2021-22 Amount (₹) in crore	FY-2022-23 Amount (₹) in crore
<i>Authorized share capital</i>	12	12
<i>Paid up share capital</i>	8	9
<i>Turnover</i>	75	90
<i>Outstanding loans</i>	45	60

Being the practicing company Secretary, you have been requested to analyze whether M/s MNO Limited is required to appoint Independent directors. Check and state the minimum number of independent directors which needs to be appointed by the company. Would your answer be different, if MNO limited is a listed company and the Chairperson of the board is a non-executive director ?
(5 marks)

(c) *S Limited is a newly incorporated public limited company. The board of directors of the company has no specific clarity regarding the various issues of Secretarial Standards (SS 1). The Board appointed Mr. P, FCS as a company secretary of the company. The board wants to know from him in relation to the following matters :*

(i) *What are the corporate actions which shall not be passed by circulation and shall be placed before the board meetings as per the guidelines of SS1 ?*

(ii) *At present there are 9 directors, out of which office of the 2 directors have fallen vacant, what is the minimum number of directors that are required to form a valid quorum for a board meeting as per the guidelines of SS1 ?*

(5 marks)

(d) *M/s XYZ Limited is a public limited company having paid up share capital of ₹28 Crores at the last of preceding financial year. The directors of M/s XYZ Limited want that timely and accurate disclosures are made regarding all material matters concerning the company including its financial situation and results. You are a practicing company secretary and you have been engaged by M/s XYZ limited for advising it in regard to disclosures to be made in the board report.*

(5 marks)

Answer 1(a)

Section 139(2) of the Companies Act, 2013 read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014 provides that an unlisted public company having paid up share capital of ₹10 crore or more or public company having paid up share capital below the threshold limit but having public borrowings from financial institutions, banks or public deposits of ₹50 crore or more, cannot appoint or re-appoint—an individual as an auditor for more than one term of five consecutive years.

In view of the above provision, an individual auditor who has completed his term of five consecutive years shall not be eligible for re-appointment as an auditor in the same company for another consecutive term of five years on the completion of his first term without observing the cooling off period of five years.

In the given case as **the bank borrowing of Bandhan Limited, a public limited company, is more than ₹50 crore**, (in the present case it is **₹60 crore**) Mr. X, an individual auditor, **cannot be re- appointed as the statutory auditor of the same company for another term of 5 years after completion of first term of 5 years.**

Answer 1(b)

Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes that the following class or classes of companies shall have at least two independent directors:

1. Public Companies having paid-up share capital of ₹10 crore rupees or more; or
2. Public Companies having turnover of ₹100 crore rupees or more; or
3. Public Companies which have, in aggregate, outstanding loans, debentures and deposits, **exceeding ₹ 50 crore rupees.**

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:

In the present case, MNO limited is an unlisted public company having outstanding loan of ₹60 crore as per last audited financial statements for the year ended 31st March, 2023. Accordingly as stated in the Rules, MNO Limited must have at least 2 independent Directors on its Board from FY 23-24 onwards.

As per Section 149(4) of the Companies Act, 2013, “Every listed public company shall have at least one-third of the total number of directors as independent directors.... Explanation.—For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.”

Further, Regulation 17 (1) (b) of SEBI (LODR), 2015 provides that in case of a listed company where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors.

In the given case, if MNO is a listed company with Chairman being a non-executive director, and total number of directors being 7; MNO Limited must have at least 3 independent directors. ($1/3$ of 7 is 2.33 rounded off as 3)

Answer 1(c)

(i) Corporate Actions

As per Secretarial Standards on Board Meetings (SS-1) which in Anenxure A gives an Illustrative list of items of business which shall not be passed by circulation and shall be placed before the Board at its Meeting, the following corporate actions shall not be passed by circulation and shall be passed be placed before a board meeting.

1. Authorise Buy-Back of securities.
2. Issue of securities, including debentures, whether in or outside India.
3. Approving amalgamation, merger or reconstruction.
4. Diversify the business.
5. Takeover another company or acquiring controlling or substantial stake in another company.

(ii) Quorum of the board meeting

As per para 3.4.1 of SS1 the Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher. Any fraction contained in the one-third being rounded off as one.

In the present case, the total number of directors is 9, out of which, office of the 2 directors have fallen vacant. The total strength of the board of directors at present comes to 7. Therefore quorum will be higher of the following two alternatives.

1. $1/3$ of 7 directors = 2.33, rounded off 3 directors; or
2. 2 directors, whichever is higher.

Therefore 3 directors are required to form a valid quorum for a board meeting in the present circumstances.

Answer 1 (d)

Disclosures to be made in Board Report of a Public Limited Company

As per Section 134(3) of the Companies Act, there shall be attached to statements

laid before a company in general meeting, a report by its Board of Directors, which shall include—

- (a) the web address, if any, where annual return referred to in sub-section (3) of section 92 has been placed]
- (b) number of meetings of the Board;
- (c) Directors' Responsibility Statement;
- (ca) details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government;]
- (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
- (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
- (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made—
 - i) by the auditor in his report; and
 - ii) by the company secretary in practice in his secretarial audit report;
- (g) particulars of loans, guarantees or investments under section 186;
- (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;
- (i) the state of the company's affairs;
- (j) the amounts, if any, which it proposes to carry to any reserves;
- (k) the amount, if any, which it recommends should be paid by way of dividend;
- (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
- (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
- (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
- (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
- (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made;

(q) such other matters as may be prescribed.

Further, Rule 8 (1) of Companies (Accounts) Rules, 2014 provided that the Board's Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

(2) The Report of the Board shall contain the particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the Form AOC-2.

(3) The report of the Board shall contain the following information and details, namely:-

(A) Conservation of energy-

- (i) the steps taken or impact on conservation of energy;
- (ii) the steps taken by the company for utilising alternate sources of energy;
- (iii) the capital investment on energy conservation equipments;

(B) Technology absorption-

- (i) the efforts made towards technology absorption;
- (ii) the benefits derived like product improvement, cost reduction, product development or import substitution;
- (iii) in case of imported technology (imported during the last three years reckoned from the beginning of the financial year)-
 - (a) the details of technology imported;
 - (b) the year of import;
 - (c) whether the technology been fully absorbed;
 - (d) if not fully absorbed, areas where absorption has not taken place, and the reasons thereof; and
- (iv) the expenditure incurred on Research and Development.

(C) Foreign exchange earnings and Outgo-

The Foreign Exchange earned in terms of actual inflows during the year and the Foreign Exchange outgo during the year in terms of actual outflows.

As per Rule 8(4) of Companies (Accounts) Rules, 2014, every listed company and every other public company having a paid up share capital of twenty five crore rupees or more calculated at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

In addition to the information and details specified in sub-rule (4), the report of the Board shall also contain -

- (i) the financial summary or highlights;

- (ii) the change in the nature of business, if any;
- (iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;
- (iiia) a statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year”
- (iv) the names of companies which have become or ceased to be its Subsidiaries, joint ventures or associate companies during the year;
- (v) the details relating to deposits, covered under Chapter V of the Act-
 - a. accepted during the year;
 - b. remained unpaid or unclaimed as at the end of the year;
 - c. whether there has been any default in repayment of deposits or payment of interest there on during the year and if so, number of such cases and the total amount involved-
 - (i) at the beginning of the year;
 - (ii) maximum during the year;
 - (iii) at the end of the year.
- (vi) the details relating to deposits, not in compliance with Chapter V of the Act.
- (vii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company’s operations in future.
- (viii) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.
- (ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained.
- (x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year alongwith their status as at the end of the financial year,
- (xii) the details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

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

Question 2

- (a) *Proxy advisors provide valuable services to the Institutional Investors and help them to take correct voting decisions. In view of this statement, explain the reasons of engaging proxy advisors by Institutional Investors.*

(5 marks)

- (b) *M/s PQR limited is a listed company. In the course of its operations, it makes regular transactions with its related parties and these transactions are of general operational nature. The company management finds it very difficult to take prior approval of audit committee for related party transactions. You are the company secretary of M/s PQR Limited. In view of difficulties faced, one of the directors of company asks you to take omnibus approval for related party transactions. You are required to explain the conditions for omnibus approval of related party transactions.*

(5 marks)

- (c) *CDS is an unlisted public company engaged in manufacturing of textile products. Following is the financial information obtained from its latest audited financial statement for the year ended 31st March 2023*

<i>Particulars</i>	<i>Amount (₹ crore)</i>
<i>Authorised Share Capital</i>	<i>100</i>
<i>Paid up Share Capital</i>	<i>30</i>
<i>Reserve and Surplus</i>	<i>10</i>
<i>Turnover</i>	<i>150</i>
<i>Outstanding loan from Nationalised Banks</i>	<i>110</i>
<i>Outstanding Security Deposits</i>	<i>22</i>

Based on the above facts, answer to the following questions, analyze whether CDS Limited is required to appoint an internal auditor ? Substantiate your answer with relevant provisions of law. Further, the company wants to appoint Mr. M as the internal auditor of company who has been employed with the company as Sr. Manager (Finance & Accounts). Check, whether his appointment as internal auditor would be valid ?

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Vidhyut Limited is a BSE listed public listed company. It is a joint venture of Quantum Power Limited and a government company. Recently the government company has appointed 3 new directors in the board of Vidhyut limited. These new directors are professional qualified to be the directors of a company but this is their first term in a company as directors. The chairman of the board wants the new directors to participate fully and actively in board decision-making. You are the company secretary of the Vidhyut Limited and you have been entrusted the responsibility for the induction of new directors. In the course of directors' induction program, you are also expected to provide an induction kit to the new directors. Explain the importance of induction program for newly appointed directors and the content of directors' induction kit.*

(5 marks)

- (ii) *Rainbow Finance Limited is a newly incorporated Non-Banking Financial Company*

(NBFC) in the category of Infrastructure and Finance Company. Its assets size is more than ₹ 100 billion. You are appointed as the company secretary of Rainbow finance limited. The chairman of board requires you to apprise him about the “fit and proper criteria” for appointment of director in the company. Write a note for the chairman of the board regarding “fit and proper criteria” as contained in the RBI Guidelines on Corporate Governance for NBFCS.

(5 marks)

- (iii) Compliance risk is the threat posed to a company's earnings or capital as a result of violation or non-conformance with laws, regulations, or prescribed practices. Companies that fail to comply with the necessary standards may be subjected to fines, payment of damages, and voided contracts. In order to avoid the compliance risk, companies establish compliance risk management function. In view of above, explain the different steps in compliance risk management.

(5 marks)

Answer 2(a)

Reasons for engaging proxy advisors firms by institutional investors

Following are few reasons why institutional investors engage proxy advisors:

1. Proxy advisors generally offer variety of services consisting of both, analyzing the proposals at general meetings and recommending voting decisions.
2. The recommendations of proxy advisors help the investors to obtain a more considered understanding of different agenda items and to arrive at an informed voting decision, allowing them to optimize their own limited resources and cast their votes in a timely and informed manner.
3. Considering that institutional investors invest in multiple companies in different industry range and across the globe, it may not be feasible for those investors to have informed knowledge of the corporate governance specifications of that country and hence there may be an inability to understand the need and impact of a particular agenda item. Proxy advisors help to combat this issue as well through their informed consultancy. Due to cross border voting investors may face issues in terms of language of a country. The proxy advisors can assist in mitigating the language issues as well. Further, they may also enable the investors to have a voting platform in cases where electronic voting is a pre-requisite at general meetings.
4. Apart from the above, general meetings across the globe may be concentrated during a certain period of the year and therefore the investors may not be in a position to gather information and knowledge about all the companies and hence, may not be in a position to take informed decision while voting. Proxy services industry emerged and expanded with the growth of institutional investors and shareholder activism. Proxy services firms play an important role in the proxy voting system. Such firms offer valuable services which includes analyzing of the proposals for general meetings and providing voting recommendations, either based on their own voting policy or on the investor's customized voting policy.
5. Proxy advisors also influence boards' decision making. They do a good job of

policing / overseeing the boards and governance records of the firms they track, and nudging institutional investors to take a stand on governance issues.

Answer 2(b)

Regulation 23(3) of SEBI LODR (Regulations), 2015 –Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions, namely -

- a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
- b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
- c) the omnibus approval shall specify:
 - i. the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into;
 - ii. the indicative base price / current contracted price and the formula for variation in the price if any; and
 - iii. such other conditions as the audit committee may deem fit:
Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.
- d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.

Answer 2(c)

As per Section 138 of the Companies Act, 2013 read with rule 13(1)(b) of the Companies (Accounts) Rules, 2014 every unlisted public company having-

- a) paid up share capital of fifty crore rupees or more during the preceding financial year; or
- b) turnover of two hundred crore rupees or more during the preceding financial year; or
- c) outstanding loans or borrowings from banks or public financial institutions **exceeding one hundred crore rupees or more** at any point of time during the preceding financial year; or
- d) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year shall be required to appoint an internal auditor.

Appointment of an internal auditor in M/s CDS Ltd

As the loan from nationalized banks of the CDS Ltd is more than ₹100 crore, (in the

given case it is ₹110 crore) for the year ended 31st March, 2023, it is mandatory for M/s CDS limited to appoint an internal auditor for the company.

Validity of appointment of Mr. M as an internal auditor

Section 138 of the Companies Act, 2013 states that an internal auditor, shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board.

Further explanation to Rule 13 of The Companies (Accounts) Rules, 2014 states that the **internal auditor may or may not be an employee of the company.**

In view of the above provisions Mr. M is a Sr. Manager (Finance & Accounts) of the company can be appointed as an internal auditor of the company if the board so decides.

Answer 2A (i)

Induction procedures in board decision-making at the earliest opportunity should be in place to allow new directors to participate fully and actively.

To be effective, new directors need to have a good deal of knowledge about the company and the industry within which it operates. It involves introducing the new directors to the people with whom they will be working and explaining how the board operates. It involves building up rapport, trust, and credibility with the other directors so that the new director is accepted by and can work with fellow directors. Common methods of induction include:

- Briefing papers
- Internal visits
- Introductions

An induction programme should be available to enable new directors to gain an understanding of:

- the company's financial, strategic, operational and risk management position
- the rights, duties and responsibilities of the directors
- the roles and responsibilities of senior executives
- the role of board committees.

An induction kit should be given to new directors which should contain the following:

- Memorandum and Articles of Association with a summary of most important provisions
- Brief history of the company
- Current business plan, market analysis and budgets
- All relevant policies and procedures, such as a policy for obtaining independent professional advice for directors
- Protocol, procedures and dress code for Board meetings, general meetings, , staff social events, site visits etc. including the involvement of partners

- Press releases in the last one year
- Copies of recent press cuttings and articles concerning the company
- Annual report for last three years
- Notes on agenda and Minutes of last six Board meetings
- Board's meeting schedule and Board committee meeting schedule
- Description of Board procedures.

Answer 2A(ii)**Fit and Proper Criteria**

All applicable NBFCs shall -

- (i) ensure that a policy is put in place with the approval of the Board of Directors for ascertaining the fit and proper criteria of the directors at the time of appointment, and on a continuing basis;
- (ii) obtain a declaration and undertaking from the directors giving additional information on the directors;
- (iii) obtain a Deed of Covenant signed by the directors;
- (iv) furnish to the Bank a quarterly statement on change of directors, and a certificate from the Managing Director of the applicable NBFC that fit and proper criteria in selection of the directors has been followed. The statement must reach the Regional Office of the Department of Non-Banking Supervision of the Bank where the company is registered, within 15 days of the close of the respective quarter. The statement submitted by applicable NBFC for the quarter ending March 31, shall be certified by the auditors.

Provided that the Bank, if it deems fit and in public interest, reserves the right to examine the fit and proper criteria of directors of any NBFC irrespective of the asset size of such NBFC.

Answer 2A(iii)

The steps in compliance risk management are as under:

1. Understand compliance obligations
 2. Assess risks
 3. Address all compliance risks
 4. Evaluate performance
- 1. Understand compliance obligations:** The primary element to manage compliance is to understand compliance obligation in the light of strategic goals and objectives. Compliance obligations stem from: Laws and regulations, industry or generic standards, internal policies, processes and procedures and contracts executed with clients and other stakeholders.

It is important to understand that obligations are either requirements or commitments. Obligations that an enterprise has no control over are termed as compliance requirements, for example, one resulting from new laws and regulations. While obligations that an enterprise may choose to abide by — for example certain industry standards or best practices - are termed as compliance commitments. Here, a mechanism to ensure compliance obligations are kept up-to- date must be established. An enterprise may choose to restrict the scope of compliance management to compliance requirements but for a higher assurance, it may include compliance commitments, too.

2. **Assess risks:** Once compliance obligations are established, a compliance risk assessment exercise should be undertaken to identify risks, causes, the areas they impact and the consequences thereof. An analysis to have better understanding of the risks should follow.

Such an analysis should consider the factors affecting the consequences and likelihood of these consequences occurring as well as the controls in place. After receiving an analysis of the level of risk involved, a compliance risk evaluation should be done to take appropriate decisions on treatment. This exercise is not only a tool to accept the presence of risk but can effectively use to prioritize the treatment. Compliance risks analyzed as low should also be monitored and subjected to corrective action for a timely precaution.

3. **Address all compliance risks:** An enterprise should ensure an effective action plan to address all compliance risks with clear ownership, responsibility, accountability and closure timelines. This can be driven with ease, if the enterprise ensures a documented compliance policy, objectives, processes and procedures. Further, compliance responsibilities must be clearly identified, assigned and established as part of the job descriptions at different levels. To ensure risks are addressed effectively, the management should ensure that all employees with compliance obligation are competent. Periodic training and awareness must be carried out and any other medium to communicate assigned responsibilities should be explored. A continuous communication mechanism is required to ensure all employees understand compliance and contribute to it by reporting risks and discharging their responsibilities effectively.
4. **Evaluate performance:** A mechanism to measure and monitor the performance of the compliance practices and its impact on strategic goals and objectives must be developed. Developing compliance performance indicators is one of the tools. It can be as simple as the number of employees trained on compliance practices to mature indicators such as risks of non-compliance and trends. Feedbacks from clients, stakeholders, suppliers, vendors, employees and government agencies are a good source of data to ascertain compliance performance. Governance mechanisms, in the form of management reviews, internal audits and periodic compliance reporting, give great insights on the performance of compliance practices

Question 3

- (a) *Analyze the importance of Auditing Standard for the purpose of reporting to the members of the company by the statutory auditors under the Companies Act, 2013.*

- (b) *“With the goal of promoting better corporate governance practices in India, the Ministry of Corporate Affairs, Government of India, has set up National Foundation for Corporate Governance (NFCG) in the year 2003.” In this context, explain in brief the mission of NFCG.*
- (c) *As per Regulation 4(2) (d) of SEBI (LODR) Regulations, 2015 the listed entity should recognise the rights of stakeholders and encourage co-operation between listed entity and the stakeholders.” Explain this statement.*
- (d) *Referring the provisions of Section 125 of the Companies Act, 2013, explain the purposes for which Investor Education and Protection Fund may be utilized.*
- (e) *Explain Section 302 of SOX Act i.e. Corporate Responsibility for Financial Reports.*

(3 marks each)

Answer 3(a)

The Standards on Auditing have been accorded legal sanctity under the Companies Act, 2013. Auditors are now mandatorily bound to ensure compliance with Standards on Auditing. As per Section 143(2) of the Companies Act 2013, the auditor shall make a report to the members of the company on the accounts examined by him and on every financial statements which are required by or under this Act to be laid before the company in general meeting and the report shall after taking into account the provisions of this Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under sub-section (11) and to the best of his information and knowledge, the said accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as prescribed in Rule 11 (Other matters to be included in Auditor's Report) of the Companies (Audit and Auditors) Rules, 2014.

As per Section 143(9) of the Companies Act 2013, it is the duty of every auditor to comply with the auditing standards. Section 143(10) confers power to the Central Government to prescribe the standards of auditing as recommended by the Institute of Chartered Accountants of India in consultation with the National Financial Reporting Authority:

However, until any auditing standards are notified, any standard or standards of auditing specified by the Institute of Chartered Accountants of India shall be deemed to be the auditing standards.

Answer 3(b)

National Foundation for Corporate Governance (NFCG) was set up in the year 2003 by the Ministry of Corporate Affairs (MCA), in partnership with Confederation of Indian Industry (CII), Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI) to promote good Corporate Governance practices both at the level of individual corporates and Industry as a whole. In the year 2010, Institute of Cost Accountants of India (ICAI) and National Stock Exchange (NSE) and in 2013 Indian Institute of Corporate Affairs (IICA) were included in NFCG as Trustees.

Mission of National Foundation for Corporate Governance:

1. To foster a culture for promoting good governance, voluntary compliance and facilitate effective participation of different stakeholders;
2. To catalyze capacity building in new emerging areas of Corporate Governance;
3. To create a framework of best practices, structure, processes and ethics;
4. To further research, scholarship, and education in corporate governance in India.

Answer 3(c)

As per Regulation 4(2) (d) of SEBI (LODR) Regulations, 2015 the listed entity should recognize the rights of stakeholders and encourage co-operation between listed entity and the stakeholders in the following manner:-

- i) The listed entity should respect the rights of stakeholders that are established by law or through mutual agreements. Stakeholders should have the opportunity to obtain effective redress for violation of their rights.
- ii) Stakeholders should have access to relevant, sufficient and reliable information on a timely and regular basis to enable them to participate in Corporate Governance process.
- iii) The listed entity should devise an effective vigil mechanism/whistle blower policy enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.

Answer 3(d)

According to Section 125(3) of the Companies Act, 2013 - the 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 investors' 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 orders made by the Court which had ordered disgorgement;
- d) Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- e) Any other purpose incidental there to, in accordance with Rule 3 of the Investor Education and Protection Fund Authority (accounting, Audit, Transfer and Refund) Rules, 2016.

Answer 3(e)**SOX Section 302 i.e. Corporate Responsibility for Financial Reports**

- a) CEO and CFO must review all financial reports.

- b) Financial report does not contain any misrepresentations.
- c) Information in the financial report is “fairly presented”.
- d) CEO and CFO are responsible for the internal accounting controls.
- e) CEO and CFO must report any deficiencies in internal accounting controls, or any fraud involving the management of the audit committee.
- f) CEO and CFO must indicate any material changes in internal accounting controls.

PART II

Question 4

- (a) *Mr. P is an investor and he has got the proposal for investment in Company A and Company B. The particulars of Company A and Company B are herein given below :*

- (i) *Company A is a highly diversified company. It has stable market share and investment in this company is thought to be safe.*
- (ii) *Company B is a start-up company and investment in this company is thought to be highly risky with high reward. In view of above, explain the concept of systematic risk and unsystematic risk and classify the risk involved for investment in company A and company B under the categories of systematic risk and unsystematic risk.*

(5 marks)

- (b) *Good News Private Limited is a publishing company and it has been publishing 2 daily newspapers, 2 weekly and 5 monthly magazines. In view of rapid technological development, the company promoter is worried about the long term survival of company and engages you to advice on the Obsolescence Risk and the ways to deal with such risk. Prepare a short note for the promoter of the company containing the meaning of Obsolescence Risk and the suggested ways to deal with such risk by the company.*

(5 marks)

- (c) *XYZ Company limited is a BSE listed reputed chemical manufacturing company. Recently, there is a fire incident occurred at one of its plant location. The directors of the company are worried about this fire incident’s impact on company reputation and ask you to prepare a note containing the following :*

- (i) *Meaning of reputation risk ?*
- (ii) *Consequences of loss of reputation.*
- (iii) *The approach to be followed for effective management of reputation risk.*

(5 marks)

- (d) *“Risk mitigation is the process by which an organization introduces specific measures to minimize or eliminate unacceptable risks associated with its operations”. In view of this statement, explain different risk mitigation measures undertaken by an organisation.*

(5 marks)

Answer 4(a)

Securities trading involves the probability of a loss or drop in value. Trading risk is divided into two general categories:

- (1) Systemic risk which affects all securities in the same class and is linked to the overall capital- market system and therefore cannot be eliminated by diversification also called market risk.
- (2) Non-systematic risk which is any risk that isn't market-related or is not systemic also called non-market risk, extra- market risk, or un-systemic risk.

<i>Systematic Risk</i>	<i>Unsystematic Risk</i>
It is not fully uncontrollable by an organisation.	It is usually controllable by an organization.
It cannot be fully assessed and anticipated in advance in terms of timing and gravity	It can be usually assessed well in advance with reasonable efforts and risk mitigation can be planned with proper understanding and risk assessment techniques.
Example of such type of risks are Interest Rate Risk, Market Risk, Purchasing Power Risk	Examples of such risk are Compliance Risk, Credit Risk, Operational Risk
It usually affects a large number of organisations operating under a similar stream.	If not managed, it directly affects the individual organisation first
It is usually of a macro nature	It is normally micro in nature
It is not entirely predictable.	It is reasonably predictable.

Keeping above in view, investment in “Company A” would be covered under unsystematic risk and investment in “Company B” would be covered under systematic risk

Answer 4(b)

Obsolescence risk is the risk that a process, product, or technology used or produced by a company for profit will become obsolete, and thus no longer competitive in the marketplace. If something is ‘obsolete’ it means it is out of date, i.e., we no longer use it. Obsolescence risk relates to a company’s loss of competitiveness in the market. The company loses competitiveness because it has something that has gone out of date. Lack of competitiveness harms profits.

Obsolescence risk is most significant for technology-based companies or companies with products or services based on technological advantages.

Obsolescence risk is a factor for all companies to some degree and is a necessary side effect of a thriving and innovative economy. This risk comes into play, for example, when a company is deciding how much to invest in new technology. Will this technology

remain superior long enough for the investment to pay off? Or will it become obsolete so soon that the company loses money?

Obsolescence risk also means that companies wanting to remain competitive and profitable need to be prepared to make large capital expenditures any time a major product, service, or factor of production becomes obsolete.

In the rapid changing world Obsolescence risk is fast emerging and unless the companies are able to cope up with this timely, the impact will be quite heavy and may lead to closure of the units also. Nokia is the latest example on this.

In case of Good News Company Private Limited, the company has been facing Obsolescence Risk. As computers, tablets, and smartphones have become more popular and affordable, more consumers have started reading magazines, newspapers, and books on these devices instead of in their print forms. For the publishing company to remain competitive, it must minimize its investments in the old paper publications and maximize its investments in new technologies. Even as it makes this shift, it must remain alert to new and unimagined technologies that could supplant the currently popular ways of reading and require still more investment.

Answer 4(c)

Reputation Risk as the risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt-holders, market analysts, other relevant parties or regulators that can adversely affect an organisation 's ability to maintain existing, or establish new business relationships and continued access to sources of funding (e.g. through the interbank or securitization markets).

Consequences of loss of reputation

Reputation Risk as the risk arising from negative perception on the part of customers, counterparties, shareholders, investors, debt-holders, market analysts, other relevant parties or regulators that can adversely affect an organisation 's ability to maintain existing, or establish new business relationships and continued access to sources of funding (e.g. through the interbank or securitization markets).

Reputational Risk is multidimensional and reflects the perception of other market participants. Furthermore, it exists throughout the organisation and exposure to reputational risk is essentially a function of the adequacy of the bank's internal risk management processes, as well as the manner and efficiency with which management responds to external influences on bank-related transactions.

Loss of Reputation has long lasting damages like:

- (a) It destroys the Brand Value
- (b) Steep downtrend in share value.
- (c) Ruining of Strategic Relationship
- (d) Regulatory relationship is damaged which leads to stringent norms.
- (e) Recruitment to fetch qualified staff as well the retention of the old employees becomes difficult.

Management of Reputation risk

1. Make reputational risk part of strategy and planning
2. Control processes - Standardization, technology, policies, and procedures reduce the likelihood and severity of events that could cause reputational damage.
3. Understand all actions can affect public perception
4. Understand stakeholder expectations
5. Focus on a positive image and communication
6. Create response and contingency plans.

Answer 4(d)

Risk mitigation is defined as taking steps to reduce adverse effects. Risk mitigation is the process by which an organization introduces specific measures to minimize or eliminate unacceptable risks associated with its operations. Risk mitigation measures can be directed towards reducing the severity of risk consequences, reducing the probability of the risk materializing, or reducing the organizations exposure to the risk. The risk mitigation step involves development of mitigation plans, designed to manage, eliminate, or reduce risk to an acceptable level. Once risks have been identified and assessed, the strategies to manage the risk fall into one or more of the following categories:

- (i) **Transfer Risk:** Normally in projects, assignments or multifaceted exercises, execution is fought with risks. Different agencies work together and these agencies take care to transfer risk in their areas to another agency which is better equipped to take care of a risk for a consideration. Here the concept of core competence curves in and whenever a particular agency, individual or a firm finds that it is dealing in an area where it does not have the core competence to deal with, it seeks the help of another agency which has the specific core competence to transfer its own risk. The risk may be in the form of loss of reputation or sub quality performance and this risk is taken care of through transfer.
- (ii) **Tolerate Risk or Risk Retention:** It is retention of the risk. It is accepting the loss when it occurs. True self-insurance falls in this category. Risk retention is a viable strategy for small risks where the cost of insuring against the risk would be greater over time than the total losses sustained. All risks that are not avoided, reduced or transferred are retained by default.

This includes risks that are so large or catastrophic that they either cannot be insured against or the premiums would be infeasible. War is an example since most property and risks are not insured against war, so the loss attributed by war is retained by the insured. Also any amount of potential loss (risk) over the amount insured is retained risk. This may also be acceptable if the chance of a very large loss is small or if the cost to insure for greater coverage amount is so great it would hinder the goals of the organization too much.

- (iii) **Reduce Risk:** The purpose of risk treatment is not necessarily to obviate the risk, but more likely to contain the risk to an acceptable level. Internal controls are actions instigated from within the organization (although their effects may be

felt outside of the organization) which are designed to contain risk to acceptable levels.

Outsourcing could be an example of risk reduction if the outsourcer can demonstrate higher capability at managing or reducing risks. In this case companies outsource only some of their departmental needs. For example, a company may outsource only its software development, the manufacturing of hard goods, or customer support needs to another company, while handling the business management itself.

This way, the company can concentrate more on business development without having to worry as much about the manufacturing process. Modern software development methodologies reduce risk by developing and delivering software incrementally. Earlier methodologies suffered from the fact that they only delivered software in the final phase of development; any problems encountered in initial phases meant costly rework and often jeopardized the whole project.

- (iv) **Avoid Risk:** This method results in complete elimination of exposure to loss due to a specific risk. It can be established by either avoiding to undertake the risky project or discontinuance of an activity to avoid risk. This means that no risky projects are undertaken. Alternatively, a project may be abandoned midway to mitigate the risk while handling a project.

It is not performing an activity which could carry risk. An example would be not buying a property or business in order to not take on the liability that comes with it. Another would be not flying in order to not take the risk that the aeroplane were to be hijacked. Avoidance may seem the answer to all risks, but avoiding risks also means losing out on the potential gain that accepting (retaining) the risk may have allowed. Not entering a business to avoid the risk of loss also avoids the possibility of earning profits.

- (v) **Combine Risk:** When the business faces two or three risks, the overall risk is reduced by combination. This strategy is suitable mainly in the areas of financial risk. Different financial instruments say, shares and debentures are taken in a single portfolio to reduce the risk.
- (vi) **Sharing Risk:** Insurance is a method of sharing risk for a consideration. For example by paying insurance premium the company snares the risk with companies and the insurance companies themselves share their risk by doing re-insurance.
- (vii) **Hedging Risk:** Exposure of funds to fluctuations in foreign exchange rates, prices etc., bring about financial risks resulting in losses or gain. The downside risk is often taken care.

PART III

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

Question 5

- (a) *International Integrated Reporting Council (IIRC) has coined the concept of “Six Capital Disclosures”. According to this concept “Integrated reporting relies on*

business disclosures through six capitals that guide businesses in decision-making and planning”. Explain the six capital disclosures as referred here.

- (b) ‘Internal check’ refers to allocation of duties in such a manner that the work of one person is checked by another while that other is performing his own duties in a normal way. In reference to internal check, explain the important objects of internal check system.
- (c) In reference to Components of Internal Control as defined by COSO”, explain the term “Control environment”.
- (d) As per Regulation 18(3) of SEBI Listing and Other disclosures requirement Regulation, 2015, the role of the audit committee and the information to be reviewed by the audit committee shall be as specified in Part C of Schedule II. In reference to above, what are the specific information in relation to annual financial statements and auditors’ report, which needs to be reviewed by audit committee?
(5 marks each)

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *Explain the guiding principles in relation to preparation of an integrated report, its contents and the manner of the disclosure of Information.*
- (ii) *In reference to Annexure-II of the Companies (CSR Policy) Rules, 2014 i.e. Format for the Annual Report on CSR Activities, explain how the excess amount be set off, (if any) would be presented.*
- (iii) *As per Section 134(3)(c) of the Companies Act, 2013, a report by its Board of Directors, including Directors’ Responsibility Statement shall be attached to statements laid before a company in general meeting. Explain the matter to be included in Directors Responsibility Statement with particular reference to internal control including internal financial control.*
- (iv) *As per Regulation 17(8) of SEBI (LODR) Regulations, 2015, the chief executive officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II. Referring the above, explain the contents of compliance certificate as provided by the chief executive officer and the chief financial officer to the board of directors.*

(5 marks each)

Answer 5(a)

Six Capital Disclosures

Integrated reporting relies on business disclosures through six capitals that guide businesses in decision-making and planning:

1. *Financial Capital* : The pool of funds that is available to an organisation for use in the production of goods or the provision of services and obtained through financing, such as debt, equity or grants, or generated through operations or investments.
2. *Manufactured Capital* : Manufactured physical objects (as distinct from natural

physical objects) that are available to an organization for use in the production of goods or the provision of services, including: buildings, equipment, infrastructure (such as roads, ports, bridges and waste and water treatment plants).

3. *Intellectual Capital* : Intellectual capital (patents, software, etc.) includes reporting issues, such as expenditures on sustainability-related R&D, monitoring of sustainability related targets.
4. *Human Capital* : Human capital includes reporting on people’s competencies, capabilities and experience and their motivations to innovate, including their alignment with and support for an organization’s governance framework and risk management approach, and ethical values, such as recognition of human rights, ability to understand, develop and implement an organization’s strategy, loyalties and motivations for improving processes, goods and services, including their ability to lead, manage and collaborate.
5. *Social Capital* : Social capital (employees, community and customers) includes reporting issues related to employee well-being, such as adoption and enforcement of human and labour rights and community engagement programmes.
6. *Natural Capital* : Natural capital (clean air, land, water, forests, biodiversity, etc.) involves reporting issues related to a company’s understanding of scarcity of these natural resources, climate change strategy, carbon emission, water consumption and recycling.

Answer 5(b)

The following are the important objects of internal check system:

- i) To assign to a specific person, the responsibility of particular acts, defaults or omissions by allocation of specific duties.
- ii) To obtain physical and financial confirmation of facts and entries physical and financial by creation and preservation of necessary records.
- iii) To facilitate the breakdown of accounting procedures where required so as to avoid bottlenecks and establish an even flow of work and operations.
- iv) To reduce the possibilities of fraud and errors.
- v) To ensure that no single individual has an exclusive control over any one transaction or group of transactions

Answer 5(c)

The control environment describes a set of standards, processes, and structures that provide the basis for carrying out internal control across the organization. According to the Institute of Internal Auditors (IIA), a control environment is the foundation on which an effective system of internal control is built and operated in an organization that strives to:

- achieve its strategic objectives,
- provide reliable financial reporting to internal and external stakeholders,

- operate its business efficiently and effectively,
- comply with all applicable laws and regulations, and
- safeguard its assets.

Answer 5(d)

As per Part C of Schedule II of SEBI (LODR) Regulations, 2015, information related to the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to:

- a) matters required to be included in the director's responsibility statement to be included in the board's report in terms of clause (c) of sub-section (3) of Section 134 of the Companies Act, 2013;
- b) changes, if any, in accounting policies and practices and reasons for the same;
- c) major accounting entries involving estimates based on the exercise of judgment by management;
- d) significant adjustments made in the financial statements arising out of audit findings;
- e) compliance with listing and other legal requirements relating to financial statements;
- f) disclosure of any related party transactions;
- g) modified opinion(s) in the draft audit report shall be reviewed by Audit committee.

Answer 5A(i)

The following Guiding Principles underpin the preparation of an integrated report, informing the content of the report and how information is presented:

- **Strategic focus and future orientation:** An integrated report should provide insight into the organization's strategy, and how it relates to the organization's ability to create value in the short, medium and long term, and to its use of and effects on the capitals.
- **Connectivity of information:** An integrated report should show a holistic picture of the combination, interrelatedness and dependencies between the factors that affect the organization's ability to create value over time.
- **Stakeholder relationships:** An integrated report should provide insight into the nature and quality of the organization's relationships with its key stakeholders, including how and to what extent the organization understands, takes into account and responds to their legitimate needs and interests.
- **Materiality:** An integrated report should disclose information about matters that substantively affect the organization's ability to create value over the short, medium and long term.
- **Conciseness:** An integrated report should be concise.
- **Reliability and completeness:** An integrated report should include all material matters, both positive and negative, in a balanced way and without material error.

- **Consistency and comparability:** The information in an integrated report should be presented: (a) on a basis that is consistent over time; and (b) in a way that enables comparison with other organizations to the extent it is material to the organization's own ability to create value over time.

Answer 5A(ii)

In reference to Annexure -II of the Companies (CSR Policy) Rules, 2014 i.e. Format For The Annual Report on CSR Activities to be Included in the Board's Report For Financial Year Commencing on or After 1st Day of April, 2020, Excess amount for set off, (if any) would be presented in the manner as prescribed as under :

<i>Sl. No. Particulars</i>	<i>Amount (in Rs.)</i>
(i) Two percent of average net profit of the company as per section 135(5)	
(ii) Total amount spent for the Financial Year	
(iii) Excess amount spent for the financial year [(a&)-(1)]	
(iv) Surplus arising out of the CSR projects or programmes or activities of the previous financial years, if any	
(v) Amount available for set off in succeeding financial years [(iii)-(iv)]	

Answer 5A(iii)

Directors' Responsibility Statement

Section 134(3)(c) of the Companies Act, 2013 provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include Directors' Responsibility Statement. In terms of sub-clause (e) of sub-section (5) of section 134 the Directors' Responsibility Statement shall state that —

- (a) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation. — For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (b) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Answer 5A(iv)

As per Regulation 17(8) of SEBI (LODR) Regulations, 2015, the chief executive

officer and the chief financial officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II. The following compliance certificate shall be furnished by chief executive officer and chief financial officer:

- A. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief :
 - 1. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - 2. these statements together present a true and fair view of the listed entity's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- B. There are, to the best of their knowledge and belief, no transactions entered into by the listed entity's during the year which are fraudulent, illegal or violative of the company's code of conduct.
- C. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of internal control systems of the listed entity's pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- D. They have indicated to the auditors and the Audit committee:
 - 1. significant changes in internal control over financial reporting during the year;
 - 2. significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
 - 3. instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the listed entity's internal control system over financial reporting.

PART IV

Question 6

- (a) *Explain four 'basic, non-negotiable system conditions for global sustainability' as developed by Karl-Henrik Robert, founder of the environment organization. "The Natural Step".*
- (b) *Explain the difference between Absolute measure approach and relative measure approach which are used in context to "Sustainable Value Added (SVA)".*
(5 marks each)

Answer 6(a)

In an attempt to address criticism of the vagueness in the definition of sustainable development, Karl-Henrik Robert, founder of the environment organization The Natural Step, along with a group of 50 scientists sought to obtain a consensus on sustainability

and developed four ‘basic, non-negotiable system conditions for global sustainability’. These include:

1. No systematic increase of substances from the earth’s crust in the ecosphere. This condition implies a drastic reduction in the use of minerals, fossils fuels and non- renewable resources.
2. No systematic increase of substances produced by society in the ecosphere. This condition means that substances cannot be produced faster that they are broken down and degraded biologically. Therefore, the uses of non-biodegradable materials must be minimized.
3. No systematic diminishing of the physical basis for productivity and diversity of nature. This condition requires preservation of biodiversity, non-environmentally damaging land use practices and use of renewable resources.
4. Fair and efficient use of resources and social justice. This implies equitable access to an just distribution of resources.

Answer 6(b)

Sustainable Value Added (SVA)

Traditionally, an enterprise focuses on value maximization. The conventional management takes into account just one dimension — economic — when creating value in an enterprise. All resources including environmental and social resources are neglected. This point of view is not acceptable when speaking about sustainable development. Over the last decades, theorists emphasize wider scope of entrepreneurial objectives besides obtaining the greatest value possible. Sustainable development is a normative concept laid out as the combination of economic prosperity, environmental integrity and social equity. Value is created whenever benefits exceed costs.

There are two approaches to measure corporate contribution to sustainability i.e. Absolute Measures and Relative Measures.

Absolute Measures:

The absolute measure of assessing corporate contributions to sustainability is to subtract the costs form the benefits created by a company. For this purpose both internal and external costs need to be considered. The underlying idea is, that a company contributes to sustainability, if the benefits exceed the sum of internal and external costs. The result is ‘Green Value Added’. (GVA).

Relative Measures:

The relative measures express corporate contributions to sustainability as benefits per unit of environmental or social impact. The best known example of a relative measure is eco- efficiency. There are two different uses of the term eco-efficiency. As a maxim eco-efficiency refer to the reduction or even minimization impacts. The second notion uses the term eco- efficiency to describe the ratio of created value per environmental impact added.

Sustainable Value Added takes into account both, the efficiency and the absolute

level (effectiveness) of resource use. It has never been more important for businesses to use their economic, environmental and social resources efficiently.

Conceptually, SVA stresses the complementary disposition of economic, environmental and social resources. Sustainable Value Added is the extra value created when the overall level of environmental and social impacts is kept constant. Current approaches to measure corporate sustainable performance take into account external costs caused by environmental and social damage or focus on the ratio between value creation and resource consumption.

As Sustainable Value Added is inspired by strong sustainability, it measures whether a company creates extra value while ensuring that every environmental and social impact is in total constant. Therefore, it takes into account both, corporate eco and social efficiency as well as the absolute level of environmental and social resource consumption (eco and social effectiveness). As a result, Sustainable Value Added considers simultaneously economic, environmental and social aspects.

The overall result can be expressed in any of the three dimensions of sustainability. Sustainable Value Added allows assessing the sustainable performance of enterprises similar to financial performance in monetary terms and this, in turn, enhances creative leadership and better formulation of a resource efficient business strategy.

ADVANCED TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

NOTE : (i) Answer ALL Questions.

(ii) All the references to section in Part II of the question paper relate to the Income Tax Act, 1961 and relevant Assessment Year 2023-24 unless stated otherwise.

(iii) Wherever necessary, suitable assumption can be made and the same to be stated clearly in the answer.

(iv) Working notes should form part of the answer

PART I

Question 1

(a) Mahesh is engaged in supply of goods and services in the state of Gujarat. He is registered person under regular scheme under GST Law. He has provided the following information with respect to outward supply made during the month of May, 2023 :

S. No.	Particulars	Amount (₹)
(i)	Supplied goods to Gravit Enterprises in the state of Gujarat at the instruction of Ramesh Enterprises, registered in the state of Karnataka.	8,00,000
(ii)	Receipt towards consultancy of trade mark registration of two products of clients. It consists of ₹1,00,000 as Consultancy fee for trade mark registration and ₹20,000 towards rates and taxes paid to the government. Payment of taxes was as per authorization of the recipient and shown separately in the invoice. It is an intra-state supply.	1,20,000
(iii)	Receipt towards sponsorship service provided to GR Agency, a partnership firm registered under the GST law. It is an inter-state supply.	2,00,000
(iv)	Liquidated damage received from Praful Distributor, a dealer registered in the state of Gujarat, to compensate for injury caused due to late supply. There is no implied contract in this regard.	50,000
(v)	Transfer of tenancy right against consideration in the form of tenancy premium relating to the property located in Ahmadabad (Gujarat). Transfer of tenancy right is subject to stamp duty and registration charges.	3,00,000

Assume applicable Rate of CGST, SGST and IGST are 9%, 9% and 18% respectively for supply of goods and services. All amounts given above are exclusive of taxes wherever applicable.

Compute the taxable value of supply and GST liability of Mahesh for the month of May 2023. State explanation with respect to the treatment of above items.

(5 marks)

(b) Determine the place of supply (with correct legal provision) under the following independent cases having regard to the provision of the GST law:

- (i) Mufat is a person registered under GST in the state of Rajasthan who intends to export good to a person chinmay located in Taiwan. Mufat avails the service of transportation of goods by air to Taiwan from an air cargo operator Fazal, who is also registered under GST in the state of Punjab.
- (ii) MPQ event management company registered at New Delhi organizes an award function at jaisalmer (Rajasthan) for Mukan Jewellers registered in Chennai.
- (iii) Vishwas Planners of Ahmedabad Planned and organized retirement function of prem Kishore (an unregistered person of Kolkata) at Ujjain.
- (iv) Montu, registered in Bangalore, has availed DTH service from Raman. The DTH service equipment with fixed line is his office at Bangalore.
- (v) Naya of Mumbai booked online ticket at Delhi for an OTC water park at Goa.

(5 marks)

(c) Swastik Auto Ltd., a registered supplier from Maharashtra is engaged in the manufacturing of passenger auto. The company provides the following details of purchase made/ services availed by it during the month of April, 2023 :

S. No.	Particulars	GST Paid (₹)
(i)	Payment made to M/s Jagdamba Caterers for providing daily breakfast & lunch to the employees of the company, as voluntary staff welfare measure.	72,500
(ii)	Payment made to contractor for construction of staff quarter.	90,000
(iii)	Purchase of Mini Bus (seating capacity 15 persons) for the transportation of employees from their residence to company and back.	5,60,000
(iv)	Purchase of iron which is used as a raw material (invoice received and GST paid for full amount but only 90% of material received during the month of April, 2023 and remaining 10% will be received in next month)	54,000

Apart from that Company purchased tyres valued ₹12,00,000 (exclusive of GST)

from a local dealer who is registered in GST u/s 10(1) of CGST Act, 2017 and pay tax @ 1% to Government, tyres are going to be used in manufacture of auto. You are required to determine the eligible Input Tax Credit (ITC) available to Swastik Auto Ltd. for the month of April, 2023, by giving brief explanations for treatment of various items.

Subject to the information given above, all the other conditions necessary for availing input tax credit have been fulfilled.

(5 marks)

- (d) Gautam Sharma has obtained registration under GST on 1st May, 2023 in the state of Uttar Pradesh. He has received the following amounts in respect of the activities undertaken by him in the month of May, 2023:

S. No.	Particulars	Amount (₹)
(i)	Commission received as an insurance agent from Life Insurance Corporation of India (LIC)	1,50,000
(ii)	Service provided to recognized sports body as a commentator	4,12,000
(iii)	Electrically operated buses given on hire to Municipal Corporation	2,80,000
(iv)	Professional service provided free of cost to his independent married sister. Cost of providing such services is ₹ 1,10,000, but the open market value of such services is ₹ 1,50,000	-

You are required to calculate net GST payable by Gautam Sharma for the month of May, 2023. Rate of CGST and SGST is 9% each for all the outward supplies made by Gautam Sharma.

All the transactions stated above are intra-State transactions and amounts given are exclusive of GST.

(5 marks)

Answer 1(a)

Sr. No.	Particulars	Value (Rs.)	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
(i)	Supplied goods to Gravit Enterprises at the instruction of third person (It is an inter-state supply as goods) Place of supply = Principal place of business of third Person i.e., Karnataka (Section 10(1)(b) of IGST Act, 2017).	8,00,000	-	-	1,44,000
(ii)	Trademark registration fee (receipt towards rates and taxes is not considered as supply being provided as a Pure Agent).	1,00,000	9,000	9,000	-

(iii)	Sponsorship Service to GR Agency, a registered partnership firm (It is covered under Reverse Charge Mechanism as provided by any person to the partnership firm).	Nil	Nil	Nil	Nil
(iv)	Liquidated Damaged from distributor (it is not a supply because there is no implied contract in this regard) 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by aggrieved party due to breach of the contract. Such payments do not constitute consideration for a supply and are not taxable.	Nil	Nil	Nil	Nil
(v)	Transfer of Tenancy Right (It is taxable supply even though it is subject to stamp duty and registration charges) Circular No. 44/18/2018 - Central Goods and Services Tax, 2017.	3,00,000	27,000	27,000	-
	Taxable Value of Supply	12,00,000	-	-	-
	GST Liability	-	36,000	36,000	1,44,000

Answer 1(b)

<i>Sr. No.</i>	<i>Particulars</i>
(i)	Place of supply will be Taiwan i.e. destination of goods having regard to the provision of 12(8) of the Integrated Goods and Services Tax, 2017.
(ii)	Place of supply will be Chennai being the location of recipient as registered under the Goods & Services Tax having regard to the provision of 12(7) of the Integrated Goods and Services Tax Act, 2017.
(iii)	Place of supply will be location of event i.e., Ujjain because service is provided to an unregistered person having regard to the provision of 12(7) of the Integrated Goods and Services Tax Act, 2017.
(iv)	Place of supply is Jodhpur i.e. where the DTH equipment and line is installed for receipt of service having regard to the provision of 12(11) of the Integrated Goods and Services Tax Act, 2017.
(v)	Place of supply of service by way of admission to an amusement park is the place where part is located i.e. Goa having regard to the provision of 12(6) of the Integrated Goods and Services Tax Act, 2017.

Answer 1(c)**Computation of Input Tax Credit available to Swastik Auto Ltd. for the month of April, 2023**

<i>Sr. No.</i>	<i>Particulars</i>	<i>Eligible ITC (Rs.)</i>
(i)	Payment made to M/s Jagdamba Caterers for providing daily breakfast & lunch facility.[ITC Not available, since Input Tax Credit (ITC) on food and beverages, outdoor catering is blocked under section 17(5) of the Central Goods and Services Tax Act, 2017].	Nil
(ii)	Payment made to contractor for construction of staff quarter. [ITC Not available, since credit in respect of work contract services availed for construction of staff quarter is blocked under section 17(5) of the Central Goods and Services Tax Act, 2017].	Nil
(iii)	Purchase of Mini Bus (seating capacity 15 persons) for the transportation of employees.[As per Section 17(5) of the Central Goods and Services Tax Act, 2017, ITC of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) is not allowed, but in the given case bus is of 15 seating capacity, hence ITC would be allowed].	5,60,000
(iv)	Purchase of iron used as a raw material.[As per Section 16(2) of the Central Goods and Services Tax Act, 2017, if the goods are received in installments, tax credit shall be allowed only when last installment has been received. In the given case last installment 10% of goods are received in May, 2023, hence full credit shall be allowed in the month of May, 2023].	Nil
(v)	Purchase of tyres from composition dealer.[Input Tax Credit not available, since goods purchase from composition dealer under section 10(I)].	Nil
Total Input Tax Credit (ITC) Available		5,60,000

Answer 1(d)**Computation of Net GST Payable by Gautam Sharma for May, 2023**

<i>Sr. No.</i>	<i>Particulars</i>	<i>Taxable Value (Rs.)</i>	<i>CGST (Rs.)</i>	<i>SGST (Rs.)</i>
(i)	Commission received as an insurance agent from Life Insurance Corporation of India (LIC).(Tax is payable under Reverse Charge Mechanism by insurance company,			

	i.e. LIC) under section 9(3) of Central Goods and Services Tax Act, 2017.	-	-	-
(ii)	Service provided to recognized sports body as a commentator.[Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide exemption notification. Hence service provided by commentator is taxable under Goods & Services Tax].	4,12,000	37,080	37,080
(iii)	Services by way of electrically operated buses given on hire to Municipality.[Services by way of given on hire to a local authority, an Electrically Operated Vehicle (EOV) meant to carry more than 12 passengers are exempt. Hence, services of giving electrically operated buses on hire to Municipal Corporation are exempt from GST.	-	-	-
(iv)	Professional services provided at free of cost.[Not a supply as it is made without consideration and is also not covered in Schedule I because sister being independent is not a related person as she belongs to a different family].	-	-	-
Total Goods & Services Tax Payable		4,12,000	37,080	37,080

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

Question 2

- (a) *Based on the telephonic instruction from the proper officer above the rank of Joint Commissioner, an officer has reached the principal place of business of Ravindra Gupta, a registered person under the GST law to conduct search and seizure proceeding in pursuance of inspection.*

Ravindra Gupta has challenged the search and seizure proceeding initiated by the officer considering it as illegal. Based on the legal provision of the CGST Act, 2017, answer the following :

- (i) *Whether the officer on the basis of telephonic instruction could initiate search and seizure proceeding ? Whether the action of Ravindra Gupta is correct in considering search or seizure as illegal ?*
- (ii) *Under what circumstances the search and seizure proceedings could be initiated ?*

(iii) What is the validity of the document seized during the illegal search ?

(5 marks)

(b) Rakesh Enterprises, a registered person under the GST law, send inputs without payment of tax to one of its job worker, Sumit Agency, for carrying out certain operations on the goods. The goods were sent on 12th May, 2022 and received by the job worker on 14th May, 2022. Sumit Agency carried out the job work but did not send back the inputs after processing.

On the basis of above answer the following :

- (i) Mention whether Rakesh Enterprises is allowed to take input tax credit on inputs sent to job worker, Sumit Agency.
- (ii) Whether your answer differs in (i) above, if the inputs are directly sent on the instruction of Rakesh Enterprises by the original supplier of the inputs to the job worker's premises ?
- (iii) State the last date by which input after job work is required to be sent back to Rakesh Agency in case of (i) above (ignore any extension period).
- (iv) What will be the consequence if the inputs were not returned back by Sumit Agency after job worker ? Also state what action is required to be taken by Rakesh Enterprises in that case ?

(5 marks)

(c) Asgar Textiles of Delhi has to send cloth for dyeing to its job-worker at Noida (UP) value of which is ₹40,000 (exclusive of GST). It wishes to know whether it needs to issue a tax invoice and e-way bill at the time of sending the goods to job-worker. You are required to advise him the documents needs to be issued and its content with reference to the provisions of the CGST Act, 2017.

Assume applicable rate of CGST, SGST and IGST as 9%, 9% and 18% respectively.

(5 marks)

(d) Who are the persons deemed to be guilty of the offence under the GST law where offence is committed by a company and state the circumstances thereto? Also discuss when will be such persons not liable to the punishment ?

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

(i) Mention the name of the document to be issued under the following independent cases with regard to the provisions of the GST law :

(detailed explanations not required)

- (i) Chirag, a registered person under GST, receives advance payment with respect to the supply of goods.
- (ii) Gaurav, a composition dealer makes supply of goods worth ₹12,000 to a registered person.

- (iii) *Vijay Shree Chemicals, a registered dealer of chemical sold goods worth ₹30,000 to an unregistered person. Value of ₹ 30,000 includes ₹ 5,000 towards exempt supply.*
- (iv) *Jai Associates, a registered person, fails to make supply of goods even though it had already received the advance payment to make the supply.*
- (v) *Bhairav Electric has sold taxable goods of ₹ 10,000 to various unregistered persons on 10th April, 2023. Customers do not require the invoices in respect the supply. Each supply of goods is upto ₹ 200.*

(5 marks)

- (ii) *Determine the applicability of TDS provisions of the CGST Act, 2017 with proper reasons under the following independent cases :*

- (i) *A Central Government department (registered under GST in the state of West Bengal for deducting TDS) enters into a contract with a Public Sector Undertaking (PSU), registered in the state of Haryana, for supplying goods valued ₹3,00,000.*
- (ii) *Darshil, a registered person in the state of Punjab, awarded a work contract by a Governmental Department also registered under GST in Punjab, amounting to ₹3,06,800 (including total GST of ₹46,800 being CGST + SGST).*
- (iii) *Nikita Enterprises, registered supplier in Gujarat, was awarded a contract for supply of goods by a PSU registered in Mumbai amounting to a taxable value of ₹5,00,000 (excluding GST). Place of supply of the goods in this case is Gujarat.*

(5 marks)

- (iii) *Rahul has filed his GST Return GSTR-3B for the month of September, 2021. on 19 October, 2021. and paid GST liability of ₹5 lakh after setting-off Input Tax Credit of ₹2.50 lakh. At the time of scrutiny of books and documents by the department, assessing officer finds that Rahul has claimed input tax credit of ₹1.80 lakh on a fake tax invoice. Department issued a show cause notice to Rahul on 31st January, 2023 under section 74(1) of the CGST Act, 2017.*

In response to above notice Rahul wants to Pay Tax, Interest and Penalty leviable on him on 25th February, 2023.

You are required to briefly discuss the panel provision under section 74 of the CGST Act, 2017 and compute the amount of Penalty for the above situation. No need to calculate interest amount.

What would be your answer if he pays Tax, Interest and Penalty before issuing the show cause notice on 25th January, 2023 ?

(5 marks)

- (iv) *Briefly explain when do the goods become liable to 'confiscation' by the officer under section 130 of the CGST Act, 2017 ?*

(5 marks)

Answer 2(a)

<i>Sr. No.</i>	<i>Particulars</i>
(i)	The officer on the basis of telephonic instruction could not initiate search and seizure proceeding because he must have an authorization in writing to initiate the search and seizure proceeding. Hence, the action of Ravidra Gupta is correct in considering it is illegal.
(ii)	As per section 67(2) of the Central Goods and Services Tax Act, 2017, where proper officer, not below rank of Joint Commissioner, either pursuant to inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act. Are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or thing.
(iii)	Even if a search and seizure of documents or account books is illegal, the documents or material prepared and obtained on search or seizure can be looked into and relied on for the purpose of making the assessment. They have probative value. They are public documents prepared by the public officer in the performance of his official duties. Law presumes that the proceedings so recorded are accurate and were made as reflected in the documents.

Answer 2(b)

<i>Sr. No.</i>	<i>Particulars</i>
(i)	As per section 19 of the CGST Act, 2017, the principal is entitled to take input tax credit on inputs sent to a job worker for job work. Accordingly, Rakesh Enterprises is eligible to take input tax credit on input sent to job worker.
(ii)	Answer will remain the same as the principal is entitled to take input tax credit of inputs sent for job work even if the said goods are directly sent by the supplier (on instruction of Rakesh Enterprises) to the job worker.
(iii)	Last day by which input after job work is required to be sent back will be 11 th May, 2023 i.e. within 1 year from the day of sending out.
(iv)	Where, input sent for job work is not received back or not supplied from the place of job worker within a period of one year of the date of being sent out, it shall be treated as Deemed supply by the principal to the job worker on the day when the said inputs were sent out.
(v)	Rakesh Enterprises shall be liable to pay tax along with applicable interest by declaring the same as supply in GSTR1 in the concerned period.

Answer 2(c)

Particulars

(i) Requirement of Tax Invoice -

For the purposes of transportation of goods for job work, the consignor may issue a delivery challan, serially numbered, in one or multiple series, in lieu of invoice at the time of removal of goods for transportation, containing the following details, namely:-

- (a) Date and number of the delivery challan;
- (b) Name, address and GSTIN of the consigner, if registered;
- (c) Name, address and GSTIN/UIN of the consignee, if registered;
- (d) Harmonised System of Nomenclature (HSN) code and description of goods;
- (e) Quantity (provisional, where the exact quantity being supplied is not known);
- (f) Taxable value;
- (g) Tax rate and tax amount — central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee;
- (h) Place of supply, in case of inter-State movement; and
- (i) Signature. Hence in given case Asgar Textiles has to issue a delivery challan and not a tax invoice at the time of sending the goods to job worker.

(ii) Requirement of e-way bill –

E-way bill will be generated when there is a movement of goods in a vehicle / conveyance of value more than Rs. 50,000.

Provided also that where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated mandatory either by the principal or the job worker, if registered, irrespective of the value of the consignment.

Therefore, E-way bill must be generated on the common portal for Inter-state movement (i.e. Delhi to Noida) of Goods by the Principal to the Job-worker even if the value of consignment of Goods is Rs. 47,200 (40,000 + 7,200 tax) less than Rs. 50,000.

Answer 2(d)

Particulars

Where an offence committed by a person under this act is a company, every person who, at the time the offence committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Where it is proved that the offence has been committed

- with the consent or connivance of or
- is attributable to any negligence on the part of any director, manager, secretary or other officer of the company

Such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Any such person shall not be liable to any punishment, if he proves that the offence was committed

- without his knowledge or
- that he had exercised all due diligence to prevent the commission of the such offence.

Answer 2A(i)

<i>Sr. No.</i>	<i>Particulars</i>
(i)	<i>Receipt Voucher</i>
(ii)	<i>Bill of Supply</i>
(iii)	<i>Tax invoice cum Bill of Supply</i>
(iv)	<i>Refund voucher</i>
(v)	<i>Consolidated Tax Invoice, for the day</i>

Answer 2A(ii)

<i>Sr. No.</i>	<i>Particulars</i>
(i)	<p>Tax is not liable to be deducted when the supply of good and or services has taken place between one specified person to another specified person. [Notification No. 73/2018-C.T., dated 31-12-2018]</p> <p>Since both a Central Government department and a PSU are the specified person, tax is not deductible in case of supply of goods between them.</p>
(ii)	<p>Certain specified person including the Government agencies are required to deduct tax from the payment made to the supplier of taxable goods and/or services, where the total value of such supply (excluding Goods & Services Tax) under a contract exceeds Rs. 2,50,000.</p> <p>Since the value of contract excluding GST exceeds Rs.2,50,000 (Rs.3,06,800 – 46,800=2,60,000), the Governmental agency is mandatorily required to deduct Central Goods and Services Tax @1 % and State Goods and Services Tax @ 1%.</p>
(iii)	<p>Since the location of supplier and place of supply is in the state of Gujarat while the location of recipient is in the state of Mumbai, TDS would not be deducted. [Proviso to section 51(1) of Central Goods and Services Tax Act, 2017]</p>

Answer 2A(iii)*Particulars*

Section 74 of Central Goods and Services Tax Act, 2017 deals with the provisions relating the determination of Penalty in case of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed by reason of fraud or any wilful statement.

As per the provision of section 74 of Central Goods and Services Tax Act, 2017 penalty in case of fraud shall be calculated as follows:

<i>Conditions</i>	<i>Amount of Penalty</i>
If Tax and interest is paid before issuance of show cause notice	15% of tax amount due
If Tax and interest is paid within 30 days from issuance of show cause notice	25% of tax amount due
If Tax and interest is paid within 30 days of communication of adjudication order	50% of tax amount due
In any other case (i.e. If Tax and interest is paid after 30 days of adjudication order)	100% of tax amount due

- (i) In the given case, Rahu1 has claimed Input Tax Credit (ITC) of Rs.1,80,000 on a fake tax invoice. So ITC wrongly availed by reason of fraud is Rs. 1,80,000. Hence amount of Tax due is Rs.1,80,000 which will be liable to penalty under section 74 of Central Goods and Services Tax Act, 2017.
- (ii) In the first case, if Rahul Pays Tax and interest on 25 February, 2023 (i.e. within 30 days of issuance of show cause notice), the penalty under section 74 of Central Goods and Services Tax Act, 2017 will be 25% of Rs. 1,80,000 (i.e. Rs.45,000).
- (iii) In second case, if Rahul Pays Tax and interest before issue of show cause notice, the penalty under section 74 of Central Goods and Services Tax Act, 2017 will be 15% of Rs.1,80,000 (i.e. Rs. 27,000).

Answer 2A(iv)*Particulars*

As per section 130 of Central Goods and Services Tax Act, 2017, goods become liable to confiscation when any person does the following :

- supplies or receives any goods in contravention of any of the provisions of this act or rules made there under with intent to evasion of tax;
- does not account for any goods on which he is liable to pay tax under this act;
- supplies any goods liable to tax under this act without having applied for registration;

- contravenes any of the provisions of the Goods & Services Tax Act or rules made there under with intent to evade payment of tax.
- uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this act or the rules made there under unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation.

Question 3

- a) *Manglam Ltd. agreed to provide consultancy services to Global Finance LLP in the month of June, 2023 for which it received an advance of ₹2,50,000 on 12th May, 2023 from Global Finance LLP. Subsequently, in the month of June, 2023 before supply of service, the said service contract has to be cancelled owing to some inadvertent circumstances. However, Manglam Ltd. has issued the invoice for the advance received in May month itself and filed GST return for May, 2023 and has paid GST thereon. As a tax consultant you are required to decide the time of supply in this case and advice to Manglam Ltd whether it can claim refund of tax paid or any other action required to adjust its tax liability ?*
- (4 marks)
- b) *State the provision of the CGST Act, 2017 and the rules made there under the GST law relating to the time limit for issuance of Tax invoice under the following independent circumstances : (Assume all suppliers are registered under the GST)*
- (i) *Rasik sold goods worth ₹ 2,00,000 which involves movement of goods from the godown on 10th May, 2023 but received by buyer on 14th May, 2023.*
- (ii) *Ajay Financial service, a NBFC, provides the supply of Car loan service to Gajendra on 15th May, 2023.*
- (iii) *Prakash has entered into an agreement for continuous supply of repair and maintenance service for the entire financial year. Due date of payment is not ascertainable from the agreement.*
- (iv) *Vinit, a practicing Company Secretary, has provided representation service before the Assessing Officer on 25th February, 2023. Payment is made on 28th February, 2023.*
- (4 marks)
- c) *What will be the tax consequences if CGST and SGST wrongfully collected instead of IGST and paid to Central Government and State Government respectively ? Also discuss the legal provision related to payment of interest and penalty in this case, if any.*
- (4 marks)
- d) *State the persons who are not qualified to act as an authorized representative under section 116(3) of the CGST Act, 2017.*
- (4 marks)

- e) *Lucky, a registered person under the GST law had failed to furnish return under section 39 of the CGST Act, 2017 even after service of notice by the proper officer. Proper Officer assessed the tax liability based on relevant material and information gathered and issued the "Best Judgment Assessment Order".*

Answer the following based on the provision of best judgment assessment :

- (i) *Time period within which such best judgment assessment order may be issued.*
- (ii) *When such best judgment assessment order shall be deemed to have been withdrawn ?*
- (iii) *On withdrawn of best judgment assessment order, whether the registered person is relieved from payment of late fee under section 47 of the CGST Act, 2017 ?*
(4 marks)

Answer 3(a)

Sr. No.	Particulars
(i)	In this case advance received on 12th May, 2023 for services to be rendered in the month of June 2023. Since advance is received prior to completion of services, the time of supply of service shall be the date of receipt of advance i.e. 12th May, 2023. Hence, Manglam Ltd. is liable to pay GST in his May, 2023 month's return.
(ii)	However, in case GST is paid by the supplier on advance received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a credit note in terms of section 34 of the Central Goods and Services Tax Act, 2017.
(iii)	He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of Central Goods and Services Tax Act, 2017. There is no need to file a separate refund claim.
(iv)	However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a refund claim [Circular No. 137/07/2020 GST dated 13.04.2020].
(v)	Therefore, in the given case, Manglam Ltd. is required to issue a credit note, declare its details in the return for the month during which such credit note has been issued and adjust the tax liability. However, if there is no output liability of Manglam Ltd. against which said credit note can be adjusted, it may proceed to file a refund claim under section 54 of the Central Goods and Services Tax Act, 2017.

Answer 3(b)

Sr. No.	Particulars
(i)	Rasik is required to issue tax invoice on or before the removal of goods i.e. on or before 10th May, 2023.
(ii)	Ajay financial service shall issue tax invoice within 45 days from the date of provision of service i.e. 15th May, 2023 i.e. by 29th June, 2023.

- (iii) Since due date of payment is not ascertainable from the continuous supply of agreement of service, Prakash has to issue tax invoice on or before the time when he receives the payment.
- (iv) Vinit is required to issue tax invoice within 30 days from the date of provision of service i.e. 25th February, 2023 i.e. by 27th March, 2023.

Answer 3(c)*Particulars***Refund of Central Goods and Services Tax and State Goods and Services Tax:**

As per Section 19 of the Integrated Goods and Services Tax Act, 2017, If a registered person who has paid the CGST and SGST on a transaction considered by him to be an intra-state supply, but which is subsequently held to be an inter-State supply, shall have to pay IGST and claim refund of Central Goods and Services Tax and State Goods and Services Tax so paid in such manner and subject to such conditions as may be prescribed.

No Interest payable on Integrated Goods and Services Tax:

As per Section 19 of the Integrated Goods and Services Tax Act, 2017, if a registered person who has paid Central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

Also the penalty will not be levied in this scenario.

Answer 3(d)*Particulars*

Following Persons shall not be qualified to act as an authorized representative as per section 116(3) of the Central Goods and Services Tax Act, 2017 —

- (i) Who has been dismissed or removed from government service; or
- (ii) Who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or
- (iii) Who is found guilty of misconduct by the prescribed authority;
- (iv) Who has been adjudged as an insolvent.

Answer 3(e)

Sr. No.	Particulars
(i)	Best judgment assessment order is required to be issued within 5 years from the date specified under section 44 of the Central Goods and Services Tax for furnishing of the annual return for the financial year to which the tax not paid relates.
(ii)	When the registered person <ul style="list-style-type: none"> • Furnishes a valid return • Within 30 days of the service of the assessment order The said assessment order shall be deemed to have been withdrawn
(iii)	Liability for payment of late fee under section 47 of the Central Goods and Services Tax Act, 2017 shall continue even after the withdrawal of the best judgment assessment order.

Question 4

- (a) XYZ Ltd. of Delhi imported a machine from United States of America (USA) by Vessel. Details with respect to the import of the machine are given below :

S. No.	Particulars	Amount
(i)	Cost of Machine	\$ 20,000
(ii)	Transport charges from factory of exporter to the port for shipment	\$ 4,000
(iii)	Freight charge from USA port to Indian Port	\$ 1,000
(iv)	Lighterage charges paid by XYZ Ltd. at the port in India	₹ 18,000
(v)	Freight incurred from Port of entry to Inland container depot	₹ 7,000
(vi)	Insurance Charges	Not ascertainable

- Date of Bill of Entry is 15th April 2023 (Rate of Basic Custom Duty 20% and Rate of exchange notified by CBIC is ₹ 80 per US \$)
- Date of Entry Inward is 8th April 2023 (Rate of Basic Customs Duty 12% and Rate of Exchange notified by CBIC is ₹ 81 per US \$)
- Social Welfare Surcharge rate is 10% and Rate of IGST is @ 18%.

Compute the assessable value and total duties payable under Customs Law relating to the machine. Ignore GST compensation cess and agricultural infrastructure and development cess.

(5 marks)

(b) With reference to Foreign Trade Policy (FTP), discuss the key differences between Advance Authorisation Scheme and Duty Free Import Authorisation (DFIA) Scheme.

(5 marks)

Answer 4(a)

Computation of Assessable Value and Total Import Duty payable:

<i>Particulars</i>	<i>Amount</i>
Cost of Machine	\$20000
Transport charges up to the Port	\$4000
FOB Value	\$24000
FOB Value in Indian R at the rate of 80 per US\$	Rs. 19,20,000
(Rate of exchange notified by CBIC on the date of presentation of Bill of Entry)	
Freight Charge from US to Indian Port (US \$1000 x 80)	Rs. 80,000
Lighterage charges paid by XYZ Ltd.	
(Cost of transportation includes the Lighterage charges)	Rs. 18,000
Freight incurred from Port of entry to Inland Container Depot	
(Post import charges not to be added)	Nil
Insurance charges	21,600
(insurance charge is included @ 1.125% of FOB as it is not ascertainable)	
Assessable Value	Rs. 20,39,600
Add : Basic Custom Duty @ 20%	Rs. 4,07,920
(Rate prevalent on the date of presentation of Bill of Entry or Entry Inward whichever is later)	
Add : Social Welfare Surcharge @ 10% of BCD	40,972
Total (AV and all duties)	Rs. 24,88,492
Add : IGST @18% (R/off)	Rs. 4,47,929
Total Value	Rs. 29,36,421
Total Duties payable under Customs Law (Roundoff)	Rs. 8,96,821

Answer 4(b)

Key differences between Advance Authorisation Scheme and Duty Free Import Authorisation (DFIA) are as follows:

<i>Sr. No.</i>	<i>Advance Authorisation Scheme</i>	<i>Duty Free Import Authorisation (DFIA)</i>
(i)	Advance Authorisation is not transferable.	DFIA is transferable after export obligation if fulfilled.
(ii)	Advance Authorisation Scheme requires 15% value addition.	In DFIA minimum 20% value addition is required.
(iii)	Advance Authorisation Scheme is available to Gem and Jewellery Sector.	DFIA Scheme is not available to Gem and Jewellery Sector.
(iv)	Advance Authorisation Scheme is eligible for both Standard Input Output Norms (SION) /Non SION Goods.	DFIA Scheme is only for Standard Input Output Norms (SION) Product.
(v)	Form ANF-4A is required Authorisation Scheme.	Form ANF-4H is required for DFIA Scheme.
(vi)	IGST has been exempted on imports under Advance Authorisation Scheme.	No such exemption is available if import under DFIA Scheme.
(vii)	Fuel is also allowed under Advance Authorisation Scheme.	Fuel is not eligible to be imported free under DFIA Scheme.

PART II**Question 5**

- (a) *AMN Pvt. Ltd. was incorporated in the AY 2021-2022 in the state of West Bengal. It has been engaged in the manufacturing of medicines. Since incorporation, the Company has opted concessional tax regime under section 115BAA of the Income Tax Act, 1961. During the financial year 2022-23, total income of the company is of ₹60 lakh. The company has satisfied all the conditions during the previous to be eligible under concessional tax regime. Compute the tax liability of the company for the assessment year 2023-24.*

(3 marks)

- (b) *Bharat Pvt. Ltd., a closely held company, has issued 20000 equity shares to Naman, a non-resident Indian, on 31st January, 2022 at an issue price of ₹75 per share, Fair Market Value of the equity shares was ₹45 per share on that day. Face value of the equity share is of ₹10 each.*

Assessing office has made an addition under section 56(2) of the Income Tax Act, 1961 while finalizing scrutiny assessment.

Discuss whether the action of the assessing officer is justified having regard to the legal provisions of the Income Tax Act, 1961.

(3 marks)

(c) Determine the taxability of the income under the below mentioned independent cases with respect to the provision of the Income Tax Act, 1961 for the assessment year 2023-24 :

- (i) Sharad, a resident but not ordinarily resident, received rental income from a house situated in Dubai. Rental income was deposited in the bank account maintained in Dubai.
- (ii) EFG Ltd., a USA based company, received ₹20 lakh from an Indian company for conducting feasibility study in relation to the new business unit to be established in Japan.
- (iii) Sakshi, a Non-resident Indian, working in a company of Singapore, directed her company to directly credit salary of two months in the bank account maintained in Delhi to meet her father's medical treatment.

(3 marks)

(d) Explain the concept of "Short Range and Long Range Tax Planning"

(3 marks)

(e) When can an agreement be declared as 'Impermissible Avoidance Agreement' under The Income Tax Act, 1961 ?

(3 marks)

Answer 5(a)

Computation of Tax Liability of AMN Pvt. Ltd. for AY 2023-24

Particulars	Amount (Rs.)
Total Income of the Company	60,00,000
Applicable Tax Rate u/s 115BAA	22%
Tax Payable	13,20,000
Add : Surcharge @ 10%	1,32,000
Total	14,52,000
Add : Health and Education Cess @ 4%	58,080
Total Tax Liability	15,10,080

Answer 5 (b)

As per section 56(2)(viib) of the Income tax Act, 1961, where a company, not being a company in which the public are substantially interested, receives in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the fair value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be deemed as income from other sources.

Here, the assessing officer is not justified in making addition u/s 56(2) of the Income tax Act, 1961, because equity shares had been issued to Mr. Naman, a Non-resident Indian, while the provision is applicable only in case of resident person.

Answer 5(c)

- (i) The rental income from a house situated in Dubai and received in the bank account maintained in Dubai will not be taxable in the hands of Mr. Sharad (not ordinary resident) because both the accrual and receipt of rental income are outside India. [Section 9(1)]
- (ii) Conducting feasibility study in relation to the new business unit to be established in Japan shall not be taxable as it is for the business outside India. [Section 9(1)(vii)(c)]
- (iii) Salary income of two month will be taxable in the hands of Ms. Sakshi even though she is non-resident because salary income is received in the bank account maintained in India and therefore taxable in India. [Section 5(2)(a)]

Answer 5 (d)

Short Range Planning : It refers to year to year planning to achieve some specific or limited objective.

For example, an individual assessee may plan to subscribe to PPF/NSC within the prescribed limit to enjoy the tax benefit in a particular year having unusual growth in the income.

Long Range Planning : It involves charting out a plan at the beginning of the income year to be followed around the year. This type of planning may not benefit immediately as in case of short term tax planning but it is likely to help in long run.

For example, Transfer of shares by an assessee to his minor son. Income from shares will be clubbed with his income but clubbing would cease after minor attains majority.

Answer 5(e)

Impermissible Avoidance Agreement : As per section 96 of the Income Tax Act, 1961, the Income Tax Commissioner will be empowered to declare an arrangement as an Impermissible Avoidance Arrangement if:

- i. It creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
- ii. It results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;
- iii. It lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or
- iv. It is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

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

Question 6

(a) *Swadeshi Ltd. an Indian company receives the following dividend income during the previous year 2022-23 :*

- (i) *From share held in Alfa Inc., a foreign company, in which it holds 25% of nominal value of equity share capital : ₹2,25,000.*

- (ii) From share held in Beta Inc., a foreign company, in which it holds 35% of nominal value of equity share capital : ₹1,50,000.
- (iii) From share held in Bharat Ltd., an Indian company in which it holds 5% of nominal value of equity share capital : ₹3,00,000.

Swadeshi Ltd. has paid Interest Expenses of ₹1,45,000 for earning above dividend income, the break up of which is as follows :

- (i) ₹45,000 (Alfa Inc.)
- (ii) ₹20,000 (Beta Inc.)
- (iii) ₹80,000 (Bharat Ltd.)

The Business income of Swadeshi Ltd. computed under the provisions of Income Tax Act is ₹41 Lakh.

Compute the total income and tax liability of Swadeshi Ltd. for the assessment year 2023-24. Assume Turnover of Swadeshi Ltd. during the previous year 2020-21 was ₹380 crore. Ignore Minimum Alternate Tax (MAT).

Note : Legal provision should form part of your answer.

(5 marks)

- (b) Pawan Ltd. of Mumbai is engaged in trading of electronic goods. It purchased 3000 units of electronic goods from its associated enterprises, Wind Ltd., Singapore @ ₹2,900 per unit and sold these units to Raja Enterprises at a price of @ ₹3,300 per unit. Pawan Ltd. also purchased similar electronic goods from an unrelated party, Varsha Ltd., a UK based company, and sold the same at a gross profit margin of 20% on sales. Wind Ltd.'s brand value is internationally known and benefit of the brand value may be taken @ ₹50 per unit. Wind Ltd. offers a quantity discount of ₹20 per unit whereas Varsha Ltd. does not offer such quantity discount.

State the best method for calculation of Arm's length price in given circumstance and compute Arm's length price (ALP) of the transaction between Pawan Ltd. and Wind Ltd., Singapore by applying that method.

Also find out whether there is any requirement of the addition needs to be made in the total income of Pawan Ltd.

(5 marks)

- (c) Distinguish between "Tax Evasion and Tax Avoidance" having regard to the tax practices followed by Tax payers to reduce the tax liability.

(5 marks)

OR (Alternate question to Q. No. 6)

Question 6

- (i) Mukesh, aged 27 years, an ordinary resident in India, is a well-known football

player. He has earned the following income and made investment with respect the financial year 2022-23 :

S. No.	Particulars	Amount (₹)
(i)	Indian income from playing football (computed)	7,40,000
(ii)	Foreign income earned from football tournament in country Z (computed)	9,00,000
(iii)	Agricultural income in country Z (exempted in the country)	3,00,000
(iv)	Life Insurance premium paid (sum insured ₹5,00,000)	60,000

There is no DTAA between India and country Z. He has paid tax of ₹1,26,000 on his foreign income.

Compute the total income and the tax payable by Mukesh for the assessment year 2023-24.

Note : (i) Foreign income given above is as converted in ₹.

(ii) Mukesh has opted for the provision of section 115BAC of the Income Tax Act, 1961.

(5 marks)

- (ii) Lalit who is employed in AQR Capital Ltd. since last 6 years, his total income as per income tax return for the last few years ranged between ₹8 lakh to ₹10 lakh per annum. He celebrated his 25th wedding anniversary on a large scale on 21st January, 2023 by hosting a luxury cruise party, for which he had spent ₹60 lakh. The Assessing Officer, in the course of scrutiny assessment of Lalit, asked him to explain the source of such expenditure.

Lalit offered explanation that the expenditure was out of his savings for the last few years.

The explanation was not found satisfactory by the Assessing Officer and wants to treat such amount as unexplained expenditure under section 69C of Income Tax Act, 1961.

You are required to discuss the tax consequences under section 69C of Income Tax Act, 1961 and decide whether decision of the Assessing Officer is justified in the this case ?

(5 marks)

- (iii) State when the Assessing Officer can invoke his power to determine Arm's Length Price of the transaction by himself. What would happen to the deduction claimed by the assessee under section 10AA or Chapter VIA of the Income Tax Act, 1961 in case of increase in Arm's Length Price by the Assessing Officer?

(5 marks)

Answer 6(a)

<i>Particulars</i>	<i>Amount (Rs.)</i>	
Profits and gains of business or profession		41,00,000
Income from other sources		
Dividend from Alfa Inc. - net dividend [2,25,000 - 45,000]	1,80,000	
Dividend from Beta Inc. - net dividend (W.N. 1) [1,50,000 - 20,000]	1,30,000	
Dividend from Bharat Ltd. (Max. allowed expenses is 20% of dividend income) (W.N. 2) [3,00,000 - 60,000]	2,40,000	5,50,000
Total Income		46,50,000

Computation of Tax Liability of Swadeshi Ltd. for AY 2023-24

<i>Particulars</i>	<i>Amount (Rs.)</i>	
Tax@ 25% on Rs. 46,50,000 (W.N. 3)		11,62,500
Add : Surcharge [Nil as total income is less than Rs. 50 lakhs]		Nil
Add : Health and Education cess @ 4% on Rs. 11,62,500		46,500
Total Tax Liability		12,09,000

Working Note 1:

Dividend received by Indian company from Specified foreign company (in which minimum 26% or more share are held by Indian Company) the concessional tax rate @ 15% under section 115BBD, would not be applicable with effect from A.Y. 2023-24. Accordingly, Net dividend received by an Indian Company from all foreign companies would be chargeable to tax at normal rates applicable to such company.

Working Note 2:

Under section 56(2)(i), with effect from 1-4-2021 any dividend receive from Indian Company is Taxable under Income from other sources. However deduction of interest expense incurred against the dividend is allowed as expenses. The deduction should not exceed 20% of the dividend income so received. No other expenditure like commission or salary expense incurred for earning the dividend income is allowed.

Working Note 3:

If a domestic company having turnover during the previous year 2020-21 is upto 400 crores and it does not opt for section 115BAA/115BAB then it shall be chargeable to tax at the rate of 25% plus applicable surcharge and health & education cess.

Answer 6(b)**Best method is Resale price method**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Resale price of goods purchased from Wind Ltd.	3300 per unit
Less : Normal Gross profit margin @ 20% on sales	(660 per unit)
Add : Adjustment for Brand Value	50 per unit
Less : Quantity discount allowed by Wind Ltd.	(20 per unit)
Arm's Length Price	2670 per unit
Price paid to Wind Ltd. 3000 unit * Rs.2900 per unit	87,00,000
Arm's Length price of 3000 units* Rs.2670 per unit	80,10,000
Increase in Income of Pawan Ltd.	6,90,000

Answer 6 (c)

<i>Basis</i>	<i>Tax Evasion</i>	<i>Tax Avoidance</i>
Meaning	It refers to reducing tax liability by dishonest means.	It refers to reducing the tax liability by finding out loopholes in the law.
Legality	It is clearly violation of law and unethical in nature. It includes an element of deceit.	It complies with the legal language of the law but not the spirit of the law.
Example	An enterprise inflating its expenses by showing fake invoices to claim more deductions.	An enterprise shifting its income by transfer of its assets to another person.
Acceptance	This is clearly prohibited as it is wholly illegal.	This concept can be considered heinous to tax evasion. Government brings amendment to curb such practices and to plug the loopholes.
Penalties and Prosecu-	It results in stringent penalties and prosecution against the person engaged in it.	It may result in disregarding the transaction done to avoid tax and may/ may not result in penalties and prosecution against the person engaged in it.
Time Period	It aims at evading the payment of tax after the liability to tax has arisen.	It is futuristic in nature.

Answer 6A(i)**Computation of Total Income and Tax Liability of Mr. Mukesh for AY 2023-24**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Indian Income from playing football (computed)	7,40,000
Foreign Income from playing football in country Z (computed)	9,00,000
Agricultural Income in country Z (exempted in country Z but taxable in India because it is not Indian Agriculture Income)	3,00,000
Gross Total Income	19,40,000
Less : Deduction under chapter VI-A (Mukesh has opted for new tax regime so no deduction is allowed)	Nil
Total Income	19,40,000
Tax Payable	
Basic Tax as per slab under new scheme	3,19,500
Add : Secondary and High Education cess @ 4%	12,780
Tax liability	3,32,280
Less: Relief under section 91 (lower of Indian Rate or foreign rate of tax) [refer working note]	(1,26,000)
Net Tax payable	2,06,280

Working Note:

- Average rate of tax in India 17.13% ($3,32,280 / 19,40,000 \times 100$)
- Average rate of tax in Country Z 14% ($126000 / 900000 \times 100$)
- Since average tax rate of Country Z is lower hence credit given for that.

Answer 6(A)(ii)

As per provision of section 69C of the Income tax Act, 1961, if any expenditure is incurred by an assessee in any financial year in respect of which he is not able to offer explanation about the source of such expenditure or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, then the amount of such unexplained expenditure may be deemed as income of the assessee for such financial year.

Further as per section 115BBE of the Income tax Act, 1961, such unexplained expenditure under section 69C is taxable @ 60% plus surcharge @ 25% and cess @ 4%. The total effective rate of tax would be @ 78%.

Therefore, in this case, since income of Mr. Lalit is not sufficient in last few years to justify the expenses and the Assessing Officer is not satisfied with the explanation offered by Mr. Lalit, the expenditure of 60 lakh incurred by him in the financial year 2022-

23 on grand cruise party may be treated as deemed income for P.Y. 2022-23 as per section 69C and it would be taxable @ 78%.

Further, such unexplained expenditure which is deemed as the income of Mr. Lalit shall not be allowed as deduction under any head of income.

Answer 6(A)(iii)

The Assessing officer may invoke the power to determine Arm Length Price 'ALP' where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of opinion that

- a) The price charged or paid in an international transaction or specified domestic transaction has not been determined in accordance with sub-section (1) or (2) of section 92C
- b) Any information and document relating to an international transaction or specified domestic transaction have not been kept and maintained by the assessee in accordance with the provisions contained in section 92D(1) and the rules made in this behalf or
- c) The information or data used in computation of the Arm's Length Price is not reliable or correct or
- d) The assessee has failed to furnish, within the specified time, any information or document which he is required to furnish by a notice issued under section 92D(3)

However before invoking the power to determine ALP, the Assessing Officer must provide an opportunity of being heard to the assessee.

No deduction under section 10AA or under chapter VI-A of the Income tax Act, 1961 shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of ALP.

DRAFTING, PLEADINGS AND APPEARANCES

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

NOTE : Answer **ALL** Questions

Question 1

- (a) "AB" is the owner of a land. He wants to donate the land in charity to a trust for the construction of Serai. Draft a deed of gift of land to trust. Assume necessary facts.
- (b) Draft Board Resolution for convening Extra-ordinary General Meeting on requisition.
- (c) ABC Ltd. proposes to install plant and machinery through Leasing arrangements. The company has authorized "Y" an employee as its Attorney to negotiate and finalize the deal. Draft a Power of Attorney by the company in favour of "Y". Assume necessary facts.
- (d) "X" is the tenant of "Y" under a tenancy at will. Draft a notice of determination of tenancy on behalf of "Y". Assume necessary facts.

(5 marks each)

Answer 1(a)

DEED OF GIFT

THIS DEED OF GIFT is made on the day of, 20.....

BETWEEN

AB of etc. (hereinafter called "the Donor"), of the one part,

and

CD of etc., and EF of, etc. (hereinafter called "the Trustees") of the other part.

WHEREAS it is proposed to erect a *serai* for the use of travellers, and a committee has been constituted to raise subscriptions for construction of the building and creation of the endowment.

AND WHEREAS the trustees are members of such committee.

AND WHEREAS the donor has agreed to contribute the piece of land hereinafter described in the schedule below as a site for such *serai*.

NOW THIS DEED WITNESSES that in pursuance of such pious wish and desire and as a patron for the proposed *serai* the said AB does hereby freely, voluntarily and absolutely and subject to the condition hereunder imposed grant; convey transfer and give unto and to the use of the said CD and EF and their successors in office, as trustees as aforesaid. ALL THAT, etc., (describe the property) and valued at Rs..... TO HAVE AND TO HOLD the same as trustees upon trust hereinafter mentioned. And it is hereby AGREED AND DECLARED by and between the parties hereto that the trustees and their successors in office shall from time to time and at all times hereafter stand possessed of the land hereby conveyed and building or buildings to be erected thereon IN TRUST to be used solely and exclusively as a *serai* for food and shelter of the travellers all through the year free of any charge or other contribution.

AND it is hereby further agreed and declared that in case the object of the gift fails; or in the event *serai* is closed or shifted anywhere or used for any purpose contrary to law or against religion or if the object of the gift is frustrated otherwise for any reason whatsoever - this gift will stand *ipso facto* revoked and the property shall in that event revert to and revest in the donor or his descendants as may remain alive with all improvements thereon free from any claim on that account as if the gift was never made nor intended unless otherwise directed in an appropriate action by a court of competent jurisdiction.

IN WITNESS WHEREOF the donor has executed this deed of a gift and delivered the same to the donee who has also executed the same in token acceptance thereof the day, month and year first above written.

The Schedule above referred to

Signed, Sealed and delivered

AB

CD

EF

Answer 1(b)

“RESOLVED THAT pursuant to the provisions of Section 100 and other applicable provisions of the Companies Act, 2013 and rules made thereunder and as per the requisition received from the Members, the Board of Directors hereby authorises calling of an Extra-Ordinary General Meeting (EGM) of the Members on (date) at(time) at (venue).

RESOLVED FURTHER THAT the draft notice of the EGM, the explanatory statement and other ancillary documents in connection with the EGM, as placed before the Board, be and are hereby approved.

RESOLVED FURTHER THAT any one of the Directors and the Company Secretary of the Company be and are hereby authorised to sign and execute the notice and other relevant documents in connection with the EGM and circulate them to the Members of the Company and do all such acts, deeds and things as may be necessary in connection with calling and convening of EGM including appointing scrutinisers and e-voting agencies, if required.”

Answer 1(c)

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS ‘ABC LIMITED’ a Company registered under the Companies Act, 2013, and having its registered office at..... (hereinafter called the Company);

AND WHEREAS the Company proposes to install plant and machinery through Leasing arrangements;

AND WHEREAS it is desirable to authorise Mr. Y of the Company to negotiate the lease arrangements, finalise and sign the Lease Deeds and other relevant papers for getting machinery for installation at the works of the Company;

AND WHEREAS the Board of Directors of the Company *vide* Resolution No..... passed in their meeting held on..... have resolved to execute and register a General Power of Attorney in terms of the draft placed before the Board in favour of Shri....., of the Company and have authorised Shri....., director, to execute, sign, seal and if necessary register and deliver the said Power of Attorney.

NOW THIS POWER OF ATTORNEY WITNESSETH AS FOLLOWS:

That the Company hereby appoints Mr. Y of the Company as its ‘Attorney’ so long as he is in the services of the Company and notwithstanding any change in his designation to do severally the following acts, deeds or things in the name on behalf of, and at the expenses of the Company:

1. To negotiate with any Leasing Company for leasing arrangements for taking plant and machinery on lease basis for installation at the Works of the Company;

- 2. To finalise, settle, execute and sign, and where necessary seal Lease Arrangements, other deeds and papers in connection therewith;
 - 3. The attorney is authorised to enter into any kind of contract, execute and perform all obligations and receive and accept all benefits for and on behalf of the company.
 - 4. The attorney is authorised to enter into, make, sign and do all such agreements, receipts, payments and contracts, etc. as he thinks proper and expedient in the interest of the company.
 - 5. And generally to do all acts, deeds and things, as may be necessary for the above purpose;
6. And the Company hereby agrees that all acts, deeds or things lawfully done by the said Attorney under the authority of this Power of Attorney hereby given shall be construed as acts, deeds and things done by the Company and the Company undertakes to lawfully do or cause to be done by virtue of the powers hereby given.

IN WITNESS WHEREOF this Power of Attorney has been signed and sealed by Shri....., director, authorised in this behalf vide Board Resolution No..... dated..... on this day of, 2023, in presence of:

WITNESSES:

- 1. _____
- 2. _____

DIRECTOR

Answer 1(d)

Notice of determination of a tenancy-at-will on behalf of the landlord

(Under section 106 of Transfer of Property Act, 1882)

Dated.....

To

The X(Tenant)

Resident of

Dear Sir,

Under instructions from my client Y S/o resident of, I call upon you to deliver up possession of the premises detailed below, within 30 days hereof which you now hold of my client as a tenant.

- 1. In default of your compliance your occupation of the premises, after the period of days, will be wrongful and an act of trespass and you will be liable to pay damages to my client at the rate of Rs..... per each day of your wrongful occupation of the same till you are ejected therefrom and that my client will sue you for your eviction and for recovery of damages.
- 2. A copy of this notice is being kept in my office for future use, if necessary.

Schedule and details of premise

Yours faithfully

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

Question 2

- (a) *What is the guidance as per Secretarial Standard-I in respect of Meeting of Board of Directors in the following matters :*
- (i) *If the Meeting of Directors is proposed to be held on 15th September 2023, what will be the last date for giving the Notice in case Notice is to be sent by e-mail or by any other electronic means to the Directors ?*
- (ii) *If the Meeting of Directors is proposed to be held on 15th September 2023, what will be the last date for giving the Notice in case Notice is to be sent by speed post or by registered post or by courier to the Directors ?*
- (iii) *If a company is incorporated on 15th July, 2023, the first meeting of Board of Directors should have been held latest by ?*
- (iv) *If a Meeting of Board is held and concluded on 16th June 2023, the draft Minutes thereof should have been circulated by ?*
- (b) *Explain Appeal by a person Denying Liability to Deduct Tax under the Income Tax Act, 1961.*
- (c) *What is the guidance as per Secretarial Standard II in respect of prohibition on withdrawal of resolutions, rescinding of resolutions and modifications to resolutions?*
- (d) *Explain the functions of Directorate of Enforcement.*

(4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

Distinguish between the following :

- (i) Conveyance and Contract
- (ii) Deed Pool and Deed Poll
- (iii) Finance and Operating lease
- (iv) Retirement of a partner and Expulsion of a partner.

(4 marks each)

Answer 2(a)

- (i) According to Secretarial Standard-I, Notice convening a Meeting shall be given at least seven days before the date of the Meeting, unless the Articles prescribe a longer period. Therefore, the last date for giving the notice in case Notice is to be sent by email or by any other electronic means to the Directors is 8th September, 2023.
- (ii) According to Secretarial Standard-I, in case the company sends the Notice by speed post or by registered post, an additional two days shall be added for the service of Notice. Therefore, the last date for giving the notice in case Notice is to be sent by speed post or by registered post or by courier to the Directors is 6th September, 2023.
- (iii) According to Secretarial Standard-I, the company shall hold first Meeting of its Board within thirty days of the date of incorporation. Therefore, the first meeting of the Board should be held on or before 13th August, 2023.
- (iv) According to Secretarial Standard-I, within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee, the draft Minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by e-mail or by any other recognised electronic means to all the members of the Board or the Committee, as on the date of the Meeting, for their comments.

Therefore, the draft minutes of the meeting of Board should have been circulated on or before 30th June, 2023.

Answer 2(b)

According to section 248 of the Income-tax Act, 1961, where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

Answer 2(c)

Prohibition on Withdrawal of Resolutions

According to Secretarial Standard – II, following resolution cannot be withdrawn:

- (i) Resolutions for items of business which are likely to affect the market price of the securities of the company shall not be withdrawn.
- (ii) Any resolution proposed for consideration through e-voting shall not be withdrawn.

Rescinding of Resolutions

According to Secretarial Standard – II, a Resolution passed at a Meeting shall not be rescinded otherwise than by a Resolution passed at a subsequent Meeting.

Modifications to Resolutions

According to Secretarial Standard – II, modifications to any Resolution which do not change the purpose of the Resolution materially may be proposed, seconded and adopted by the requisite majority at the Meeting and, thereafter, the modified Resolution shall be duly proposed, seconded and put to vote.

However, no modification to any proposed text of the Resolution shall be made if it in any way alters the substance of the Resolution as set out in the Notice. Grammatical, clerical, factual and typographical errors, if any, may be corrected as deemed fit by the Chairman.

Further, no modification shall be made to any Resolution which has already been put to vote by Remote e-voting before the Meeting.

Answer 2(d)

Directorate of Enforcement is a Multi-Disciplinary Organization mandated with the task of enforcing the provisions of two special fiscal laws – Foreign Exchange Management Act, 1999 (FEMA) and Prevention of Money Laundering Act, 2002 (PMLA).

The main functions of the Directorate are as under;

1. Investigate contraventions of the provisions of Foreign Exchange Management Act, 1999 (FEMA). Contraventions of FEMA are dealt with by way of adjudication by designated authorities of Enforcement Directorate (ED) and penalties upto three times the sum involved can be imposed.
2. Investigate offences of money laundering under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) and to take actions of attachment and confiscation of property if the same is determined to be proceeds of crime derived from a Scheduled Offence under PMLA, and to prosecute the persons involved in the offence of money laundering. There are 156 offences under 28 statutes which are Scheduled Offences under PMLA.
3. Processing cases of fugitive/s from India under Fugitive Economic Offenders Act, 2018. The objective of this Act is to provide for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian Courts and to preserve the sanctity of the rule of law in India.

4. Sponsor cases of preventive detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) in regard to contraventions of FEMA.
5. Render cooperation to foreign countries in matters relating to money laundering and restitution of assets under the provisions of PMLA and to seek cooperation in such matters.

Answer 2A(i)

“Conveyance”, as defined in clause 10 of Section 2 of the Indian Stamp Act, 1899, “includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred *inter vivos* and which is not otherwise specifically provided by Schedule I of this Act.” Apparently, conveyance is not a contract. The distinction between conveyance and contract is quite clear. Contract remains to be performed and its specific performance may be sought but conveyance passes on the title to property to another person. Conveyance does not create any right of any action but at the same time it alters the ownership of existing right.

Contracts are governed by provisions of the Indian Contract Act, 1872 whereas the cases of transfer of immovable property are governed by the Transfer of Property Act, 1882 in India.

A mere contract to mortgage or sale would not amount to actual transfer of interest in the property but the deed of mortgage or sale would operate as conveyance of such interest. In other words, once the document transferring immovable property has been completed and registered as required by law, the transaction becomes conveyance.

Answer 2A(ii)

Deed Pool

A deed between two or more parties where as many copies are made as there are parties, so that each may be in a possession of a copy. This arrangement is known as deed pool.

Deed Poll

A deed made and executed by a single party e.g. power of attorney, is called a deed poll, because in olden times, it was polled or cut level at the top. It had a polled or clean cut edge. It is generally used for the purpose of granting powers of attorney and for exercising powers of appointment or setting out an arbitrator’s award. It is drawn in first person usually.

Answer 2A(iii)

In case of “finance lease”, provision of non-cancellability should invariably be set forth in the lease agreement. In “operating lease” the provision of cancellability is provided with responsibility of the lessor for repairs and maintenance, technology transfer and change of know-how and providing knowledge of running the equipment leased out to lessee. All these aspects, *inter alia* should be well provided in the document. In “operating lease” it is the responsibility of the lessor to provide the lessee the benefits of innovations, change in technology of the equipment and the related know-how required for.

Answer 2A(iv)

A partner may retire from a firm with the consent of all other partners. If the terms of the agreement so provide, a partner may retire by notice to the other partners. In a partnership at will also a partner can retire by giving notice in writing to all the other partners of his intention to retire.

A partner can be expelled from a firm by a majority of the partners where such a power is conferred by the agreement between the partners and the power is exercised in good faith.

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

Question 3

- (a) *What are the pre-requisites of Arbitration and requisites of an Award ?*

- (b) *Discuss the provisions relating to authentication of Power of Attorney.*
- (c) *Stages of criminal trial in warrant case when a complainant instituted in a case.*
- (d) *Explain the types of Hire-Purchase Agreements.*

(4 marks each)

OR (Alternate question to Q. No. 3)

Question 3A

Elucidate the following :

- (i) *In Kale v. Dy. Director of Consolidation, AIR 1976 SC 807 the Supreme Court has laid down certain propositions to put a binding effect and the essentials of a family settlement. What are the said propositions ? Discuss.*
- (ii) *Guidance as per Secretarial Standard I regarding disclosure of compliance with Secretarial Standards in the report of Board of directors. Draft a disclosure paragraph.*
- (iii) *Define Summons. What orders can be given by the court in respect of service of summons where the summons cannot be served in an ordinary way ?*
- (iv) *Define Slump Sale and factors to be considered in deal structuring of slump sale.*

(4 marks each)

Answer 3(a)

Pre-requisites of Arbitration

Every arbitration must have the following three pre-requisites:

- (i) a dispute between parties to an agreement, requiring a settlement;
- (ii) its submission for a settlement to a third person; and
- (iii) a decision by such third person according to his own judgement based on the facts and circumstances of the dispute, which is binding on both the parties.

Requisites of an Award

The general requisites of an award are:

- (a) it must be consistent with the submission;
- (b) it must be certain;
- (c) it must be fair to the parties;
- (d) it must be final;
- (e) its implementation must be possible.

Answer 3(b)

A power of attorney need not be attested. However, it would be advisable to execute the power of attorney before and have it authenticated by a Notary Public or any Court Judge/Magistrate, Indian Consul or Vice-Consul or representatives of the Central Government. According to Section 85 of the Indian Evidence Act, 1872, if a power of attorney is so authenticated, the courts shall presume execution of the power of attorney. Under Section 85 of the Indian Evidence Act, 1872, the Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of the Central Government, was so executed and authenticated. Under Section 57(6) of the Indian Evidence Act, 1872, the seals of Notary Public are taken judicial notice of.

Further, according to section 33 of the Registration Act, 1908, if a power of attorney gives authority to present documents for registration under Section 32 of the Registration Act,

1908, it must be executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub-District the principal resides or where the Registration Act is not in force, before any Magistrate, or if it is executed outside India, before a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of the Central Government.

Answer 3(c)

It may sometimes happen that the police refuses to register an FIR. In such cases one can directly approach the criminal court under the Code of Criminal Procedure, 1973. On the filing of the complaint, the court will examine the complainant and its witnesses to decide whether any offence is made against the accused person or not. After examination of the complainant, the Magistrate may order an inquiry into the matter by the police and to get him submit a report for the same.

After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not. If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal.

After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence with the prosecution to charge the accused then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.

Answer 3(d)

The Hire-purchase agreements, ignoring variations of detail, broadly takes one or other of two forms, which are as follows:

1. When the owner is unwilling to look to the purchaser of goods to recover the balance of the price, and the financier who pays the balance undertakes the recovery. In this form, goods are purchased by the financier the dealer, and the financier obtains a hire-purchase agreement from the customer under which the latter becomes the owner of the goods on payment of all the instalments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price.
2. In the other form of transactions, goods are purchased by the customer, who in consideration of executing a hire-purchase agreement and allied documents remains in possession of the goods, subject to liability to pay the amount paid by the financier on his behalf to the owner or dealer, and the financier obtains a hire-purchase agreement which gives him a license to seize the goods in the event of failure by the customer to abide by the conditions of the hire-purchase agreement. Generally there is a guarantor who also signs the agreement as a surety.

Answer 3A(i)

In *Kale v. Dy. Director of Consolidation, AIR 1976 SC 807*, the Supreme Court has laid down the following propositions to put the binding effect and the essentials of a family settlement in a concretised form:

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence.
- (3) The family arrangement may be even oral in which case no registration is necessary.
- (4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement

made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immovable properties and, therefore, does not fall within the mischief of Section 17 (2) (sic) (Section 17 (1) (b)) of the Registration Act and is, therefore, not compulsorily registrable.

- (5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties of the settlement has no title but, under the arrangement, the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same.
- (6) Even in bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable, the family arrangement is final and binding on the parties to the settlement.

Answer 3A(ii)

The report of the Board of directors shall include a statement on compliances of applicable secretarial standards. The Annual Report and Annual Return of a company shall disclose the number and dates of Meetings of the Board and Committees held during the financial year indicating the number of Meetings attended by each Director.

The Report of the Board of Director's shall include a statement on compliance of applicable Secretarial Standards. The above referred statement may be given as under:

"The Directors have devised proper systems to ensure compliance with the provisions of all applicable Secretarial Standards and that such systems are adequate and operating effectively"

The above statement is intended to align the disclosure requirement with the provisions of Section 134(5)(f) of the Companies Act, 2013, which requires the Directors to state in the Directors Responsibility Statement that the Directors have devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems are adequate and operating effectively.

Answer 3A(iii)

Summons is an instrument used by the court to commence a civil action or proceedings and is a means to acquire jurisdiction over party. It is a process directed to a proper officer requiring him to notify the person named, that an action has been commenced against him, in the court from where process is issued and that he is required to appear, on a day named and answer the claim in such action.

Order which can be given by court where summon cannot be served in an ordinary way

Where the court is satisfied that there is reason to believe that the Defendant is keeping out of the way for purpose of avoiding service or that for any others reason the summons cannot be served in ordinary way the court shall order summons to be served by affixing copy thereof in conspicuous part of the house. To expedite service of summons one more provision is relating to substituted service under which the court orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the Defendant last resided or carried on business or personally worked for gain.

Answer 3A(iv)

Slump sale is one of the widely used ways of business acquisitions. In simple words, 'slump sale' is nothing but transfer of a whole or part of business concern as a going concern; lock, stock and barrel. The concept of 'slump sale' was incorporated in the Income Tax Act, 1961

("IT Act") by the Finance Act, 1999 with the inclusion of section 2(42C). The term 'slump sale' is defined as transfer of one or more undertakings as a result of the sale for a lump-sum consideration without values being assigned to the individual assets and liabilities in such sales.

Deal Structuring: A deal should be structured considering agreement between buyer and seller. It should be time, cost and compliance effective. While structuring a deal following factors must be taken into consideration:

1. **Objective of the deal:** This includes the core objective set for deal of slump sale. While structuring the deal it must be taken into consideration that objective is getting achieved fully. As post deal factors such as ownership and control, financial impact depends on structuring of the deal.
2. **Transaction cost:** Transaction cost under slump sale majorly involve capital gain tax to the seller, stamp duty tax to the buyer and withdrawal of exemption deduction, and allowances, and apart from these professional fees to the consultants. Transaction costs involved in slump sale can go upto 5-10% of deal size.
3. **Discharge of consideration:** Lump sum consideration may be discharged by payment in cash or by way of issue of debentures and or both. Consideration being imperative aspect of slump sale should be discharged by taking into consideration future financial, legal and strategic impact on transacting companies.

Question 4

Explain the following :

- (a) *Role of Company Secretary in Practice under Real Estate (Regulation and Development) Act, 2016.*
- (b) *Contents of Trust deed to ensure reasonable certainty.*
- (c) *Writ of Mandamus. Against whom this writ cannot be issued ?*
- (d) *Conditions of reference u/s 395 of Code of Criminal Procedure, 1973. Justify with reasons whether a reference can be made on a point of law on which different views have been expressed by some High Courts ?*

(4 marks each)

Answer 4(a)

As per Section 56 of the Real Estate (Regulation and Development) Act, 2016(the Act) a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of applicant or appellant as the case may be. Hence a Company Secretary holding certificate of practice can:

- Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- Represent a person before real estate appellate tribunal.
- Represent a person before Adjudicating Officer.

Further, the role of company secretary under Real Estate (Regulation and Development) Act, 2016 includes the following:

- Provide services like Consultancy Services under the Act.
- Provide secretarial support to the client in complying with the various requirements of the Act.

Answer 4(b)

The deed creating a trust should contain in reasonable certainty, among others, the following:

- (a) an intention to create a trust;
- (b) the purpose of the trust;
- (c) the beneficiaries;
- (d) names of the trustee/s;
- (e) trust property;
- (f) unless the author is himself a trustee transfer of the legal ownership of the property to the trustee; and
- (g) duties, rights and liability of the settler, trustee and the beneficiary.

The deed can also provide for re-imbusement of expenses incurred by the trustee(s) in connection with the discharge of his/their duties as a trustee(s) and also all expenses properly incurred in or about the execution of the trust for the realisation, preservation or benefit of the trust property or the protection or the support of the beneficiary.

Answer 4(c)

The expression "mandamus" means a command. The writ of mandamus is, thus, a command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty.

This writ is used when the inferior tribunal has declined to exercise jurisdiction. Mandamus can be issued against any public authority. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion.

Mandamus can be issued by the Supreme Court and all the High Courts to all authorities. However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers.

It also does not lie against a private individual or body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or of a Statute. It is a discretionary remedy and the Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.

Answer 4(d)

Section 395 of Code of Criminal Procedure, 1973 (Cr.P.C.) empowers a Court subordinate to the High Court to make a reference to the High Court under sub-section (1) if following conditions exist:

- (1) The case pending before it must involve a question as to validity of any Act, Ordinance or Regulation. A mere plea raised by a party challenging the validity of an Act is not sufficient to make a reference to the High Court unless the Court itself is satisfied that a real and substantial question as to validity of the Act is actually involved for the disposal of the case.
- (2) Secondly, the Court should be of the opinion that such Act, Ordinance Regulation, as the case may be, is invalid or inoperative but has not been so declared by High Court or by the Supreme Court.
- (3) While making a reference to the High Court, the Court shall refer to the case setting out its opinion and reasons for making a reference.

The section does not permit a reference with a view to resolve a conflict of authority where different views on a certain point of law have been expressed by some High Court, the

reason being that the Court desiring to make a reference is supposed to follow the law laid down by the High Court to which it is subordinate.

It is necessary for the Court making a reference to give its own opinion on the law which is sought to be referred to for clarification.

Question 5

- (a) "A" is running the business of trading in textiles. He has decided to sell the business and goodwill to "P". Draft a deed of sale. Assume necessary facts.

(6 marks)

- (b) ABC Ltd. an electronics manufacturer having a registered office at Jaipur supplied goods to XYZ Ltd. The purchaser company made part payment only. ABC Ltd filed suit before the District Judge for recovery of the balance amount. The suit was dismissed by a learned District Judge on the ground that the evidence led by the plaintiff did not establish the claim. Draft an appeal to be filed before High Court against the Judgement of District Judge. Assume necessary facts.

(6 marks)

- (c) Explain in detail the duties of a Company Secretary in practice towards the Clients.

(4 marks)

Answer 5(a)

THIS DEED OF SALE is made on this day of, 2023,

between

A(the vendor), of the one part.

and

P..... (the purchaser) of the other part.

WHEREAS the said vendor is carrying on the business of trading in textile;

AND WHEREAS the said purchaser has agreed with the said vendor for purchase by him of all the interest and goodwill in the said business, and the debts, stock-in-trade, effects and the premises on which the said business is being carried on, at the price of Rs and upon the terms and conditions hereinafter mentioned:

AND WHEREAS the said vendor has delivered to the said purchaser the books of account and other books relating to the said business, and in the said books are set forth the accounts and particulars of the debts, respectively due and owing to and from the said vendor, and also the particulars of the contracts and engagements to which he is liable in respect of the said business.

NOW THIS DEED WITNESSES:

1. In pursuance of the said agreement and in consideration of the sum of Rs..... (Rupees.....) paid by the said purchaser to the said vendor (the receipt whereof the said vendor hereby acknowledges), and also in consideration of the agreement hereinafter contained on the part of the said purchaser, the said vendor does hereby convey, assign and make over to the said purchaser, all the beneficial interest and goodwill of the said vendor in the said business..... so carried on by him as aforesaid, and also all the book and other debts now due and owing to him on account of the said business and all securities for the same, and also all contracts and engagements, benefits and advantages which have been entered into with the said vendor and also all the stock-in- trade, goods, fixtures, articles and things which, at the date of this Deed belong to the said vendor on account of the said business and all the rights, title and interest of the said vendor to and in

the said premises, to have and to hold the premises hereby conveyed to the said purchaser absolutely;

- 2. The said vendor does hereby agree with the said purchaser that he, the said vendor, will not at any time hereafter either by himself or in collaboration with any other person or persons, carry on the said business of trading in textile within..... kilometers of.....;
- 3. The amounts and particulars of the debts respectively due and owing to and from the said vendor on account of the said business and the particulars of the contracts and engagements to which he is liable with respect to the said business, are correctly stated and set forth in the books of account and other books delivered by the said vendor to the said purchaser;
- 4. The said vendor will pay all the sums (if any) which may now be due and owing from the said business in excess of the amounts which in the said books appear to be so due and owing;
- 5. The said vendor has full right to sell and assign the said premises hereby sold and assigned to the said purchaser and will not at any time hereafter revoke, annul and make void the aforesaid power or authority hereby given to the said purchaser, or do or execute or knowingly or willingly suffer any act, deed or thing, whereby the said purchaser may be prevented from having and receiving the said premises or any part thereof, to and for his own use and benefit, or by means whereof the said purchaser shall be injured in the said business; and
- 6. The said vendor will, from time to time and at all times hereafter, use his best endeavours to promote the said business and to give to the purchaser full advantage of the connections and customs of the said vendor, in the said business.

AND THIS DEED ALSO WITNESSES, that in pursuance of the said agreement in this behalf and in consideration of the premises, the said purchaser does hereby agree with the said vendor that he, the said purchaser, will, from time to time and at all times hereafter, keep harmless and indemnified the said vendor and his estate and effects from and against the several sums of money which by the said books appear to be due and owing from the said vendor in respect of the said business and also from and against the contracts and engagements to which by the said books the said vendor appears to be now liable, and also interests, costs, expenses, losses, claims and demands on account of the said debts, contracts and engagements respectively.

It is further agreed that the names of the parties hereto shall, unless inconsistent with the context, include as well the heirs, administrators or assigns of the respective parties as the parties themselves.

IN WITNESS WHEREOF the said vendor and the said purchaser have hereto respectively signed on the day, month and the year above-written.

Witness 1: Vendor

Witness 2: Purchaser

Answer 5(b)

IN THE HIGH COURT OF RAJASTHAN, JAIPUR BENCH
CIVIL APPELLATE JURISDICTION

REGULAR CIVIL APPEAL NO..... OF

IN THE MATTER OF:

ABC Ltd. a company incorporated under the provisions of the Companies Act, ... and having its registered office at Jaipur.

.....Appellant

Versus

XYZ company Ltd., a company incorporated under the Companies Act and having its registered office at Jaipur.

..... Respondent

May it please the Hon'ble Chief Justice of the High Court of Rajasthan and his Lordship's Companion Justices,

The appellant company

MOST RESPECTFULLY SHOWETH:

1. That the appellant herein is a company duly registered under the provisions of the Companies Act, 2013 and the registered office of the appellant is at Jaipur and the company is engaged in the business of Manufacturing of electronics.
2. That the respondents who are also doing business of selling goods manufactured by the appellants and other manufacturers approached the appellant for purchasing from the appellant-company the aforesaid manufactured goods. An agreement was reached between the parties which were reducing into writing. The appellant supplied goods worth Rs. over a period of months to the respondents. A statement of account regarding the goods so supplied is annexed hereto and marked as ANNEXURE A-1.
3. That the respondents have made a total payment of Rs. on different dates. The statement of the said payments made by the respondents is appended and is marked as ANNEXURE A-2.
4. That the remaining amount has not been paid by the respondent despite repeated demands and issuance of a legal notice by the appellant through advocate.
5. That the appellant filed a suit for recovery of the aforesaid balance amount of Rs. together with interest at the rate of% per annum and the cost of the suit. The suit was filed on in the court of the learned District Judge.
6. That upon being summoned by the said court the respondents appeared through counsel and filed their written statement to which appellant-plaintiff also filed replication.
7. That the parties led evidence. After hearing the counsel for the parties, the learned District Judge has by his judgement and decree passed on dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the appellant-plaintiff. Copies of the judgement and decree of the court below are annexed hereto and are marked as ANNEXURE A-3 AND A-4, respectively.

Aggrieved by the aforesaid judgement and decree of the court below dismissing the suit of the plaintiff, this appeal is hereby filed on the following, amongst other,

GROUND

- A. That the judgement and decree under appeal are erroneous both on facts as well as law.
- B. That the learned trial court has failed to properly appreciate the evidence, and has fallen into error in not finding that the preponderance of probability was in favour of the plaintiff-appellant.
- C. That there was sufficient evidence led by the plaintiff to prove the issues raised in the suit and the defendant-respondent has failed to effectively rebut the plaintiff's evidence, more particularly the documentary evidence.
- D.
- E.

F.

8. That the valuation of this appeal for the purposes of payment of court-fee is fixed at Rs..... and the requisite court fee is appended to this memorandum of appeal.
9. That this appeal is being filed within the prescribed period of limitation, the judgement and decree under appeal having been passed on(date).

In the above facts and circumstances the appellant prays that this appeal be allowed, the judgement and decree under appeal be set aside and the decree prayed for by the appellant in his suit before the court below be passed together with up-to-date interest and costs of both courts.

APPELLANT

(.....)

VERIFICATION

Verified at..... on this, the..... day of....., 20..... that the contents of the above appeal are correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

APPELLANT

(.....)

Annexure A-1 to A-4

Answer 5(c)

A Company Secretary has the following duties towards clients:

- i. A Company Secretary shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client.
- ii. A Company Secretary shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear if he can retire without jeopardizing his client's interest.
- iii. A Company Secretary shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either him or continuing the engagement.
- iv. It shall be the duty of a Company Secretary to fearlessly uphold the interest of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.
- v. A Company Secretary shall not at any time, be a party to fomenting of litigation. A Company Secretary shall not act on the instructions of any person other than his client or his authorized agent.
- vi. A Company Secretary shall not do anything whereby he abuses or takes advantage of the confidence reposed in him by his client.

Question 6

- (a) *The liability of the surety is co-extensive with that of the principal debtor". Comment in the light of provisions of section 128 of the Indian Contract Act, 1872.*

(4 marks)

- (b) *"W" is the wife of "H" who is employed as an accountant in a company on a monthly salary of ₹ 50,000. She was driven out of the matrimonial home by her husband and came to her father's place. "H" leads a life of drunkenness and debauchery, he is also a man of uncertain temperament having the habit of beating. As "W" does not want to live with "H" due to his violent nature. Draft a petition on behalf of "W" for her maintenance.*

(6 marks)

- (c) *Draft a Notice of Extra-Ordinary General Meeting for shifting the registered office of Company from Hyderabad (Telangana) to Jaipur (Rajasthan).*

(6 marks)

Answer 6(a)

According to Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

The surety's liability is not deferred until the creditor exhausts his remedies against the principal debtor. In the absence of some special equity, the surety has no right to restrain an action against him by the creditor on the ground that the principal debtor is solvent or that the creditor may have relief against the principal debtor in some other proceedings.

The liability of the surety being co-extensive with that of the principal debtor is joint and several with the latter and, therefore, in the absence of a clear intention to the contrary it is at the option of the creditor, to decide whether he shall proceed against the surety or the principal debtor. Of course, a guarantor is *prima facie* entitled to have the debt proved as against him.

Answer 6(b)

In the Court of Judicial Magistrate

Case No..... under section 125, Criminal Procedure Code, 1973 (Cr.P.C.)

Petitioner W (wife)

Opposite Party H (husband)

Daughter of.....

versus

Son of.....

Village

Thana

Village.....

Thana

Occupation.....

Occupation.....

In the matter of petition for maintenance of petitioner W from the husband H under section 125 of Cr.P.C. The humble petition of W (wife), the petitioner above-named

Most respectfully Showeth:

- Your petitioner W is the married wife of the opposite party. The marriage between them was solemnized according to the Hindu rites on at
- The opposite party H is a clerk on the staff of Ltd. holding a responsible position and drawing salary of Rs. 50,000 per month.
- The opposite party severely assaulted the petitioner on.....and drove her away from the matrimonial house on in presence of several gentlemen of the locality.

- 4. That the opposite party leads a life of drunkenness and debauchery. He is besides a man of uncertain temperament and would fly into rage in season and out of season without any reason whatsoever. He has lost all sense of decorum and would use extremely filthy language.
- 5. Your petitioner after being driven out of the house by the opposite party came over to her father's place on the same day and has been staying at father's house with his family members.
- 6. The opposite party was served with a pleader's notice to send your petitioner Rs. every month for her maintenance but with no result. Having regard to the violent temper of H and his inhuman way of beating your petitioner she does not venture to go back to the place of the opposite party.

PRAYER

- 1. Your petitioner, therefore, prays that Your Honour may be pleased to issue notice on the opposite party and after taking evidence of both sides be pleased to order the opposite party to pay the petitioner maintenance at the rate of Rs. per month.
- 2. Any other relief or reliefs which the court may deem proper under the circumstances be also awarded to the petitioner.

.....
Petitioner

.....
Through Advocate AB

VERIFICATION

I, W, the Petitioner, state on solemn affirmation that whatever contained in paragraphs ____ to Para No _____ of the Petition is true to my own knowledge and that whatever contained in paragraphs No ____ to Para No _____ is based on information received and believed to be true to me.

Signed and verified this _____ day of _____ 20 _____ at _____

.....
Petitioner

Answer 6(c)

Name of the Company

CIN -

Registered Address

Email-

Telephone:

Website:

NOTICE OF EXTRA-ORDINARY GENERAL MEETING

NOTICE is hereby given that an Extra-Ordinary General Meeting of the Members of (name of Company) will be held on..... (day), (date) at a.m./p.m. at (address) to transact the following special business:

Shifting of Registered Office

To consider and, if thought fit, to pass the following Resolution:

“RESOLVED THAT pursuant to Section 13 and other applicable provisions, if any, of the Companies Act, 2013 and rules made thereunder (including any statutory modification(s)

or re-enactment thereof for the time being in force), and subject to the approval of the Regional Director, the Registered Office of the Company be shifted from the Hyderabad (Telangana) to Jaipur (Rajasthan) the with effect from (date).

RESOLVED FURTHER THAT Clause - II of the Memorandum of Association of the Company be altered by substitution of the words in place of the words

RESOLVED FURTHER THAT Mr. And Mr., the Board of Directors of the Company be and are hereby jointly/ severally authorised to do all such acts, deeds, matters, and things as deem necessary, proper and desirable and to sign, and execute all necessary documents, applications and returns for the purpose of giving effect to the aforesaid resolution along with filing of Form INC-22 as a return of change in address registered office with the Registrar of Companies and to file the necessary petition(s) before the Regional Director, Region for confirmation of the alteration of Clause - II of the Memorandum of Association of the Company as aforesaid."

By Order of the Board of Director
For
..... (Signature)
..... (Name)
Director/ Company Secretary
DIN/ACS/FCS No.

Place:.....

Date:

.....

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