

# **GUIDELINE ANSWERS**

## **EXECUTIVE PROGRAMME**

**DECEMBER 2022**

**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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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:

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

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**EXECUTIVE PROGRAMME EXAMINATION**

DECEMBER 2022

**JURISPRUDENCE, INTERPRETATION & GENERAL LAWS**

*Time allowed : 3 hours*

*Maximum marks : 100*

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

**Question 1**

- (a) *The Charters of the several High Courts established by the British Government has laid down the rule to decide a case where the law on a matter is silent. Explain with the help of Supreme Court of India's view in similar situation.*
- (b) *Explain the test laid down by the Supreme Court of India for determining whether an entity is an instrumentality or agency of the state.*
- (c) *Explain substituted mode of service of summons and its effect.*
- (d) *Discuss the effect of repeal under Section 6 of General Clauses Act, 1897.*  
(5 marks each)

**Answer 1(a)**

The Charters of the several High Courts established by the British Government directed that when the law was silent on a matter, they should decide the cases in accordance with justice, equity and good conscience. Justice, equity and good conscience have been generally interpreted to mean rules of English law on an analogous matter as modified to suit the Indian conditions and circumstances.

The Supreme Court has stated that it is now well established that in the absence of any rule of Hindu Law, the courts have authority to decide cases on the principles of justice, equity and good conscience unless in doing so the decision would be repugnant to, or inconsistent with, any doctrine or theory of Hindu Law.

In the absence of any rule of a statutory law or custom or personal law, the Indian courts apply to the decision of a case what is known as "justice, equity and good conscience", which may mean the rules of English Law in so far as they are applicable to Indian society and circumstances.

**Answer 1(b)**

In *Ajay Hasia v. Khalid Mujib, AIR 1981 SC 481*, the Supreme Court has enunciated the following test for determining whether an entity is an instrumentality or agency of the State:

- (1) If the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.
- (2) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation it would afford some indication of the corporation being impregnated with government character.

- (3) Whether the corporation enjoys a monopoly status which is conferred or protected by the State.
- (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or an instrumentality.
- (5) If the functions of the corporation are of public importance and closely related to government functions, it would be a relevant factor in classifying a corporation as an instrumentality or agency of government.
- (6) If a department of government is transferred to a corporation, it would be a strong factor supporting an inference of the corporation being an instrumentality or agency of government.

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

Order V, Rule 20 of the Civil Procedure Code, 1908 deals with the provision relating to substituted service and its effects. The requirements relating to the said rule is as under:

**When can be issued** : Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by substituted service.

### **Modes of substituted service:**

1. By affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.
2. By an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

**Effect of substituted service** : Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

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

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

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

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

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

**Question 2**

- (a) *There is a contract between A and contractor B. There is another contract between B and sub-contractor C to execute same work. On completion of work C demanded money from B. On non-payment C filed a criminal complaint against B alleging that B having received the money from A had misappropriated the money. Discuss with reasons the matter of the case and offence committed by B, if any.* (4 marks)
- (b) *Oral evidence must be direct in all cases. Explain this statement.* (4 marks)
- (c) *Explain the meaning of continuous running of time under Section 9 of Limitation Act with exceptions and applicability.* (4 marks)
- (d) *The biggest check over administrative action is the power of judicial review. Elaborate.* (4 marks)

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

**Question 2A**

- (i) *State the remedies available in tort other than an action for unliquidated damages.*
- (ii) *What are the remedies under Criminal Procedure Code, where a warrant remains unexecuted?*
- (iii) *The enforcement of Foreign Award is subject to certain conditions. Explain this statement.*
- (iv) *Explain the time limit set up under the Indian Stamp Act, 1899 for making an application for relief in respect of impressed spoiled stamps.* (4 marks each)

**Answer 2(a)**

The fact of the given situation is similar to a case *U. Dhar v. State of Jharkhand*, (2003) 2 SCC 219, decided by the Supreme Court.

In this case, there were two contracts - one between the principal and contractor and another between contractor and sub-contractor. On completion of work sub-contractor demanded money on completion of work and on non-payment filed a criminal complaint alleging that contractor having received the payment from principal had misappropriated the money. The magistrate took cognizance of the case and High Court refused to quash the order of magistrate. On appeal to the Supreme Court, it was held that matter was of civil nature and criminal complaint was not maintainable and was liable to be quashed.

The Supreme Court also observed that money paid by the principal to the contractor was not money belonging to the complainant, sub-contractor, hence there was no question of misappropriation.

In the present case the contract between B and C is an independent contract regarding execution of certain works and even assuming the case of the complainant to be correct, at best it is a matter of recovery of money on account of failure of B to pay the amount said to be due under the contract. The dispute between the parties is of a purely civil nature arising out of a contract. Hence C cannot file case against A for misappropriation of money. B may be guilty of breach of contract.

### **Answer 2(b)**

Under Section 3(1) of the Indian Evidence Act, 1872 oral evidence means statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. The direct evidence means the evidence of the person who perceived the fact to which he deposes. The two broad rules regarding oral evidence are:

- (i) all facts except the contents of documents may be proved by oral evidence;
- (ii) oral evidence must in all cases be “direct”.

According to Section 60 of the Act, Oral Evidence must be direct means that if evidence is about any fact which is heard, seen, perceived by any sense or by making an opinion. Then as per this section it could be valid only if it has been given by the person who heard, saw, perceived or formed an opinion after a particular incident. However, the basis on which such opinions are held may be proved by the production of such treatises. Thus, if any oral evidence needs to be admissible, all the conditions under Section 60 of the Indian Evidence Act must be fulfilled. The section states that oral evidence must, in all cases, whatever, be direct; that is to say:

- i. if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
- ii. if it refers to a fact which could be heard, it must be the evidence of a witness who he says heard it;
- iii. if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
- iv. if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

However, the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Further, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

**Answer 2(c)**

According to Section 9 of the Limitation Act, 1963(the Act), where once time has begun to run, no subsequent disability or inability to institute a suit or make an application can stop it.

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover debt shall be suspended while the administration continues.

The applicability of this Section is limited to suits and applications only and does not apply to appeals unless the case fell within any of the exceptions provided in the Act itself.

For the applicability of Section 9 of the Act, it is essential that the cause of action or the right to move the application must continue to exist and subsisting on the date on which a particular application is made. If a right itself had been taken away by some subsequent event, no question of bar of limitation will arise as the starting point of limitation for that particular application will be deemed not to have been commenced.

**Answer 2(d)**

Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agency within that jurisdiction.

The doctrine of judicial review has been originated and developed by the American Supreme Court, although there is no express provision in the American Constitution for judicial review. Judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. It is concerned not with the decision but with the decision making process.

In *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, AIR 1997 SC 3400, the Supreme Court held that while exercising the power of judicial review it does not sit as a court of appeal but merely reviews the manner in which the decision was made, particularly as the court lacks the expertise to correct the administrative decision and if a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The court is to confine itself to the question of legality. Its concern should be:

- 1) whether a decision making authority exceeding its power?
- 2) committed an error of law?
- 3) committed a breach of rules of natural justice?
- 4) reached a decision which no reasonable tribunal would have reached, or
- 5) abused its power?

Judicial review is exercised at two stages:

- (i) at the stage of delegation of discretion, and
- (ii) at the stage of exercise of administrative discretion.

**Answer 2A(i)**

The main remedy for a tort is an action for unliquidated damages, although some other remedies, like Injunction, Specific Restitution and Self Help are also available.

Injunction, may be obtained in addition to damages or specific restitution may be claimed in an action for the detention of a chattel. Self-help is a remedy of which the injured party can avail himself without going to a law court. It does not apply to all torts and perhaps the best example of these to which it does apply is trespass to land. For example, if "A" finds a drunken stranger in his room who has no business to be there in it, and is thus a trespass, he (A) is entitled to get rid of him, if possible without force but if that be not possible with such force as the circumstances of the case may warrant.

**Answer 2A(ii)**

Where a warrant remains unexecuted, the Code of Procedure Code, 1973 provides for two remedies:

- i) Issuing a Proclamation (Section 82)
- ii) Attachment and sale of property (Section 83)

The Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, the Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation. (Section 82).

The Court issuing a proclamation under Section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person. (Section 83)

**Answer 2A(iii)**

Yes, it is true that the enforcement of Foreign Award is subject to certain conditions. These conditions are provided in section 48 of Arbitration and Conciliation Act, 1996 (the Act) for New York Convention Awards and section 57 of the Act for Geneva Convention Awards.

**Conditions for Enforcement of Foreign Awards**

Section 48 of the Arbitration and Conciliation Act, 1996 enumerates the conditions for enforcement of foreign awards for New York Convention Awards and provides that the party, against whom the award is invoked, may use one or more of the following grounds for the purpose of opposing enforcement of a foreign award, namely, –

- (i) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (ii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or



- (iii) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matter submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

- (iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made; or
- (vi) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or
- (vii) the enforcement of the award would be contrary to the public policy of India.

Section 57 of the Act which provides for the Conditions for enforcement of foreign awards in case of Geneva Convention states that in order that a foreign award may be enforceable under part II Chapter I, it shall be necessary that:

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

#### **Answer 2A(iv)**

Section 50 of Indian Stamp Act, 1899 prescribes the time limit within which an application for relief in respect of impressed stamps spoiled, can be made. Different time limits have been specified for the purpose, namely:

- (1) in the cases mentioned in Section 49(5)(d), within two months of the date of the instrument;
- (2) in the case of a stamped paper on which no instrument has been executed by any of the parties thereto, within six months after the stamp has been spoiled;
- (3) in the case of a stamped paper in which an instrument has been executed by

any of the parties thereto, within six months after the date of the instrument, or if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed:

Provided that:

- (a) when the spoiled instrument has been for sufficient reasons sent out of India, the application may be made within six months after it has been received back in India.
- (b) when, from unavoidable circumstances, any instrument for which another instrument has been substituted, cannot be given up to be cancelled within the aforesaid period, the application may be made within six months after the date of execution of the substituted instrument.

### Question 3

- (a) Write any four exceptions to the registration of non-testamentary documents under Sub-section (2) of Section 17 of Registration Act.
- (b) Section 4 of the Right to Information Act, 2005 has entrusted certain obligations on the public authorities. Discuss any eight obligations.
- (c) Discuss the types and importance of document or transactions mentioned in the first schedule of Information Technology Act, 2000.
- (d) State the justifiable grounds for Parliament and State Legislature to pass law of preventive detention and briefly explain safeguards against such preventive detention laws.

(4 marks each)

### Answer 3(a)

The registration of the non-testamentary documents mentioned in clauses (b) and (c) of Section 17(1) of the Registration Act, 1908 is subject to the exceptions provided in Sub-section (2) of Section 17. These are-

- i. any composition deed, i.e., every deed the essence of which is composition; or
- ii. any instrument relating to shares in Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- iii. any debentures issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- iv. any endorsement upon or transfer of any debenture; or
- v. any document other than the documents specified under section 17(1A) creating merely a right to obtain another document which will, when executed create, declare, assign, limit or extinguish any such right, title or interest; or

- vi. any decree or order of a court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or
- vii. any grant of immovable property by the Government; or
- viii. any instrument of partition made by Revenue-officer; or
- ix. any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
- x. any order granting loan made under the Agriculturists Loans Act, 1884 or instrument for securing the repayment of a loan made under that Act; or
- xi. any order made under the Charitable Endowments Act, 1890 vesting any property in a treasurer of a charitable endowment or divesting any such Treasurer of any property; or
- xii. any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money, due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- xiii. any certificate of sale granted to the purchaser of any property sold by public auction by Civil or Revenue Officer.

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

#### **Obligations of Public Authority**

Section 4 of the Right to Information Act, 2005(RTI Act) makes it clear that every public authority under the RTI Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations, instructions, etc. in its possession as prescribed under the Act.

Section 4(1) states that every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under RTI Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.

As per Section 4(1)(b), every public authority has to publish within one hundred and twenty days of the enactment of this Act:

- i. The particulars of its organization, functions and duties;
- ii. The powers and duties of its officers and employees;
- iii. The procedure followed in its decision making process, including channels of supervision and accountability;
- iv. The norms set by it for the discharge of its functions;
- v. The rules, regulations, instructions, manuals and records used by its employees for discharging its functions;

- vi. A statement of the categories of the documents held by it or under its control;
- vii. The particulars of any arrangement that exists for consultation with, or representation by the members of the public, in relation to the formulation of policy or implementation thereof;
- viii. A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or the minutes of such meetings are accessible to the public;
- ix. A directory of its officers and employees;
- x. The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- xi. The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- xii. The manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- xiii. Particulars of recipients of concessions, permits or authorizations granted by it;
- xiv. Details of the information available to, or held by it, reduced in an electronic form;
- xv. The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- xvi. The names, designations and other particulars of the Public Information Officers.
- xvii. Such other information as may be prescribed;

and thereafter update the publications every year.

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

First Schedule of the Information Technology Act, 2000(the Act) provides the list of documents or transactions to which the act shall not apply. The documents or transactions mentioned in first schedule and their importance are as under:

- (1) *A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881* : Negotiable instruments are used for purposes of payment or credit and as security.
- (2) *A power-of-attorney as defined in section 1A of the Powers-of-Attorney(POA) Act, 1882* : POA document is an extremely important part of estate planning. It is considered expedient and necessary to have someone else act for you when there is an advancement in the business and commerce transactions.
- (3) *A trust as defined in section 3 of the Indian Trust Act, 1882* : A Trust is a relationship in which a person or entity holds a valid legal title to a certain property which is known as the Trust property. The Trust is bound by a fiduciary duty to exercise that legal title for the benefit of any one or more individuals or group of individuals or organisations, who are known as the Beneficiaries.
- (4) *A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925,*

*including any other testamentary disposition by whatever name called* : A Will helps in avoiding any lengthy processes and delay in the distribution of your assets. Having a Will eases the way for nominees/legal heirs to get easier access to assets of the deceased.

- (5) *Any contract for the sale or conveyance of immovable property or any interest in such property* : A Sale Deed is required to make sure that the buyer of the property has full ownership rights and can keep or sell it as they see fit. After executing the Sale Deed for a proper monetary price, the seller transfers entire legal ownership of the property.

### **Answer 3(d)**

Parliament has the power to make a law for preventive detention for reasons connected with defence, foreign affairs or the security of India. Parliament and State Legislatures are both entitled to pass a law of preventive detention for reasons connected with the security of State, the maintenance of public order, or the maintenance of supplies and services essential to the community.

### **Safeguards against Preventive Detention**

Article 22 (amended by the 44th Constitution Amendment Act, 1978) contains following safeguards against preventive detention:

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

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

### **Question 4**

- (a) *In the interpretation of a statute a Judge must not alter the material of which it is woven, but he can and should iron out the creases. Comment.*
- (b) *Explain the provisions applicable to making of rules or bye-laws after previous publication under Section 23 of General Clauses Act.*

- (c) *Explain the difference between the powers of the Collector under Section 39 and the powers of the Controlling Revenue Authority under Section 45 of Indian Stamp Act, 1899.*
- (d) *Do you consider that there is no antithesis between effective government and controlling the exercise of administrative powers ?*

(4 marks each)

**Answer 4(a)**

The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judge's trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. A judge should ask himself the question: If the makers of the Act had themselves come across this luck in the texture of it, how would they have straight ended it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.

**Answer 4(b)**

Section 23 of the General Clauses Act provides that where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely,-

- (1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby,
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the government concerned prescribes;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) the authority having power to make the rules or bye-laws, and, where the rules, or bye- laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- (5) the publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

**Answer 4(c)**

The differences between the powers of the Collector under Section 39 and the powers of the Controlling Revenue Authority under Section 45 of Indian Stamp Act, 1899 are following:

<i>Powers of the Collector under section 39</i>	<i>Powers of Controlling Revenue Authority under section 45</i>
Refund of penalty only.	Refund of Penalties and duties where they have been paid in excess.
Power to refund penalty is restricted only to two cases mentioned in Section 39.	Powers under Section 45 are not subject to any such limitation.
There is no time limit for the Collector to exercise his powers from him to refund.	Section 45 provides for the time limits.
The power under Section 39 is routine function of the Collector.	The power under Section 45 is to be exercised only when an application is made by a party.
The collector may also use his discretion.	The power under Section 45 is a purely discretionary one and the Chief Controlling Revenue Authority cannot be compelled to exercise his power from him by any further proceedings.

**Answer 4(d)**

It is the task of administrative law to ensure that the governmental functions are exercised according to law and legal principles and rules of reason and justice. The goal of administrative law is to ensure that the individual is not at receiving end of state's administrative power and in cases where the individual is aggrieved by any action of the administration, he or she can get it redressed. There is no antithesis between an effective government and controlling the exercise of administrative powers. Administrative powers are exercised by thousands of officials and affect millions of people. Administrative efficiency cannot be the end-all of administrative powers and the interests of people must be at the centre of any conferment of administrative power. If exercised properly, the vast powers of the administration may lead to the welfare state; but, if abused, they may lead to administrative despotism and a totalitarian state.

**Question 5**

- (a) *State the procedure of appeal before the National Company Law Appellate Tribunal.*
- (b) *What is presumption ? When is it needed and not needed for interpretation ?*  
(8 marks each)

**Answer 5(a)**

Part III of the National Company Law Appellate Tribunal Rules, 2016 dealing with the provisions relating to Institution of appeals. The Procedure before of appeal before NCLAT is as under:

- 1) *Manner and Language for Presentation* - Every appeal to the Appellate Tribunal shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type-written or printed in double spacing on one side of standard paper with an inner margin of about four centimeters width on top and with a right margin of 2.5 cm, and left margin of 5cm, duly paginated, indexed and stitched together in paper book form.
- 2) *Cause Title* - The cause title shall state "In the National Company Law Appellate Tribunal" and also set out the proceedings or order of the authority against which it is preferred.
- 3) *Format of pleadings* - Appeal shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.
- 4) *Marking the date* - Where Saka or other dates are used, corresponding dates of Gregorian calendar shall also be given.
- 5) *Description of parties* - Full name, parentage, description of each party and address and in case a party sue or being sued in a representative character, shall also be set out at the beginning of the appeal and need not be repeated in the subsequent proceedings in the same appeal.
- 6) *Numbering of parties* - The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party and these numbers shall not be changed and in the event of the death of a party during the pendency of the appeal, his legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers.
- 7) *Representation by Legal heirs or representative in case of death* - Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.
- 8) *Reference to the relevant provision* - Every proceeding shall state immediately after the cause title and the provision of law under which it is preferred.
9. *Service of Summons* - The address for service of summons shall be filed with every appeal on behalf of a party and shall as far as possible contain the following items namely:-
  - (a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house:
  - (b) the name of the town or village;
  - (c) the post office, postal district and PIN Code; and
  - (d) any other particular necessary to identify the addressee such as fax number, mobile number and e-mail address, if any.



10. *Initialling alteration* : Every interlineation, eraser or correction or deletion in any appeal shall be initialled by the party or his authorised representative.
11. *Presentation of appeal* :
  - (i) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
  - (ii) Every appeal shall be accompanied by a certified copy of the impugned order.
  - (iii) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
  - (iv) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.
  - (v) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.
  - (vi) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.
12. *Number of copies to be filed* : The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.
13. *Endorsement and verification* : At the foot of every appeal or pleading there shall appear the name and signature of the authorised representative and every appeal or pleadings shall be signed and verified by the party concerned in the manner provided by these rules.
14. *Translation of document* :
  - (i) A document other than English language intended to be used in any proceeding before the Appellate Tribunal shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by the authorised representative engaged on behalf of parties in the case.
  - (ii) The Registrar may order translation, certification and authentication by a person approved by him for the purpose on payment of such fee to the person, as specified by the Chairperson.
  - (iii) Appeal or other proceeding shall not be set down for hearing until and unless all parties confirm that all the documents filed on which they intend to rely are in English or have been translated into English and required number of copies are filed with the Appellate Tribunal.

**Answer 5(b)**

The expression “presumption” in interpretation would mean that while interpreting a statute or any provision thereof; the courts must deem certain things to be true and correct. In other words, the court must proceed to interpret with the conception of correctness of certain things. Presumptions are guidelines used by the courts in process of interpretation. However, they are only used if there are any ambiguities in language but sometimes even if there are no ambiguities it can be used by the judges.

Where the meaning of the statute is clear, there is no need for presumptions. But if the intention of the legislature is not clear, there are number of presumptions. These are:

- (a) That the words in a statute are used precisely and not loosely.
- (b) That vested rights, i.e., rights which a person possessed at the time the statute was passed, are not taken away without express words, or necessary implication or without compensation.
- (c) That "mens rea", i.e., guilty mind is required for a criminal act. There is a very strong presumption that a statute creating a criminal offence does not intend to attach liability without a guilty intent.
- (d) That the state is not affected by a statute unless it is expressly mentioned as being so affected.
- (e) That a statute is not intended to be inconsistent with the principles of International Law. Although the judges cannot declare a statute void as being repugnant to International Law, yet if two possible alternatives present themselves, the judges will choose that which is not at variance with it.
- (f) That the legislature knows the state of the law.
- (g) That the legislature does not make any alteration in the existing law unless by express enactment.
- (h) That the legislature knows the practice of the executive and the judiciary.
- (i) Legislature confers powers necessary to carry out duties imposed by it.
- (j) That the legislature does not make mistake. The Court will not even alter an obvious one, unless it be to correct faulty language where the intention is clear.
- (jj) The law compels no man to do that which is futile or fruitless.
- (k) Legal fictions may be said to be statements or suppositions which are known, to be untrue, but which are not allowed to be denied in order that some difficulty may be overcome, and substantial justice secured. It is a well settled rule of interpretation that in construing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on which alone the fiction can operate.
- (l) Where powers and duties are inter-connected and it is not possible to separate one from the other in such a way that powers may be delegated while duties are retained and vice versa, the delegation of powers takes with it the duties.

- (m) The doctrine of natural justice is really a doctrine for the interpretation of statutes, under which the Court will presume that the legislature while granting a drastic power must intend that it should be fairly exercised.

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

**Question 6**

- (a) Explain the three fundamental provisions to which the Information Technology Act, 2000 is made applicable. (4 marks)
- (b) Discuss the grounds under which the Court at the time of passing sentence on accused person, order him to execute a bond for keeping peace to such period and when such a bond so executed shall become void ? (4 marks)
- (c) Explain with suitable examples that legal damage is neither identical with actual damage nor is it necessarily pecuniary. (4 marks)
- (d) Explain the limitations under Civil Procedure Code that every suit shall be instituted in a court within the local limit of whose jurisdiction the defendant actually resides or carries on business. (4 marks)

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

**Question 6A**

- (i) The classical view of that 'no mens rea, no crime' has long been eroded. Elaborate.
- (ii) All facts logically relevant are not legally relevant. Narrate.
- (iii) Name the kind of suits for which period of limitation prescribed by the Limitation Act is 30 years and 12 years respectively.
- (iv) State the reason and purpose of Arbitration and Conciliation (Amendment) Act, 2015 passed by the Parliament. (4 marks each)

**Answer 6(a)**

The Information Technology Act, 2000, was enacted to make, in the main, three kinds of provisions, as under:

- (a) It provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, usually referred to, as "electronic Commerce".
- (b) It facilitates the electronic filing of documents with the Government agencies, (and also with the publication of rules etc., in the electronic form).
- (c) It amends the, Indian Penal Code, the Indian Evidence Act, 1872, the Bankers' Book Evidence Act, 1891, and the Reserve Bank of India Act, 1934, so as to bring in electronic documentation within the purview of the respective enactments.

**Answer 6(b)**

According to Section 106 Criminal Procedure Code, when a Court of Session or Court of a Magistrate of first class convicts a person of any of the offences specified in

section 106(2) or of abetting any such offence and is of opinion that it is necessary to take security from such person for keeping the peace, the Court may, at the time of passing sentence on such person, order him to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding three years, as it thinks fit.

The offences specified under section 106(2) are as follows:

- (a) any offence punishable under Chapter VIII of the India Penal Code 1860 other than an offence punishable under section 153A or section 153B or section 154 thereof.
- (b) any offence which consists of or includes, assault or using criminal force or committing mischief;
- (c) any offence of criminal intimidation;
- (d) any other offence which caused, or was intended or known to be likely to cause a breach of the peace.

However, if the conviction is set-aside on appeal or otherwise, the bond so executed shall become void.

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

It is not every damage that is a damage in the eye of law. It must be a damage which the law recognizes or invasion of the legal right. In the absence of an infringement of a legal right an action does not lie. Also, where there is infringement of a legal right, an action lies even though no damage may have caused. Therefore, legal damage is neither identical with actual damage nor is it necessarily pecuniary.

Two maxims explain this proposition.

- A. *Damnum Sine Injuria* - This maxim means, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts.

Eg. if I own a shop and you open a shop in the neighbourhood, as a result of which I lose some customers and my profits fall off, I cannot sue you for the loss in profits, because you are exercising your legal right.

- B. *Injuria Sine Damnum* - According to this maxim, where there is no damage resulted yet it is an injury or wrong in tort, i.e. where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort.

Eg. The act of trespassing upon another's land is actionable even though it has not caused the plaintiff even the slightest harm.

#### **Answer 6(d)**

According to Section 20(a) of Civil Procedure Code, 1908, subject to the limitations aforesaid i.e. Section 15, 16, 17, 18 and 19, every suit shall be instituted in a Court within the local limits of whose Jurisdiction the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain.

The provisions relating to limitation are explained as under:

1. *Section 15 - Court in which suits to be instituted* : Every suit shall be instituted in the Court of the lowest grade competent to try it.
2. *Section 16 - Suits to be instituted where subject-matter situate* : Subject to the pecuniary or other limitations prescribed by any law, suits (a) for the recovery of immovable property with or without rent or profits, (b) for the partition of immovable property, (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property, (d) or the determination of any other right to or interest in immovable property, (e) for compensation for wrong to immovable property, (f) for the recovery of movable property actually under distraint or attachment, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

However, a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

3. *Section 17 - Suits for immovable property situate within jurisdiction of different Courts* : Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

However, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

4. *Section 18 - Place of Institution of suit where local limits of jurisdiction of Courts are uncertain* : Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts, any immovable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

However, that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

Where a statement has not been recorded under section 18(1), and an objection is taken before an Appellate or Revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the Appellate or Revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the court having jurisdiction with respect thereto and there has been a consequent failure of justice

5. *Section 19 - Suits for compensation for wrongs to person or movables* : Where

a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

**Answer 6A(i)**

Where a statute imposes liability, the presence or absence of a guilty mind is irrelevant. The classical view of that 'no mens rea, no crime' has long been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishment even where the offences have been defined to exclude mens rea. Many laws passed in the interest of public safety and social welfare imposes absolute liability. This is so in matters concerning public health, food, drugs, etc. There is absolute liability (mens rea is not essential) in the licensing of shops, hotels, restaurants and chemists establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act, offences against the State like waging of war, sedition etc.

**Answer 6A(ii)**

A fact is said to be logically relevant to another when it bears such casual relation with the other as to render probably the existence or non-existence of the latter. All facts logically relevant are not, however, legally relevant. Relevancy under the Indian Evidence Act, 1872(the Act) is not a question of pure logic but of law, as no fact, however logically relevant, is receivable in evidence unless it is declared by the Act to be relevant. Of course every fact legally relevant will be found to be logically relevant; but every fact logically relevant is not necessarily relevant under the Act as common sense or logical relevancy is wider than legal relevancy. A judge might in ordinary transaction, take one fact as evidence of another and act upon it himself, when in Court, he may rule that it was legally irrelevant. And he may exclude facts, although logically relevant, if they appear to him too remote to be really material to the issue.

**Answer 6A(iii)**

*Period of 30 years* : The maximum period of limitation prescribed by the Limitation Act is 30 years and it is provided only for three kinds of suits:

1. Suits by mortgagors for the redemption or recovery of possession of immovable property mortgaged;
2. Suits by mortgagee for foreclosure;
3. Suits by or on behalf of the Central Government or any State Government including the State of Jammu and Kashmir or Local authorities.

*Period of 12 years* : A period of 12 years is prescribed as a limitation period for various kinds of suits relating to immovable property, trusts & trust property, legacy, hereditary offices, execution of decrees and endowments.

**Answer 6A(iv)**

With the passage of time, some difficulties in the applicability of Arbitration and Conciliation Act, 1996(Principal Act) have been noticed. Interpretation of the provisions of

the Act by Court in some cases have resulted in delay in disposal of arbitration proceeding and increase the interference of the courts in arbitration matters, which tend to defeat the object of the Act.

With a view to overcome the difficulties, Arbitration and Conciliation (Amendment) Act, 2015(the amendment Act) was passed by the Parliament. The amendment Act facilitate and encourage Alternative Dispute Mechanism, especially arbitration for settlement of disputes in a more user-friendly, cost effective and expeditious disposal of cases, since India is committed to improve its legal framework to obviate in disposal of cases.

The purpose of the amendment act is as under:

- (i) to amend the definition of “Court” to provide that in the case of international commercial arbitrations, the Court should be the High Court;
- (ii) to ensure that an Indian Court can exercise jurisdiction to grant interim measures, etc., even where the seat of the arbitration is outside India;
- (iii) an application for appointment of an arbitrator shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days;
- (iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues;
- (v) to provide that the arbitral tribunal shall make its award within a period of twelve months from the date it enters upon the reference and that the parties may, however, extend such period up to six months, beyond which period any extension can only be granted by the Court, on sufficient cause;
- (vi) to provide that a model fee Schedule on the basis of which High Courts may frame rules for the purpose of determination of fees of arbitral tribunal, where a High Court appoints arbitrator in terms of section 11 of the Principal Act;
- (vii) to provide that the parties to dispute may at any stage agree in writing that their dispute be resolved through fast track procedure and the award in such cases shall be made within a period of six months;
- (viii) to provide for neutrality of arbitrators, when a person is approached in connection with possible appointment as an arbitrator;
- (ix) to provide that application to challenge the award is to be disposed of by the Court within one year.

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## COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

**NOTE :** 1. Answer ALL Questions.

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

### PART I

#### Question 1

Comment on the following referring to the provisions of the Companies Act, 2013 :

- (a) Failure to distribute dividend always attracts punishment.
- (b) Niraj, who is a practicing Company Secretary has given an opinion to the Board of directors of a company that in case of a merger of wholly owned subsidiary into parent company, there is no requirement to convene meeting of Equity Shareholders, Secured and Unsecured Creditors.
- (c) Ritesh was appointed as a Director, Finance of a listed company. During his meeting with the statutory auditor, he represented that since Chief Financial Officer (CFO) who is a Chartered Accountant has already finalized the financial statements, he as well as the Board of directors doesn't have any responsibilities in so far as preparation of financial statements are concerned.
- (d) Every holder of securities of a company may, at any time, nominate any person to whom his securities shall vest in the event of his death.

(5 marks each)

#### Answer 1(a)

Section 127 of Companies Act, 2013 provides that, when a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

Exceptions: Proviso to section 127 has provided a list where no offence under this section shall be deemed to have been committed:-

- a) where the dividend could not be paid by reason of the operation of any law;
- b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;



- c) where there is a dispute regarding the right to receive the dividend;
- d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

In case of a Nidhi Company, section 127 applies with the modification that where the dividend payable is less than Rs. 100 or less, it is sufficient, if declaration of dividend is announced in local language and the same is displayed in the notice board of the company for 3 months.

Hence, the statement is correct, failure to distribute dividend always attracts punishment but subject to the exceptions under which the non- distribution of dividend shall not attract penalties.

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

In the light of Section 232, when the 'Transferor and Transferee Company' involve a Parent Company and a Wholly Owned Subsidiary, the meeting of Equity Shareholders, Secured and Unsecured Creditors can be dispensed with if the rights of the Equity Shareholders of the 'Transferee Company' are not being affected.

In the matter of *Mohit Agro Commodities & Ors.* NCLAT, dated June 28, 2021, the NCLAT has observed that Section 232(1) of the Companies Act, 2013 uses the word 'may' which introduces an element of discretion to the Tribunal to be exercised in the interest of justice in appropriate situations. Section 232 is a specific provision carved out by the legislature when both conditions maintained in clauses (a) and (b) of section 232(1) are met.

In the instant case the amalgamation sought for is between a Wholly Owned Subsidiary and the Holding Company. The points which were considered in the above-mentioned judgment were:

- 1) Whether such an arrangement alters the rights of the Stakeholders of the Company?
- 2) Whether such an amalgamation has any bearing internally on Creditors/Members of both the Companies?
- 3) Whether not holding the subject meeting would amount to violation of any of the provisions of the Companies Act, 2013?
- 4) Whether the Tribunal can exercise their discretion when the 'Transferor Company' is a Wholly Owned Subsidiary of the Transferee Company and financial position of the 'Transferee Company' is positive and the merger is not affecting the rights of the Shareholders or the Creditors?

Therefore, it was held that the rights and liabilities of Secured and Unsecured Creditors were not getting affected in any manner by way of the proposed scheme as no new shares are being issued by the 'Transferor Company' and no compromise is offered to any Secured and Unsecured Creditors of the 'Transferee Company'. Hence, when the

'Transferor and Transferee Company' involve a Parent Company and a Wholly Owned Subsidiary, the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors can be dispensed with as the rights of the Equity Shareholders of the 'Transferee Company' are not being affected.

Therefore, the opinion given by Mr. Niraj, Practicing Company Secretary to the board of the company is correct.

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

Section 134(5) of the Companies Act, 2013 specifically provides that the Director's Responsibility Statement shall set out the following affirmations:

- (i) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (ii) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (iii) the directors had taken proper and sufficient care of the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (iv) the directors had prepared the annual accounts on a going concern basis;
- (v) 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; and
- (vi) 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.

In light of above, it is the responsibility of the Board of directors to prepare proper financial statement and maintain proper books of account in compliance with the statutory requirement. The Board cannot absolve from its responsibility on the ground that a Chartered Accountant has been appointed as CFO.

Therefore, Mr. Ritesh's representation to the statutory auditor is incorrect.

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

Section 72(1) states that every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his securities shall vest in the event of his death.

Section 72(2) states that when the securities of a company are held by more than one person jointly, the joint holders may together nominate, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.

Section 72(3) states that notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of the securities of a company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the securities of the company, the nominee shall, on the death of the holder of securities or, as the case may be, on the death of the joint holders, become entitled to all the rights in the securities, of the holder or, as the case may be, of all the joint holders, in relation to such securities, to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

Section 72 (4) states that when the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

Rule 19 of Companies (Share Capital and Debentures) Rules, 2014 deals with Nomination by securities holders. It provides that:-

- (1) Any holder of securities of a company may, at any time, nominate, in Form No. SH.13. any person as his nominee in whom the securities shall vest in the event of his death.
- (2) On the receipt of the nomination form, a corresponding entry shall forthwith be made in the relevant register of securities holders, maintained under section 88.
- (3) Where the nomination is made in respect of the securities held by more than one person jointly, all joint holders shall together nominate in Form No. SH. 13 any person as nominee.
- (4) The request for nomination should be recorded by the Company within a period of two months from the date of receipt of the duly filled and signed nomination form.
- (5) In the event of death of the holder of securities or where the securities are held by more than one person jointly, in the event of death of all the joint holders, the person nominated as the nominee may upon the production of such evidence as may be required by the Board, elect, either-
  - to register himself as holder of the securities; or
  - to transfer the securities, as the deceased holder could have done.
- (6) If the person being a nominee, so becoming entitled, elects to be registered as holder of the securities himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased share or debenture holder(s).
- (7) All the limitations, restrictions and provisions of the Act relating to the right to transfer and the registration of transfers of securities shall be applicable to any such notice or transfer as aforesaid as if the death of the share or debenture holder had not occurred and the notice or transfer were a transfer signed by that shareholder or debenture holder, as the case may be.

- (8) A person, being a nominee, becoming entitled to any securities by reason of the death of the holder shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company.
- (a) The Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.
- (9) A nomination may be cancelled, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in Form No. SH.14.
- (10) The cancellation or variation shall take effect from the date on which the notice of such variation or cancellation is received by the company.
- (11) When the nominee is a minor, the holder of the securities, making the nomination, may appoint a person in Form No. SH. 13 specified under sub-rule (1), who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.

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

**Question 2**

- (a) *Ranveer, Chief Financial Officer (CFO) of the company has made the following observations with respect to the appointment of an internal auditor.*

<i>Particulars</i>	<i>Observations made by Ranveer</i>
<i>Existing employee of the company who is a Chartered Accountant having experience of doing internal audit in past</i>	<i>Cannot be appointed</i>
<i>Association of Chartered Accountants, Azad Nagar specialized in internal audits</i>	<i>Can be appointed</i>
<i>B Pvt. Ltd. (a company owned and managed by Chartered Accountants engaged in the business of providing internal audit services)</i>	<i>Can be appointed</i>

*Examine, whether the observations are in accordance with the provisions of the Companies Act, 2013 ?* (3 marks)

- (b) *Distinguish between transfer and transmission of shares as per the provisions of the Companies Act, 2013.* (3 marks)
- (c) *“Non-filing of particulars of a charge shall be void against the company as a going concern” – Examine this statement in light of the provisions of the Companies Act, 2013.* (3 marks)
- (d) *ABCD Ltd. is a listed company and its financial results are about to be discussed and approved in the board meeting to be held on 20th July, 2022. Referring to the provisions of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 answer the following :*
- (i) *Compliance requirement regarding intimation to the stock exchange about the meeting of the board discussing annual financial results*
  - (ii) *Circulating the financial reports to the shareholders who hold shares in dematerialized (demat) form.*
  - (iii) *Presenting financial reports by the listing company on its website, if the listed entity has subsidiaries.* (3 marks)
- (e) *Amrutha has ceased to be a director of CSS Ltd. by resignation. However, she continues to be the shareholder of the company. She now wants to inspect the minutes of the Board meeting in electronic form which she had attended during her tenure as a director of the company. Is she entitled to inspect the minutes of those Board meetings of CSS Ltd. as per the provisions of the Companies Act, 2013 ?* (3 marks)

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

**Question 2A**

- (i) *A Ltd; B Ltd; C Ltd; and D Ltd; are group investment companies. A Ltd. has invested 52% of B Ltd's share capital and B Ltd. has invested 55% of share capital of C Ltd. Further C Ltd. has invested 51% of share capital of D Ltd. In the light of the provisions of the Companies Act, 2013 explain the validity of the investments made by the above companies.* (3 marks)
- (ii) *Alama Ltd. was carrying on textile business which was acquired by another company by paying suitable compensation. The directors of Alama Ltd. who had majority voting rights changed the object of the company at the general meeting and utilized the compensation received from textile business for the new object of the company while refusing to distribute the compensation to its shareholders. The affected minority shareholders approached the Tribunal for relief against oppression by the majority. Will the minority shareholders succeed in their claim under the provisions of the Companies Act, 2013 ?* (3 marks)
- (iii) *Explain the manner in which public limited companies may issue their securities as per the provisions of the Companies Act, 2013.* (3 marks)
- (iv) *A company's net profit calculated under section 198 of the Companies Act, 2013 as per the audited financial statements was as under :*

Year 2021-22 : net profit Rs. 8 crore.

Year 2020-21 : net profit Rs. 5 crore

Year 2019-20 : net profit Rs. 4 crore.

*The profit for the financial year 2021-22 included the profit of Rs. 1 crore from its foreign subsidiary company and Rs. 1 crore from an Indian company covered under section 135 of the Companies Act, 2013, as dividend. Comment on the amount, if any, liable to be spent on corporate social responsibility (CSR) activities by the company. (3 marks)*

- (v) *List out any three types of companies that may be formed under the Hong Kong Companies Ordinance. (3 marks)*

### Answer 2(a)

As per the provisions of section 138 of the Companies Act, 2013 the correct answer is as under:

<i>Particulars</i>	<i>Observations made by Ranveer</i>	<i>Legality of the observation</i>
Existing employee of the company who is a Chartered Accountant having experience of doing internal audit in past	Cannot be appointed	As per section 138, a Chartered Accountant is eligible to be appointed as internal auditor. Hence, He can be appointed.
Association of Chartered Accountants, Azad Nagar specialized in internal audits	Can be appointed	As per section 138 read with rule 13(1) of the Companies (Accounts) Rules, 2014, the internal auditor may be either a Chartered Accountant or Cost Accountant or such other professional as may be decided by the Board and further, the rule specifies for certain class of companies, the internal auditor may be either an individual or a partnership firm or a body corporate. Since the association does not fall within the above categories, it cannot be appointed as Internal Auditor.
B Pvt. Ltd. (a company owned and managed by Chartered Accountants engaged in the business of providing internal audit services)	Can be appointed	Yes, B Pvt. Ltd. can be appointed being a body corporate.

**Answer 2(b)**

Distinction between transfer and transmission of shares are as under:

<i>Transfer of shares</i>	<i>Transmission of shares</i>
1. Transfer of shares is a voluntary or deliberate act of the parties by way of a contract	Transmission takes place because of operation of law for instance on death, insolvency or lunacy of a member
2. The execution of a valid transfer deed is necessary	No instrument of transfer is required in case of transmission
3. Stamp duty is payable where shares are transferred by a member (except when the shares are in demat form)	No stamp duty is payable in case of transmission of shares
4. Transfer of shares is generally made for some consideration	Transmission of shares takes place without any consideration

**Answer 2(c)**

According to Section 77 of the Companies Act, 2013, notwithstanding anything contained in any other law for the time being in force, no charge created by a company shall be taken into account by the liquidator [appointed under this Act or the Insolvency and Bankruptcy Code, 2016] or any other creditor unless it is duly registered under sub-section (1) and a certificate of registration of such charge is given by the Registrar under sub-section (2).

In the case of *ONGC Ltd v. Official Liquidators of Ambica Mills Co Ltd (2006) 132 Comp Cas 606 (Guj)*, the ONGC had not been able to point out whether the so called charge, on the basis of which it was claiming preference as a secured creditor, was registered or not. It was held that in the light of this failure, ONGC could not be treated as a secured creditor in view of specific provisions of section 125 and the statutory requirement under the said section. This does not, however, mean that the charge is altogether void and the debt is not recoverable. So long as the company does not go into liquidation, the charge is good and may be enforced.

Void against the liquidator means that the liquidator on winding up of the company can ignore the charge and can treat the concerned creditor as unsecured creditor. The property will be treated as free of charge i.e. the creditor cannot sell the property to recover its dues. Void against any creditor of the company means that if any subsequent charge is created on the same property and the earlier charge is not registered, the earlier charge would have no consequence and the latter charge if registered would enjoy priority. In other words, the latter charge holder can have the property sold in order to recover its money.

Thus, non-filing of particulars of a charge does not invalidate the charge against the company as a going concern. It is void only against the liquidator and the creditors at the time of liquidation. The company itself cannot have a cause of action arising out of non-registration. Hence, the statement is not correct.

**Answer 2(d)**

- (i) Under Regulation 29 (2) of SEBI (LODR) Regulations, 2015, every listed company has to give intimation to the stock exchange, at least five days before the date of the board meeting to be held for discussing annual financial results, (excluding the date of meeting and date of notice). Hence, ABCD Ltd. is required to comply with this requirement.
- (ii) As per rule 11(a) of the Companies (Accounts) Rules, 2014, in case of all listed companies and such public companies which have a net worth of more than one crore rupees and turnover of more than ten crore rupees, the financial statements may be sent by electronic mode to such members whose shareholding is in dematerialised format and whose email ids are registered with Depository for communication purposes. Hence, ABCD Ltd. is required to comply with this requirement.

Further, regulation 36 of SEBI (LODR) Regulations, 2015, states that the listed entity shall send annual report to the shareholders in soft copies to all those shareholder(s) who have registered their email address(es) either with the listed entity or with any depository. This Regulation also requires the listed entity to send annual reports to the holders of securities, not less than twenty one days before the annual general meeting.

Hence, ABCD Ltd. is required to comply with this requirement.

- (iii) As per section 136 of the Companies Act, every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any.

**Answer 2(e)**

As per para 7.7.1 of SS-1, the minutes of meetings of the Board and any committee thereof can be inspected by the Directors.

Director is entitled to inspect the minutes of the meeting held before the period of his directorship. A director is entitled to inspect the minutes of the meetings held during the period of his directorship even after he/she ceases to be a director.

Inspection of the minutes may be provided in physical or electronic form. While inspection of minutes book, the Company Secretary or the official of the company authorised by the Company Secretary to facilitate inspection shall take all precautions to ensure that the minute's book is not mutilated or in any way tampered by any person.

Hence, Amrutha can inspect the minutes of the Board meetings held during her tenure as director even after she ceases to be the director relating to her tenure as directorship.

**Answer 2A(i)**

A company shall, unless otherwise prescribed, make investment through not more than two layers of investment companies. [Sub-section (1) of section 186]

However, the aforesaid provisions shall not affect-

- (i) a company from acquiring any other company incorporated in a country outside



India if such other company has investment subsidiaries beyond two layers as per the laws of such country;

- (ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force. [Proviso to sub-section (1) of section 186]

Therefore, Section 186 (1) restricts a company from making investment through more than 2 layers of investment companies.

As stated above, for the purpose of Section 186 of the Act, Investment Company means a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income.

The definition of Investment Company is exhaustive. Further, the restriction under section 186(1) is about investment through Investment Companies only. Therefore, investment through any company other than the Investment Company is not covered under sub-section (1) of Section 186 of the Act.

A Ltd. is ultimate holding company of B Ltd., C Ltd., and D Ltd. Hence, investment of A Ltd. into B Ltd. and B Ltd. into C Ltd. is allowed. But, investment of C Ltd. into D Ltd. shall not be allowed/valid as the investment will be beyond two layers.

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

Chapter XVI of the Companies Act, 2013 deals with the provisions relating to the prevention of oppression and mismanagement of a company. Oppression and mismanagement of a company mean that the affairs of the company are being conducted in a manner that is oppressive and biased against the minority shareholders or any member or members of the company. To prevent the same, there are provisions for the prevention and mismanagement of a company.

An attempt to force new and more risky objects upon an unwilling minority may in circumstances amount to oppression. This was held in *Hindustan Co-operative Insurance Society Ltd.*, AIR. 1961 Cal. 443 wherein the life insurance business of a company was acquired in 1956 by the Life Insurance Corporation of India on payment of compensation. The directors, who had the majority voting power, refused to distribute this amount among shareholders, rather they passed a special resolution changing the objects of the company to utilise the compensation money for the new objects. This was held to be "Oppression". The court observed: "The majority exercised their authority wrongfully, in a manner burdensome, harsh and wrongful. They attempted to force the minority shareholders to invest their money in different kind of business against their will. The minority had invested their money in a life insurance business with all its safeguards and statutory protections. But they were being forced to invest where there would be no such protections or safeguards".

The minority shareholders will succeed in the case against the directors. "The essence of the matter seems to be that the conduct complained of should at the lowest, involve a visible departure from the standards of fair dealing, on which every shareholder who entrusts his money to the company is entitled to rely."

Hence, the minority shareholders of Alama Ltd. can petition the National Company Law Tribunal under section 241(1) of the Companies Act, 2013 and will succeed in their claim.

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

As per Section 23(1) of the Companies Act, 2013, a public company may issue securities in the following manner:

- 1) to public through prospectus ('public offer') by complying with the provisions of Part I of Chapter III of the Companies Act, 2013; or
- 2) through private placement by complying with the provisions of Part II of Chapter III of the Companies Act, 2013; or
- 3) through rights issue or a bonus issue in accordance with the provisions of the Companies Act, 2013 and in case of a listed company or a company which intends to get its securities listed also with the provisions of the SEBI Act, 1992 and the rules and regulations made there under.

### **Answer 2A(iv)**

Every company (including foreign company) having net worth of Rs. 500 crore or more or turnover of Rs. 1000 crore or more or net profit of Rs. 5 crore or more during immediately preceding financial year needs to constitute CSR committee and will attract the provisions of section 135 for compliance. Profits from any overseas branch of the company shall not be included in the computation of the net profits. So also, the dividend received from any Indian company will be excluded. 2% CSR is computed on the average net profits made by the company during the preceding three financial years. The net profit of the company during FY 2021-22 is Rs. 6 crore (8-1-1). Hence, the company is liable to spend on CSR @ 2% of average net profit of preceding 3 years. As such the average net profit would come to Rs. 5 crore (i.e.  $6+5+4=15/3$ ). Hence, the company is required to spend Rs. 10 lakh (i.e. 2% of Rs. 5 crore)

### **Answer 2A(v)**

As per section 66 of the Hong Kong Companies Ordinance following types of companies may be formed:

- 1) a public company limited by shares;
- 2) a private company limited by shares;
- 3) a public unlimited company with a share capital;
- 4) a private unlimited company with a share capital;
- 5) a company limited by guarantee without a share capital.

**Question 3**

- (a) *Draft a specimen resolution for allotment of sweat equity shares to the Chairman and Managing Director (CMD) of a listed company. Also state the type of meeting and kind of resolution to be passed referring to the provisions of the Companies Act, 2013.*

(5 marks)

- (b) *Lalchand Ltd. proposes to declare dividend in the current year and provides you the following information :*

*Equity share capital-paid up Rs. 5 crore*

*10% Preference share capital-paid up Rs. 2 crore*

*General reserves Rs. 1.50 crore*

*Securities premium Rs.5 crore*

*Surplus as per Profit and Loss Account Rs.10 lakh*

*Dividend declared in the past years 2019-20, 2020-21, 2021-22 is 10%, 12% and 14% respectively.*

*Calculate the amount available to be drawn out of reserves and the maximum rate of dividend that can be declared by the company citing the relevant provisions of the Companies Act, 2013. Assume that no adequate profit was available in the current year for distribution of dividend.*

(5 marks)

- (c) *AB Ltd. whose net worth is of Rs. 51 crore and annual turnover of Rs. 400 crore as per the latest audited financial statements intends to accept deposits from the general public. In this scenario answer the following questions as per the provisions of the Companies Act, 2013 (the Act).*

(i) *How much amount of deposit could be accepted by AB Ltd. from general public ?*

(ii) *If AB Ltd. is an eligible company for accepting deposits, and could not pass a special resolution of its members, what other options are available to the company to borrow funds beyond the limit prescribed under section 180 of the Act ?*

(iii) *As an eligible company for accepting deposits, what are the forms need to be filed by the company for acceptance of deposits ?*

(iv) *How much quantum of money should be deposited in a separate account for deposits maturing each year ?*

(v) *Is there any time limit for issuance of deposit receipts for money accepted?*

(5 marks)

**Answer 3(a)**

*Type of meeting: General Meeting*

*Kind of resolution: Special Resolution*

*Specimen resolution:*

TO CONSIDER AND APPROVE ALLOTMENT OF SWEAT EQUITY SHARES TO MR. / MS.....(DIN:.....) CHAIRMAN AND MANAGING DIRECTOR

**"RESOLVED THAT** subject to the provisions of section 54 of the Companies Act, 2013 read with Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014, in accordance with the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, Securities Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI Listing Regulations"), and in accordance with the provisions of the Articles of Association of the Company and any other regulatory approval if required, including any statutory modification(s) or re-enactment(s) thereto, and further subject to such other approvals, permissions and sanctions as may be necessary from any other statutory authority and such conditions and modifications as may be prescribed or imposed while granting such approvals consent of the members be and is hereby accorded to allot \_\_\_\_\_ Equity Shares as Sweat Equity Shares of Rs. /- \_\_\_\_\_ each to Mr./Ms. \_\_\_\_\_ Chairman & Managing Director of the Company holding DIN : \_\_\_\_\_, for the value addition he / she continues to create in 4 years while in employment of the Company, in such tranches as may be decided from time to time within the time permissible under relevant regulation, at Rs. /- \_\_\_\_\_ per share on the basis of the valuation reports dated \_\_\_\_\_ from (SEBI Category I Merchant Banker) & from \_\_\_\_\_ Registered Valuer.

**"RESOLVED FURTHER THAT** the Equity Shares to be allotted shall rank pari passu with the existing Equity Shares of the Company.

**"RESOLVED FURTHER THAT** the price of the same shall be determined as prescribed under Regulation 33 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.

**"RESOLVED FURTHER THAT** Mr./Ms. \_\_\_\_\_ Company Secretary and/or any director of the Company be and is/are hereby authorized to do all such acts and deeds as may be deemed necessary for giving effect to the aforementioned resolution."

**Answer 3(b)**

According to third proviso to Section 123(1) read with rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014, in case of inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made in accordance with such the following conditions, namely:-

- (1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year. This sub rule shall not apply to a company which has not declared any dividend in each of preceding 3 financial years.

- (2) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- (3) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- (4) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.

Computation:

1. Average rate of dividend;  $(10\%+12\%+14\%)/3=12\%$
2. 1/10th of paid up capital and free reserves: Rs. 86 lakh as computed below:
  - (i) Equity capital Rs. 5 crore + Preference Capital Rs. 2 crore + GR Rs. 1.50 crore + Surplus as per P & L A/c Rs. 10 lakh=Rs. 8.60 crore
  - (ii)  $1/10\text{th} * \text{Rs. } 8.60 \text{ crore} = 86 \text{ lakh}$
3. Available reserve for drawing as computed below:
 

(i) General Reserve	Rs. 1.50 crore
Less : 15% of paid up share capital of Rs. 7 crore	(Rs.1.05 crore)
Balance reserve available	Rs. 0.45 crore
(ii) Plus: Surplus	Rs. 0.10 crore
(iii) Free Reserves Available	Rs. 0.55 crore
4. Distributable amount for dividend Rs. 55 lakh being lower than Rs. 86 lakh as computed under point 2 above
5. Rs. 55 lakh – amount set aside for dividend to preference shareholders Rs. 20 lakh i.e. 10% of share capital of Rs. 2 crore. Hence, available reserve for equity dividend is Rs. 35 lakh.
6. Rate of dividend, if Rs. 35 lakh is distributed:  $(\text{Rs. } 35 \text{ lakh}/\text{equity capital Rs. } 5 \text{ crore}) * 100 = 7\%$
7. Dividend @7% may be distributed being less than the average rate of dividend.

### Answer 3(c)

- (i) As per section 76(1) of the Companies Act, 2013 read with Rule 2(1)(e) of the Companies (Acceptance of Deposit) Rules, 2014, a public company having net worth of not less than Rs. 100 Crore or turnover of not less than Rs. 500 Crore (Eligible Company) and which has obtained the prior consent of the members in a general meeting by means of special resolution and has also filed the special resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits can obtain deposits from public. Eligible company, which is accepting deposits within the limit specified under clause (c) of sub-section (1) of section 180 (Borrowing Powers) may accept deposits by means of an ordinary resolution.

AB Ltd. is not an eligible company and hence, it cannot accept deposit from general public.

- (ii) If AB Ltd is an eligible company and could not pass a special resolution, there are no other options available. Hence, it cannot accept deposits beyond the limits prescribed under section 180.
- (iii) The forms to be submitted are Form MGT-14, Form DPT-1 (Circular in the form of advertisement inviting deposits), DPT-2 (Deposit Trust Deed), DPT-3 (Return of Deposits) and DPT-4 (Statement regarding deposits existing on the commencement of the Act), and CHG-1.
- (iv) As per section 73(2)(c) of the Companies Act, 2013, on or before the thirtieth day of April each year, the company to deposit such sum which shall not be less than twenty percent of the amount of its deposits maturing during the following financial year and keeping it in a separate bank account called Deposit Repayment Reserve Account.
- (v) Yes, as per rule 12 of the Companies (Acceptance of Deposits) Rules, 2014, every company shall, on the acceptance of a deposit, furnish to the depositor or his agent a receipt for the amount received by the company, within a period of twenty one days from the date of receipt of money or realisation of cheque.

## PART II

### Question 4

- (a) *A is a leading business man who is presently acting as director in five companies. He wants to become the Chairman and Managing Director (CMD) of CKC International Ltd. which undertakes several businesses. The company's average annual turnover was Rs. 1,125 crore in the preceding three financial years. The Company already have H, C and L as its Chief Executive Officers for each of its business categories. As a Company Secretary advise A regarding appointment of key managerial persons, feasibility of appointing him in CKC International Ltd. as CMD and retaining the directorship of other companies referring to the provisions of the Companies Act, 2013. (5 marks)*
- (b) *Company Secretary of Mask Ltd., a listed company, having the following unlisted subsidiary companies, is seeking your advice whether an independent director is required to be appointed in these unlisted subsidiary companies :*

Name	Net Worth as on 31st March 2022 (Rs. in crore)	Consolidated Net Worth of Mask Ltd. as on 31st March 2022 (Rs. in crore)
Cure Ltd.	120	3,500
Impact Ltd.	560	
Taj Ltd.	800	

*Can wife of a director of a step-down subsidiary company take up the role of an independent director in any of the above qualified companies ? Examine the issues referred to above in light of the relevant provisions of the Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. (5 marks)*

(c) In the general meeting of CBD Ltd. six individual members were present and the meeting was adjourned by the Chairman of the meeting at his own will, to the same day of the next week as an important member was not present for the meeting. In this context, referring to the provisions of the Companies Act, 2013 answer the following questions :

- (i) Could the Chairman adjourn the meeting, if the company's shareholders (i.e. the members) strength was 300 ?
- (ii) For the adjourned general meeting is any fresh notice of meeting is to be sent ?
- (iii) If only three members were present in the adjourned meeting, where in such a meeting too the important member (shareholder) could not participate, would the meeting be considered as duly convened and conducted ?

(5 marks)

(d) Kuku, CFO of a company intends to make contribution to a political party as per details shown below :

Name of the political party	Amount to be contributed (Rs. in crore)	Average net profit during the three immediately preceding financial year (Rs. in crore)	Manner in which amount will be transferred
Hamara Jag	7.25	140	Bearer cheque
Sovereign Party	9.9		RTGS
Female front party	13		Account payee bank draft

Referring to the provisions of the Companies Act, 2013 advise Kuku,

- (i) Whether contribution proposed as above can be made ?
- (ii) Specify the penalty for which the company may be liable in case of violations in making contribution to the political parties. (5 marks)

#### Answer 4(a)

Appointment of key managerial persons: Section 203 of the Companies Act, 2013 read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, mandates the appointment of Key Managerial Personnel and makes it obligatory for a listed company and every other public company having a paid-up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel:

- (i) managing director, or Chief Executive Officer or manager and in their absence, a whole- time director:
- (ii) company secretary; and

(iii) chief financial officer

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014, requires such appointment by the Board of Directors only by means of Resolution passed at meeting of the Board.

**Feasibility of appointing as CMD :** An individual shall not be appointed or reappointed as the chairperson of the company, as well as the managing director or chief executive officer of the company at the same time unless the Articles of such a company provide otherwise; or the company does not carry multiple businesses. However, such class of companies engaged in multiple businesses and which has appointed one or more chief executive officers for each such business as may be notified by the Central Government are exempted from the above.

MCA vide its notification S.O. 1913(E) dated 25-7-2014 notified that public companies having paid up Share capital of Rs. 100 Cr or more and annual turnover of 1000 Cr or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business can appoint an individual as Chairperson and Managing Director.

Hence, A can be appointed in CKC International Ltd. as its CMD as the company's turnover is over Rs. 1000 crore.

**Retaining directorship of other companies :** With the permission of the Board he can continue to be the director of other companies.

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

Provisions relating to Independent Directors are covered under section 149 of the Companies Act, 2013. However, listed companies are also required to follow relevant SEBI (LODR) Regulations.

As per Regulation 24(1) of the SEBI (LODR) Regulations, 2015 at least one independent director on the Board of Directors of the listed company shall be a director on the Board of Directors of an unlisted material subsidiary, whether incorporated in India or not.

*Explanation* - For the purposes of this provision, notwithstanding anything to the contrary contained in Regulation 16, the term 'material subsidiary' shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed company and its subsidiaries in the immediately preceding accounting year.

Further, spouse of an independent director cannot be appointed as an independent director. Section 149(6)(b)(ii) provides that an independent director in relation to a company means one who is not related to promoters or directors in the company, its holding, subsidiary or associate company.



<i>Name</i>	<i>Net Worth as on 31st March 2022 (Rs in crore)</i>	<i>Consolidated Net Worth of Mask Ltd. as on 31st March 2022 (Rs in crore)</i>	<i>Correct Answer</i>
Cure Ltd.	120	3,500	Not required
Impact Ltd.	560		Not required
Taj Ltd.	800		Required

Wife cannot take up a role of an independent director if spouse is already appointed as an independent director in subsidiary of the qualified company.

#### **Answer 4(c)**

**Notice of an adjourned meeting :** As per para 15.3 of SS-2, If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district. However, if a Meeting is adjourned for a period not exceeding three days and where an announcement of adjournment has been made at the Meeting itself, giving in the details of day, date, time, venue and business to be transacted at the adjourned Meeting, the company may also opt to give Notice of such adjourned Meeting either individually or by publishing an advertisement, as stated above.

**No quorum in an adjourned meeting :** If at the adjourned meeting also, a quorum is not present within half- an-hour from the time appointed for holding meeting, the members present, being not less than two in number, will constitute the quorum.

Para 15.1 of SS-2 provides that, a duly convened meeting shall not be adjourned unless circumstances warrant. The chairman may adjourn the meeting with the consent of the members present, at which quorum is present.

If a Meeting is adjourned sine-die or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the provisions relating to Notice.

The words, personally present exclude proxies. In case two or more corporate bodies who are members of a company are represented by single individual, each of the bodies corporate will be treated as personally present by the individual representing it. If, for instance, he represents three corporate bodies, his presence will be counted as three members being present in person for purposes of quorum. In light of this the queries will be answered as below:

- (i) Where number of members of a public company is not more than 1000 the quorum for the meeting shall be 5 members personally present. Hence, assuming that 6 members were personally present the quorum was present at the general meeting. The chairman cannot adjourn the meeting at his own will without the consent of the member if all the six members were personally present, since the quorum is present. But in the event of disorder or other like causes, when it

becomes impossible to conduct the Meeting and complete its business, The Chairman may also adjourn a Meeting.

- (ii) Yes, notice need to be sent individually or by publishing in news daily in compliance to Para 15.3 of SS-2.
- (iii) If at the adjourned meeting, the quorum is not present within half- an hour from the time appointed for holding meeting, the members present, being not less than two in numbers, will constitute the quorum. In this case, 3 members are present in the adjourned meeting, it will be considered as a valid meeting. [Section 103(3)]

#### Answer 4(d)

- (i) According to Section 182 of the Companies Act, 2013, a company, other than a government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party. Further the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

Accordingly, the answer is as under:

<i>Name of the political party</i>	<i>Remarks</i>
Hamara Jag	Contribution cannot be made through bearer cheque
Sovereign Party	Contribution can be made through RTGS
Female front party	Contribution can be made through account payee bank draft

- (ii) If the contribution is in contravention of the provisions of this section, the company shall be punishable for an amount of which may extend to five times of the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times of the amount so contributed.

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

#### Question 5

- (a) *Pandole is serving as the managing director of a listed company and she would like to know the answers for her following queries in light of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 :*
  - (i) *In how many other listed companies she could be appointed as an independent director ?*
  - (ii) *Could she be appointed as non-executive director in five more private companies ?* (4 marks)
- (b) *A company which has Rs. 13 crore of paid-up share capital is intending to have a board meeting on 12th December, 2022. Its managing director wants to know*

the provisions of the Companies Act, 2013 relating to notice of the meeting to directors on the following points :

- (i) The date before which the notice needs to be served either by electronic mode or by post ?
  - (ii) If the company has a predetermined date of 12th of every alternate month for its board meeting, unless otherwise changed, should the notice be sent to the directors every time ?
  - (iii) In case of urgent exigency can a board meeting be convened at a shorter notice to the directors ?
  - (iv) Could the notice of Board meeting be issued/sent by any person in the company to the directors ? (4 marks)
- (c) X is a 20 year old B. Com. graduate who is the son of Y aged 70, a top businessman in India. Y intends to appoint his son X as the Managing Director (MD) of one of his group companies and continues to be the Managing Director of another group company. Examine the validity of the proposals explaining the procedure for such appointments as per the provisions of the Companies Act, 2013. (4 marks)
- (d) The Board of a company had total strength of 12 directors. There was a vacancy of two directors in the Board. Referring to the provisions of the Companies Act, 2013 answer the following :
- (i) What is the quorum required for the board meeting of the company ?
  - (ii) In case, nine directors are interested in a particular matter which is to be discussed in a meeting, what shall be the quorum for the meeting under such scenario ?
  - (iii) In a particular meeting, six directors participated and three of them participated through video conferencing. Would the meeting be considered valid ?
  - (iv) In the attendance register meant for board meeting, whether directors participating through video/audio-visual means will be entered ? (4 marks)
- (e) The Annual General Meeting (AGM) was called by a proper and valid notice to be held on Sunday, the 7th August, 2022. Due to lack of quorum for the meeting, it was adjourned for the same day, time and place in the next week. In the adjourned meeting on a particular resolution, two shareholders holding shares to the nominal value of Rs. 5,50,000 demanded a poll, but the Chairman refused to conduct the poll. In the light of the provisions of the Companies Act, 2013, give your opinion on the above happenings. Also, decide the validity of the meeting, if it would have been called on Monday, the 15th August, 2022. (4 marks)

**OR (Alternate question to Q. No. 5)**

**Question 5A**

- (i) Examine whether the following persons are eligible to be reappointed as an

*independent director of Seamless Ltd. after the completion of cooling period as defined under the Companies Act, 2013 ?*

<b>Name</b>	<b>Activities performed during the cooling period</b>
Ram	Advisor to CFO of Seamless Ltd.
Kishan	Started his own independent advisory business and was not associated with Seamless Ltd.
Rakesh	Completed a small valuation work on the multiple requests by the Chairman of Seamless Ltd.

(4 marks)

- (ii) *Amit, CFO of a company has sought your advice on the frequency of holding first as well as second and subsequent annual general meetings. Provide your advice to Amit in light of the relevant provisions of the Companies Act, 2013.*

(4 marks)

- (iii) *A company has passed two resolutions by circulation with a majority of five directors where total strength of the board is of nine directors. Two directors required that such a resolution should be decided at the meeting of the Board. Answer the following questions under such scenario referring to the provisions of the Companies Act, 2013 :*

- (a) *Whether the claim of the two directors that the resolution should be passed at the meeting of the Board only is valid ?*
- (b) *How the resolution passed by circulation will be recorded in the minutes of the board meetings ?*
- (c) *If the draft resolution was not sent to one director by inadvertent mistake, should the resolution be considered invalid ?*
- (d) *If the single approval has been given by the majority of directors for both the resolutions together, whether such approval will be considered as valid ?*

(4 marks)

- (iv) *XY Ltd. is an unlisted company having 1100 shareholders. One of the directors of the company is of the opinion that the company should constitute Stakeholders Relationship Committee (SRC). However, the Secretary of the company claims that it is not mandatory for the company to constitute SRC. Referring to the provisions of the Companies Act, 2013 answer the following questions :*

- (a) *Whether the claim of the director is correct ?*
- (b) *If XY Ltd. is a listed company how the SRC should be formed ?*
- (c) *What is the quorum for SRC meeting ?*
- (d) *What is the minimum number of meetings the SRC should conduct in a year ?*

(4 marks)

- (v) *For the annual general meeting (AGM) of a company proxies were received from A, B, C and D. C and D deposited their proxy forms 72 hours before the meeting, as the Articles of the company requires for deposit of proxy forms 72 hours before the meeting. A and B deposited proxy forms 50 hours before the meeting and hence the Chairman rejected their proxy forms. C represented 48 shareholders, having 8% shareholding and D represented one shareholder having 11% voting rights. In the light of the provisions of the Companies Act, 2013 explain the validity of the proxies. (4 marks)*

**Answer 5(a)**

According to Section 165 of the Companies Act, 2013, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. The maximum number of public companies in which a person can be appointed as a director shall not exceed ten. For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included. For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

Additionally, for listed entities SEBI vide recent notification in regulation 17A of SEBI (LODR) Regulation, 2015 provides that the directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time -

- (1) A person shall not be a director in more than eight listed entities with effect from April 1, 2019 and in not more than seven listed entities with effect from April 1, 2020:

Further it has been provided that a person shall not serve as an independent director in more than seven listed entities.

- (2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an independent director in not more than three listed entities.

For the purpose of this regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange.

- (i) Pandole can be appointed in three more listed companies as independent director.
- (ii) She could be appointed in five more private companies as director which will be well within the limits of total directorship.

**Answer 5(b)**

- (i) As per section 173(3) of the Companies Act, 2013 read with SS-1 requires that not less than seven days' notice in writing shall be given to every director at the registered address (whether in India or outside India) as available with the company, unless the Articles prescribe a longer period. The date of notice need not be excluded and the date of meeting is to be excluded while computing length of notice. For the Board meeting on 12th December 2022, the notice is to

be sent on 5th December 2022 if sent by electronic mode and by 3rd December, 2022 if sent by post (notice not to be sent by ordinary post).

- (ii) As per para 1.3.5 of SS-1, the Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals. If notice of meeting is not given to one of its directors, meeting of board of directors is invalid and resolution passed at such meeting are inoperative.
- (iii) Yes, in case of-Board Meeting to transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above, subject to following conditions:
  - at least one independent director, if any, shall be present at the meeting;
  - In case of absence of independent director, decision taken at such meeting shall be circulated to all the directors, and shall be final only on ratification thereof by at least one Independent director.
  - In case the company does not have an Independent Director, the decisions shall be final only on ratification thereof by a majority of the Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company.
- (iv) No, notice shall be issued by the Company Secretary or where there is no Company Secretary, by any Director or any other person authorised by the Board for the purpose.

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

Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. Further, a company shall not appoint or re-appoint any person as its Managing Director, Whole Time Director or manager for a term exceeding five years at a time and no re-appointment shall be made earlier than one year before the expiry of his term.

No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

- a) is below the age of twenty-one years or has attained the age of seventy years:
- b) is an undischarged insolvent or has at any time been adjudged as an insolvent:
- c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

Appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the

company, the appointment of the person who has attained the age of seventy years may be made.

Hence, Mr.X cannot be appointed as MD, without approval of Central Government, since he is less than 21 years and Mr. Y can be appointed by passing a special resolution.

#### **Answer 5(d)**

As per section 174 (1) of the Companies Act, 2013 the Quorum for Board Meeting shall be 1/3rd of its total strength or two directors, whichever is higher.

*Explanation* — for the purposes of this section:

- Any fraction of a member will be rounded off as one
  - Total strength shall not include directors whose places are vacant.
- (i) The quorum for the Board meeting in this case shall be four.
  - (ii) According to Section 174(3) of Companies Act, 2013, where at any time the number of interested Directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of Directors who are not interested Directors and present at the meeting, being not less than two, shall be the quorum during such time. Hence, the interested directors are excluded and hence, the remaining three directors will form the quorum.
  - (iii) As per clause 3.3 of SS-1, a Director participating through video conferencing/ audio visual modes will also be counted for quorum. Thus, the meeting would be considered valid.
  - (iv) As per clause 4.1.2 of SS-1, the attendance register shall contain the following particulars: serial number and date of the Meeting; in case of a Committee Meeting name of the Committee; place of the Meeting; time of the Meeting; names and signatures of the Directors, the Company Secretary and also of persons attending the Meeting by invitation and their mode of presence, if participating through Electronic Mode.

The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded in the attendance register and authenticated by the Company Secretary or where there is no Company Secretary, by the Chairman or by any other Director present at the Meeting, if so authorised by the Chairman and the fact of such participation is also recorded in the Minutes.

#### **Answer 5(e)**

As per section 96 of the Companies Act, 2013, an Annual General Meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.

"National Holiday" for this purpose means and includes a day declared as National Holiday by the Central Government. According to SS-2, National Holiday means Republic Day i.e. 26th January, Independence Day i.e. 15th August, Gandhi Jayanti i.e. 2nd October and such other day as may be declared as National Holiday by the Central Government.

Further, as per section 109 of the Companies Act, 2013, before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the following person(s):

- (a) *in the case a company having a share capital*: by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000/- or such higher amount as may be prescribed, has been paid-up; and
- (b) *in the case of any other company*: by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

In the above case, the Chairman cannot refuse to conduct the poll as the shareholders hold shares which in aggregate sum is Rs. 5,50,000 which is higher than what is prescribed.

A poll when validly demanded shall be taken, even if the Chairman had refused to grant the poll. Consequently, if a valid demand for poll is refused by the Chairman, the Meeting shall either be re-convened or a new Meeting should be convened to hold the poll or to consider the item in respect of which the valid demand for poll was not granted, as the case may be. [*M. K. Srinivasan and Others v. W. S. Subrahmanya Ayyar and Others (1932) 2 Comp. Cas. 147*]

Further, holding of the Annual General Meeting on Sunday the 7th August, 2022 shall be valid as Sunday is not a National Holiday. However, the meeting convened on 15th August, 2022 shall be invalid being a National holiday.

#### **Answer 5A(i)**

The re-appointment of independent director shall be on the basis of report of performance evaluation. (Schedule IV - Code for Independent Directors).

Section 149(11) provides that the Independent Director shall be eligible for re-appointment on passing of special resolution. He shall not hold office for more than 2 consecutive terms, but such independent director shall be eligible for appointment after the expiration of 3 years (cooling period) of ceasing to become an independent director.

However, he shall not, during the said period of 3 years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Accordingly, based on the above provision, correct answer is as under:

<b>Name</b>	<b>Activities performed during the cooling period</b>	<b>Correct Answer</b>
Ram	Advisor to CFO of Seamless Ltd.	Not eligible, since he was associated directly with the company
Kishan	Started his own independent advisory business and was not associated with Seamless Ltd.	Eligible
Rakesh	Completed a small valuation work on the multiple requests by the Chairman of Seamless Ltd.	Not eligible, since he was associated with the company



**Answer 5A(ii)**

As per section 96 of the Companies Act, 2013, the Annual General Meeting should be held once in each calendar year.

First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.

- Subsequent annual general meeting of the company should be held within 6 months from the date of closing of the relevant financial year.
- The gap between two annual general meetings shall not exceed 15 months

The above mentioned points shall be suggested to Mr. Amit with respect to frequency of holding first as well as second and subsequent annual general meetings.

**Answer 5A(iii)**

As per section 175 of the Companies Act, 2013 read with rule 5 of the Companies (Meetings of Board and its Powers) Rules, 2014, a company may pass the resolutions through circulation. The resolution in draft form together with the necessary papers may be circulated to all the directors or members of committee at their address registered with the company in India by hand or by speed post or by courier or through electronic means which may include e-mail or fax.

The said resolution must be passed by majority of directors or members entitled to vote. If not less than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.

The resolution passed through circulation shall be noted at a subsequent meeting and made part of the minutes of such meeting.

Further SS-1, requires that each business proposed to be passed by way of resolution by circulation shall be explained by a note setting out details of the proposal, relevant material facts that enable the directors to understand the meaning, scope and implications of the proposal, the nature of concern of interest, if any, of any director in the proposal, which the director had earlier disclosed and the draft of the resolution proposed.

Each resolution shall be separately explained. The decision of the directors shall be sought for each resolution separately. Not more than seven days from the date of circulation of the draft of the resolution shall be given to the directors to respond and the last date shall be computed accordingly.

- (i) The claim of the two directors need not be considered. Only one-third of the total directors eligible to vote can alone require it.
- (ii) The minutes will be recorded in the next board meeting.
- (iii) All the directors should be sent with the draft resolution, otherwise the resolution will become invalid.
- (iv) Each resolution shall be separately explained. The decision of the directors shall be sought for each resolution separately.

**Answer 5A(iv)**

Section 178(5) of the Companies Act, 2013 provides for constitution of the stakeholders relationship committee.

- (a) The company that has more than one thousand shareholders, debenture-holders, deposit- holders and any other security holders at any time during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board. Hence, the claim of the director is correct.
- (b) As per regulation 20 of the SEBI (LODR) Regulations, 2015, the listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interests of shareholders, debenture holders and other security holders.
  - The chairperson of this committee shall be a non-executive director.
  - At least three directors, with at least one being an independent director, shall be members of the Committee.
  - The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.
- (c) The quorum for the SRC shall be as specified by the Board. If no such quorum specified than all the members of the SRC will for the quorum as per SS-I.
- (d) As per SS-1 para 2.2, Stakeholders Relationship Committee shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the Board.

**Answer 5A(v)**

As per section 105 of the Companies Act, 2013 read with rule 19 of the Companies (Management and Administration) Rules, 2014, a Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.

However, a Member holding more than ten percent of the total share capital of the company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not act as a Proxy for another person or shareholder.

If a Proxy is appointed for more than fifty Members, he shall choose any fifty Members and confirm the same to the company before the commencement of specified period for inspection. In case, the Proxy fails to do so, the company shall consider only the first fifty proxies received as valid.

The instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

A company cannot refuse proxies if filed before 48 hours before the meeting. Hence rejection of the forms of A & B is invalid. C and D are valid proxies.

**PART III****Question 6**

- (a) *A complaint was lodged against a member of the Institute of Company Secretaries of India (ICSI) under section 21 of the Company Secretaries Act, 1980. The Disciplinary Committee after investigation submitted its report to the Council of ICSI on the complaint lodged. Explain as to what would be the further course of action on the complaint against the member of ICSI ?*
- (b) *The Secretarial Standard-II prescribes the aspects related to the presence of directors, auditors and chairman in the Annual General Meetings (the AGMs). As a Company Secretary offer your views to the following questions :*
- (1) *Should the presence of secretarial auditor in person and company auditors in person is mandatory in the Annual General Meeting (AGM) ?*
  - (2) *Where the directors should be seated in the AGM ?*
  - (3) *If the Chairman was late for the meeting by an hour, what should be done to conduct the meeting ?*
  - (4) *If the Chairman was interested in any matter for discussion in the meeting, what shall be done at that stage ?*
  - (5) *Whether the secretarial auditor has right to speak at the AGM ?*

*(5 marks each)***Answer 6(a)**

The Disciplinary Committee (DC) shall after investigation report the result of its enquiry to the Council for its consideration.

After submission of report by the DC the following procedure shall be taken up by the Council.

- (1) The Council shall consider the report of the Disciplinary Committee and if in its opinion, a further enquiry is necessary, may cause such further enquiry to be made and a further report submitted by the Disciplinary Committee.
- (2) After considering such report or further report of the Disciplinary Committee, as the case may be, where the Council finds that the respondent is not guilty of any professional or other misconduct, it shall record its findings accordingly and direct that the proceedings shall be filed or the complaint shall be dismissed as the case may be.
- (3) After considering such report or further report of the Disciplinary Committee, as the case may be, where the Council finds that the respondent has been guilty of a professional or other misconduct, it shall record its findings accordingly and shall proceed in the manner as laid down in the succeeding sub-regulations.
- (4) Where the finding is that the member of the Institute has been guilty of a professional or other misconduct, the Council shall afford to the member an opportunity of being heard before orders are passed against him in the case. The

Council after hearing the respondent, if he appears in person or after considering the representations, if any, made by him, pass such orders as it may think fit, as provided under Subsection (4) of Section 21.

- (5) The orders passed by the Council shall be communicated to the complainant and the respondent.

**Answer 6(b)**

- (1) As per section 146 of the Companies Act, 2013 read with para 4.3 of SS-2, the Auditors, unless exempted by the company, and the Secretarial Auditor, unless exempted by the company shall either by themselves or through their authorised representative, attend the General Meetings of the company. The authorised representative who attends the General Meeting of the company shall also be qualified to be an Auditor / Secretarial Auditor.

Hence, presence of the Secretarial Auditor and company Auditors in persons is not a must.

- (2) Directors who attend General Meetings of the company and the Company Secretary shall be seated with the Chairman.

If any Director is unable to attend the Meeting, the Chairman shall explain such absence at the Meeting.

- (3) The Chairman of the Board shall take the Chair and conduct the Meeting. If the Chairman is not present within fifteen minutes after the time appointed for holding the Meeting, or if he is unwilling to act as Chairman of the Meeting, or if no Director has been so designated, the Directors present at the Meeting shall elect one of themselves to be the Chairman of the Meeting. If no Director is present within fifteen Minutes after the time appointed for holding the Meeting, or if no Director is willing to take the Chair, the Members present shall elect, on a show of hands, one of themselves to be the Chairman of the Meeting, unless otherwise provided in the Articles.

If a poll is demanded on the election of the Chairman it shall be taken forthwith in accordance with the provisions of the Act and the Chairman elected on a show of hands shall continue to be the Chairman of the Meeting until some other person is elected as Chairman as a result of the poll, and such other person shall be the Chairman for the rest of the Meeting.

In case of a private company, appointment of the Chairman shall be in accordance with this para, unless otherwise provided in the Articles.

- (4) If the Chairman is interested in any item of business, without prejudice to his Voting Rights on Resolutions, he shall entrust the conduct of the proceedings in respect of such item to any Non -Interested Director or to a Member, with the consent of the Members present, and resume the Chair after that item of business has been transacted.
- (5) The Secretarial Auditor shall have the right to be heard at such Meetings on that part of the business which concerns them as Auditors / Secretarial auditor.

## SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

**NOTE :** Answer ALL Questions.

### PART A

#### Question 1

- (a) *Sumit Bhasin has an expertise in the field of Modular Kitchen designing, he possesses adequate education too in this field. Now in order to start his venture, he wants to consult a Company Secretary for getting aware of various modes of organization and to select the best mode keeping in view their merits and demerits. As a Company Secretary, make Sumit Bhasin acquainted with available modes of organization while briefing the merits and demerits of each. (5 marks)*
- (b) *Raman is an Indian Citizen, and his stay in India during the immediately preceding financial year is for 130 days. He appoints Sanjay, a foreign citizen, as his nominee, who has stayed in India for 125 days during the immediately preceding financial year. Is Raman eligible to incorporate a One-Person Company (OPC) ? If yes, can he give the name of Sanjay in the Memorandum of Association as his nominee ? Justify your answers with relevant provisions of the Companies Act, 2013. (5 marks)*
- (c) *Ramesh wishes to form a Nidhi Company with a minimum paid-up equity share capital of ₹12 lakh. Ramesh is seeking your guidance regarding the general limitations and prohibitions put in place for Nidhi Companies. (5 marks)*
- (d) *Hardev Lal, Director of JKL Limited acted bona fide to pursue one of the 'objects' of the Company not falling within the 'object clause' of its Memorandum of Association. Subsequently, such fact was noticed through the contents of the Boards' Report wherein it was reported that such persuasion had resulted in a loss to the Company to the extent of ₹ 25 lakh during the first year itself. The members of the Company disapproved the transaction and required explanation from the Board of Directors. As a Company Secretary, what do you advise the management in this matter and how to fix the responsibility of Hardev Lal. Support your answer with the help of leading case law. (5 marks)*

#### Answer 1(a)

The main types of business entities in India are Sole Proprietorship, Partnership, Hindu Undivided Family (HUF) Business, Limited Liability Partnership (LLP), Co-operative Societies, Branch Office and Company which may be any kind of company including One Person Company (OPC), private company, public company, Guarantee Company, subsidiary company, statutory company, insurance company or unlimited company. There

can also be Association of Persons (AOP) and Body of Individuals (BOI), Corporation, Co-operative Society, Trust etc.

Broadly the following are the available modes of organizations:

### 1. Sole Proprietorship

Sole proprietorship is a form of business, wherein one person owns all the assets of the business, no legal formalities are required to create a sole proprietorship other than an appropriate licensing to conduct a business and registration of business name if it differs from that sole proprietorship. The owner reports income/ loss from this business along with is personal income tax return.

*Merits:*

- Easy to establish and operate.
- Sole Beneficiary of Profits.

*Demerits:*

- Unlimited Liability
- Higher Tax Incidence.

### 2. Partnership Firm

Partnership firms are created by drafting a partnership deed among the partners. The partnership deed is registered to make a firm. Partnership firms in India are, governed by the Indian Partnership Act, 1932.

Section 464 of the Companies Act, 2013 empowers the Central Government to prescribe maximum number of partners in a firm but the number of partners so prescribed cannot be more than 100.

The Central Government has prescribed maximum number of partners in a firm to be 50 vide Rule 10 of the Companies (Miscellaneous) Rules, 2014. Thus, in effect, a partnership firm cannot have more than 50 members.

*Merits:*

- Easy to establish and operate.
- If the partnership agreement permits, a partnership could continue to exist if one of the partners dies.

*Demerits:*

- Unlimited Liability
- Possibility of conflicts.

### 3. Limited Liability Partnership (LLP)

Limited Liability Partnership is an alternate corporate business entity that provides the benefits of limited liability of a company but allows its members the flexibility of organizing their internal management on the basis of a mutually-arrived agreement, as is the case in a partnership firm, introduced in India by way of limited Liability Partnership Act, 2008.

*Merits:*

- Lower registration cost.
- No requirement of compulsory Audit.

*Demerits:*

- Penalty for non-compliance.
- Inability to have Equity Investment.

**4. One Person Company (OPC)**

OPC means a company with only 1 person as a member. Share holder can make only 1 nominee, he shall become a shareholder in case of death / incapacity of original stakeholder.

*Merits:*

- Can be incorporated with minimum one director.
- Complete control

*Demerits:*

- Suitable only for small business.
- One-person Company can have Minimum or Maximum no. of 1 Member.

**5. Private Company**

Private company is a company which has the following characteristics:

- Shareholders right to transfer shares is restricted.
- Minimum number of 2 members in company.
- Number of shareholders is limited to 200.
- An invitation to the public to subscribe to any shares or debentures or any type of security is prohibited.

*Merits:*

- Separate Legal Entity
- Limited Liability

*Demerits:*

- In stock exchanges shares cannot be quoted.
- It restricts transferability of shares by its articles.

**6. Public Company**

A public company is a company which has the following characteristics:

- Shareholders right to transfer share; is not restricted.
- Minimum 7 members.
- An invitation to the public to subscribe to any shares or debentures or any type of security is permitted.

*Merits:*

- Limited Liability of shareholders.
- Unlimited source of raising funding.

*Demerits:*

- More statutory compliances.
- Lack of secrecy.

## 7. Hindu Undivided Family (HUF)

A Hindu family can come together and form a HUF. HUF is taxed separately from its members. One can save taxes by creating a family unit and pooling in assets to form a HUF. HUF has its own PAN and files tax returns independent of its members.

### *Merits:*

- Members are liable to pay taxes just like other individuals.
- Two PAN cards can be created and each of them file the taxes separately.

### *Demerits:*

- All members have equal rights on the property.
- Closing the HUF could be difficult.

## 8. Co-operative Society

A cooperative organization is an association of persons, usually of limited means, who have voluntarily joined together to achieve a common economic end through the formation of a democratically controlled organization, making equitable distributions to the capital required, and accepting a fair share of risk and benefits of the undertaking.

### *Merits:*

- Limited Liability
- Equality in voting rights

### *Demerits:*

- Government Control
- Mutual Disputes

## 9. Section 8 Company

Section 8 company is a company established for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object', provided the profits, if any, or other income is applied for promoting only the objects of the company and no dividend is paid to its members. Section 8 Companies are registered under the Companies Act, 2013.

### *Merits:*

- Access to tax benefits
- Improved Credibility

### *Demerits:*

- Stringent Compliances and norms



- Profit cannot be a prime objective

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

As per Rule 3 of the Companies (Incorporation) Rules, 2014, only a natural person who is an Indian citizen whether resident in India or otherwise (person who stayed in India for a period of not less than 120 days during immediately preceding financial year)-

- Shall be eligible to incorporate an OPC;
- Shall be a nominee for the sole member of an OPC.

In the given case, Mr. Raman is an Indian citizen and his stay in India during the immediately preceding financial year is 130 days which is above the requirement of 120 days. Hence, Mr. Raman is eligible to incorporate an OPC.

Further, even though Mr. Sanjay's name is mentioned in the Memorandum of Association as nominee and his stay in India during the immediately preceding financial year is more than 120 days, he is a foreign citizen and not an Indian citizen. Hence, Sanjay's name cannot be given as nominee in the Memorandum of Association as nominee.

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

#### **General Restrictions or Prohibitions**

In terms of Rule 6 of the Nidhis Rules, 2014, Nidhi shall not-

- carry on the business of chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by anybody corporate;
- issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;
- open any current account with its members;
- acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management;
- carry on any business other than the business of borrowing or lending in its own name. Nidhis which have adhered to all the provisions of these rules may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding twenty per cent of the gross income of the Nidhi at any point of time during a financial year;
- accept deposits from or lend to any person, other than its members;
- pledge any of the assets lodged by its members as security;
- take deposits from or lend money to anybody corporate;
- enter into any partnership arrangement in its borrowing or lending activities;
- issue or cause to be issued any advertisement in any form for soliciting deposit;

It may be noted that private circulation of the details of fixed deposit Schemes

among the members of the Nidhi carrying the words "for private circulation to members only" shall not be considered to be an advertisement for soliciting deposits;

- k. pay any brokerage or incentive for mobilizing deposits from members or for deployment of funds or for granting loans;
- l. raise loans from banks or financial institutions or any other source for the purpose of advancing loans to members of Nidhi.

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

#### **Doctrine of *Ultra Vires***

In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires. As a result, an act which is ultra vires is void, and does not bind the company. Neither the company nor the contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if every member assents to it.

The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form [*Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Com Cases 293 (Cal.)*].

It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to the company's memorandum, the directors will be personally liable to replace it. In *Jehangir R. Modi v. Shamji Ladha, [(1866-67) 4 Bom. HCR (1855)]*, the Bombay High Court held, "A shareholder can maintain an action against the directors to compel them to restore to the company the funds of the company that have by them been employed in transactions that they have no authority to enter into, without making the company a party to the suit".

It is evidently clear from the facts of the case narrated in the question that the act of Hardev Lal, Director of JKL Limited was ultra vires the Company as its object clause did not contained the object pursued by him and as a result, the Company had incurred losses. As such, he is personally liable to compensate the Company with the quantum of loss incurred.

#### **CASE LAWS:**

The doctrine of ultra vires was first enunciated by the House of Lords in a classic case, *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) L.R. 7 H.L. 653*.

The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors."

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being ultra vires, Riche brought a case for damages on the ground of breach of contract, as according to him the words "general

contractors" in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so because the contract was ratified by a majority of shareholders.

The House of Lords held that the contract was ultra vires the company and, therefore, null and void. The term "general contractor" was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorize the directors to make", still it would be ultra vires. The shareholders cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

However, later on, the House of Lords held in other cases that the doctrine of ultra vires should be applied reasonably and unless it is expressly prohibited, a company may do an act which is necessary for or incidental to the attainment of its objects. Section 13(1)(d) of the Companies Act, 1956 [Corresponds to section 4(1)(c) of the Companies Act, 2013] provides that the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof be stated in the memorandum. However, even when the matters considered necessary in furtherance of the objects are not stated, they would be allowed by the principle of reasonable construction of the memorandum.

*\*The word 'ultra' means beyond and the word 'vires' means powers.*

In the case *A. Lakshmanaswami Mudaliar v. L.I.C., A.I.R. 1963 S.C. 1185*, upheld the doctrine of ultra vires. In this case, the directors of the company were authorized "to make payments towards any charitable or any benevolent object or for any general public or useful object". In accordance with shareholders' resolution the directors paid Rs. 2 lacs to a trust formed for the purpose of promoting technical and business knowledge. The company's business having been taken over by L.I.C., it had no business left of its own.

The Supreme Court held that the payment was ultra vires the company. Directors could not spend company's money on any charitable or general objects. They could spend for the promotion of only such charitable objects as would be useful for the attainment of the company's own objects. It is pertinent to add that the powers vested in the Board of directors, e.g., power to borrow money, is not an object of the company. The powers must be exercised to promote the company's objects. Charity is allowed only to the extent to which it is necessary in the reasonable management of the affairs of the company. Justice Shah held: "There must be proximate connection between the gift and the company's business interest". Thus "gifts to foster research relevant to the company's activities" and "payments to widows of ex- employees on the footing that such payments encourage persons to enter the employment of the company" have been upheld as valid and intra vires.

In this regard the Act provides for bonafide charitable spending by the company. Section 181 of the Companies Act, 2013 authorizes the Board of directors to contribute to bona fide charitable and other funds. However, prior consent of the company in general meeting, has to be obtained in order to contribute for any bona fide charitable or other purpose any amount exceeding five per cent of the average net profits for the three immediately preceding financial years.

The power of the Board as regards contribution to funds, which do directly relate to business of the company is unrestricted. It should not be inferred from the language of the section that with the consent of the company in general meeting, the board of directors may contribute to charitable funds to an unlimited extent, unless MoA and AoA authorizes such expenditure. If it does not authorize so it will be ultra vires the powers of the company.

A bank or any other person lending to a company, for purposes ultra vires the memorandum, cannot recover. [*National Provincial Bank v. Introductions Ltd.*, (1969) 1 All. E.R. 887].

Further, in the case of *Bell Houses Ltd. v. City Wall Properties Limited* (1966) 36 Com Cases 779, the objects clause included a power to "carry on any other trade or business whatsoever which can, in the opinion of the Board of directors, be advantageously carried on by the company." The Court has held the same to be in order.

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

**Question 2**

- (a) *Matrix Limited is an unlisted company, having its registered office at Chennai. The Annual General Meeting was held at Goa on 1st July, 2021 at 3.00 PM and concluded at 8.00 PM. Consent of all the members to conduct AGM at Goa was received by 24th June, 2021 through Email.*
- (i) *Examine the validity of the meeting as per the provisions of the Companies Act, 2013.*
- (ii) *State, the consequences if a resolution has passed in such meeting, without sufficient disclosure regarding interest of a director. (2+2=4 marks)*
- (b) *Explain the difference between Public Trust and Private Trust. (4 marks)*
- (c) *Radha Furnishing Pvt. Ltd. a Start-up Company wants to issue sweat equity shares to its employees. Is there any provision regarding it ? Explain. (4 marks)*
- (d) *Wonkar Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting Gilli Danda by arranging introductory courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. A member decided to make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company.*
- (i) *Is there any provision under the Companies Act, 2013 to revoke the license? If so, state the provisions.*
- (ii) *Whether the Wonkar Club can be merged with Stick Private Limited, a company engaged in the business of Networking ? (2+2=4 marks)*
- (e) *SDM Pvt. Ltd. is having paid up share capital of ₹ 45 Lakh and annual turnover of ₹ 185 Lakh. It is a wholly owned subsidiary of K Ltd. a listed company. Can SDM Pvt. Ltd. be called a Small Company as per the provisions of the Companies Act, 2013. (4 marks)*

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

- (i)(a) *Shankar Narain, director of Rakant Business Solutions Ltd. resigned with effect from 1st April, 2021. As required under the provisions of the Companies Act, 2013, the company has filed e-form No. DIR-12 with the Registrar of Companies mentioning the date of resignation as 30th June, 2021 being the date of acceptance of such resignation by the Company. The Company continued to issue various cheques (with pre-printed signatures of resigned director) in the ordinary course of its business to its investors in repayment of the deposits after 1st April, 2021 but the said cheques were dishonoured. The investors filed complaints against the company and Shankar Narain, the former director of the company. Discuss and advice whether Shankar Narain shall be liable or not in this case for the cheques issued till 30th June, 2021. (2 marks)*
- (b) *Lakshmi Tube Lights Private Limited has committed a default which is in violation of the provisions of the Companies Act, 2013. No specific penalty or punishment is provided in the Act for the said default. In the given circumstances, decide the quantum of punishment for contravention that may apply to Lakshmi Tube Lights Private Limited, as provided under the Companies Act, 2013. (2 marks)*
- (ii) *NBFCs lend and make investments and hence their activities are akin to that of banks; however, there are a few differences between them. Explain. (4 marks)*
- (iii) *Delta LLC is a Limited Liability Corporation registered in California (USA). The company has no place of business in India by itself or through agent, but it's doing online business through electronic mode in India. Explain whether Delta LLC will be treated as a Foreign Company as per the provisions of the Companies Act, 2013 ? (4 marks)*
- (iv) *Is the procedure for incorporating Housing Finance Company is same as any other Company ? Elucidate (4 marks)*
- (v) *Define the term "Unicorn Start-ups". (4 marks)*

**Answer 2(a)**

- (i) Section 96(2) of the Companies Act, 2013, states that every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.

However, annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. The Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

In the given question, Matrix Limited is an unlisted company and consent of all members to conduct the AGM at Goa has been received in advance (i.e. on 24th

June, 2021). In order to conduct meeting at some other place (other than the State where registered office of the company is situated), the consent of all members is required which Matrix Limited has received. Hence, the meeting is called in order.

- (ii) Section 102 of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' should be annexed to the notice calling such general meeting, which must specify, the nature of concern or interest, financial or otherwise, if any, in respect of each item of every director and the manager, if any and the relatives of director and the manager.

*Effect of non-disclosure* : As per section 102(4), if as a result of the non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a director or his relative, either directly or indirectly, such director shall hold such benefit in trust for the company, and shall be liable to compensate the company to the extent of the benefit received by him.

As per section 102(5), if any default is made in complying with the provisions of this section, every such director who is in default, shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the director or any of his relative, whichever is higher.

### **Answer 2(b)**

#### **Difference between Public Trust and Private Trust**

- (a) Identification of the beneficiaries of the Trust is a simple way to differentiate between a public and a private trust. If the beneficiaries make up a large or substantial body of public, then the trust in question is public. A public trust exists "for the purpose of its objects, the members of an uncertain and fluctuating body, and is managed by a board of trustee. If, however, the beneficiaries are a narrow and specific group such as the employees of a company, then the trust is private.
- (b) In a Public Trust, the interest is vested in an uncertain and fluctuating body. They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals. (*Supreme Court in Deoki Nandan v. Murlidhar 1957 AIR 133 1956 SCR 756*)
- (c) Their domains are different: public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

A trust for the benefit of employees of a company however numerous would not be considered as public charitable. For example, an industrialist who creates a trust for the benefit of his 5,000 people, their spouses and children is considered private because who the beneficiaries are known.

While a public trust is set up for what is called 'uncertain and fluctuating body of persons, it is possible to create a sectarian or communal trust as a public charitable trust. There are trusts which are only for specific religious communities. However, such trusts may not be tax- exempt.

**Answer 2(c)****Issue of Sweat Equity Shares by Start-up Companies**

As per proviso to Rule 8 of the Companies (Share Capital and Debentures) Rules, 2014, a start-up company as defined in notification number G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding 50% of its paid-up share capital upto 10 (ten) years from the date of its incorporation or registration.

So, Radha Furnishing Private Limited a Start-up Company can issue sweat equity shares after considering above mentioned provisions.

**Answer 2(d)**

- (i) According to Section 8(6) of the Companies Act, 2013, the Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of section 8 subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or in violation of the objects of the company or prejudicial to public interest, and on revocation, the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

Hence, in the instant case, the Central Government can revoke the license given to Wonkar Club as Section 8 of the Companies Act, 2013, as the affairs of the company are conducted fraudulently and dividend was paid to its members which is in contravention to the conditions given under Section 8.

- (ii) According to Section 8(10) of the Companies Act, 2013, a company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

In the instant case, Wonkar Club cannot be merged with Stick Private Limited as the objects of both the companies are different and not similar.

**Answer 2(e)**

As per Section 2(85) of the Companies Act 2013, "Small Company" means a company, other than a public company, having-

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to-

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act.

Rule 2(1)(t) of the Companies (Specification of Definitions Details) Rules, 2014, provides that for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crore and rupees twenty crore respectively.

In the given case, SDM Pvt. Ltd. satisfies the turnover and paid up share capital criteria to be small company, but being a subsidiary of K Ltd (a listed), it falls under the exclusions to the definition and hence is not a small Company.

#### **Answer 2A(i)**

(a) The director of Rakant Business Solutions Ltd. could not be held responsible under Section 141 of the Negotiable Instruments Act, 1881 as he had resigned from his directorship on 1st April, 2021 and the cheques issued thereafter, which were dishonoured.

Further, Section 168(2) of the Companies Act, 2013 states that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

However, if there was delay on the part of the company in intimating the ROC about the date of the resignation, the resigning Director could not be saddled with responsibility and liability for such delay. Date of filing of Form DIR-12 is not conclusive as to the date of resignation of director shown in the letter of resignation is to be considered.

(b) **Punishment Where No Specific Penalty or Punishment is provided**

As per Section 450 of the Companies Act, 2013, if a company or any officer of the company or any other person contravenes any of the provisions of Companies Act or the rules made there-under or any condition, limitation, or restriction subject to which any approval is given or granted for which no penalty or punishment is provided elsewhere in this Act, then the Company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

In the given case, the quantum of punishment for contravention for the violation of the provisions of Companies Act, 2013 by Lakshmi Tube lights Private Limited shall be decided as prescribed under Section 450 of the Companies Act, 2013.

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

NBFCs lend and make investments and hence their activities are akin to that of banks; however, there are a few differences as given below:

i. NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself;



- ii. NBFC cannot accept demand deposits;
- iii. deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in case of banks.

In terms of Section 45-IA of the RBI Act, 1934, no Non-Banking Financial Company can commence or carry on business of a non-banking financial institution without obtaining a certificate of registration from the Reserve Bank. However, in terms of the powers given to the Reserve Bank, to obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI viz Venture Capital Fund/Merchant Banking companies/Stock broking companies registered with SEBI, Insurance Company holding a valid Certificate of Registration issued by IRDA, Nidhi companies as notified under Section 620A of the Companies Act, 1956 or formed under section 406 of the Companies Act, 2013, Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982, Housing Finance Companies regulated by National Housing Bank, Stock Exchange or a Mutual Benefit company.

**Answer 2A(iii)**

As per Section 2(42) of the Companies Act, 2013, a foreign company means any company or body corporate incorporated outside India which –

- a) has a place of business in India whether by itself or through an agent, physically or through electronic mode, and
- b) conducts any business activity in India in any other manner.

The Companies (Specification of Definitions Details) Rules, 2014, defines the term electronic mode in the context of a foreign company under Rule 2(1)(h). The same is also defined under Rule 2(1)(c) of the Companies (Registration of Foreign Companies) Rules, 2014.

The definition of electronic mode encompasses all electronic based transactions, whether main server is installed in India or not, including, but not limited to-

1. business to business and business to consumer transactions, data interchange and other digital supply transactions;
2. offering to accept/inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
3. financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
4. online services such as telemarketing, telecommuting, telemedicine, education and information research; and
5. all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Hence, Delta LLC will be treated as Foreign Company, even though it has no place of business in India by itself or through agent, but it is conducting its online business through electronic mode in India.

**Answer 2A(iv)**

The procedure for incorporating a Housing Finance Company (HFC) is the same as any other company.

The Reserve Bank, after satisfying itself on the fulfilment of following conditions provided under sub-section (4) of Section 29A of the National Housing Bank Act, 1987 may grant a Certificate of Registration:

- i. housing finance institution is or shall be in a position to pay its present or future depositors in full as and when their claims accrue;
- ii. the affairs of the housing finance institution are not being or are not likely to be conducted in a manner detrimental to the interest of its present or future depositors;
- iii. the housing finance institution has adequate capital structure and earning prospects;
- iv. the general character of the management or the proposed management of the housing finance institution shall not be prejudicial to the public interest or the interests of its depositors;
- v. the public interest shall be served by the grant of certificate of registration to the housing finance institution to commence or to carry on the business in India;
- vi. the grant of certificate of registration shall not be prejudicial to the operation and growth of the housing finance sector of the country; and
- vii. any other condition, fulfilment of which in the opinion of the Reserve Bank, shall be necessary to ensure that the commencement of or carrying on the business in India by a housing finance institution shall not be prejudicial to the public interest or in the interests of the depositors;
- viii. the Reserve Bank may, wherever it considers necessary so to do, require the National Housing Bank to inspect the books of such housing finance institution and submit a report to the Reserve Bank for the purpose of considering the application.

The Reserve Bank may, after being satisfied that the conditions specified in sub-section (4) are fulfilled, grant a certificate of registration subject to such conditions which it may consider fit to impose.

**Answer 2A(v)**

A unicorn is a term used to indicate a privately held Start Up company with a valuation of over \$1 billion. For a unicorn, the journey starts from the growth stage, they are disruptors which start out in an incredibly unique way to solve everybody problem. The reasons these start up become so successful is because all of their solutions fill a specific need in a new and different way.

The Indian start up ecosystem has developed dynamically in recent times. Two decades back, there were only few active investors and limited number of support organisations, such as incubators and accelerators. However, in the past decade. There

has been a significant increase in both investment activity and infrastructure facilities to provide the much-needed impetus to the expansion of the unicorn tribe.

### PART B

#### Question 3

- (a) (i) *Central Goods & Services Tax Act, 2017 (CGST Act, 2017) prescribe the cases where registration under the Act is compulsory, irrespective of the aggregate turnover. Discuss.*
- (ii) *On the other hand, under CGST Act, 2017 there are certain people who are not liable to be registered. Discuss. (3+2 marks)*
- (b) *Vikram Overseas Pvt. Ltd. has a paid up capital of ₹50 lakh and turnover of ₹15.80 crore in the last financial year 2020-21. The Company has filed its annual return for the relevant financial year signed by only one director of the company. With reference to the provisions of the Companies Act, 2013, analytically comment whether the act of the company is in order ? (5 marks)*
- (c) *Entrepreneurs are required to obtain Statutory Clearances relating to Pollution Control and Environment while setting up an Industrial Project. Central Pollution Control Board has specified list of industries requiring pollution license/certificate or consent. Ministry of Environment carries on the classification from highest to lowest Pollution Index and categorized the industries. Explain. (5 marks)*
- (d) (i) *Define the term “Commercial Establishment” under Shop & Establishment Act.*
- (ii) *What do you understand from "Assignment of Copyright" ? (5 marks)*

#### Answer 3(a)

##### (i) **Compulsory Registration (Section 24 of the Central Goods & Services Tax Act, 2017)**

In the following cases, registration is made compulsory, irrespective of the aggregate turnover:

- (i) persons making any inter-State taxable supply;
- (ii) casual taxable persons making taxable supply;
- (iii) persons who are required to pay tax under reverse charge;
- (iv) person who are required to pay tax under sub-section (5) of section 9;
- (v) non-resident taxable persons making taxable supply;
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (viii) Input Service Distributor, whether or not separately registered under this Act;
- (ix) persons who supply goods or services or both, other than supplies specified

under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

- (x) every electronic commerce operator who is required to collect tax at source under section 52;
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and
- (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

**(ii) Persons not liable to registered**

The following persons are not liable to register under Section 23 of the Central Goods & Services Tax Act, 2017:

- Any person engaged exclusively in the supply of goods / services / both that are not liable to tax;
- Any person engaged exclusively in the supply of goods / services / both that are wholly exempt from tax;
- Agriculturalist to the extent of supply of produce from land cultivation;
- Specified categories as may be notified by the Government.

**Answer 3(b)**

As per Section 2(85) of the Companies Act 2013, "Small Company" means a company, other than a public company, having-

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to-

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.

Rule 2(1)(t) of the Companies (Specification of Definitions Details) Rules, 2014, provides that for the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crore and rupees twenty crore respectively.

In view of the above case, Vikram Overseas Pvt. Ltd. would be a "Small Company" since it has paid up capital of Rs. 50 lakh and turnover of Rs. 15.80 crore in the last financial year 2020-21 which is within the limit prescribed under section 2 (85) of the Companies Act, 2013.

As per proviso to Section 92(1) of the Companies Act, 2013, the annual return of a small company, shall be signed by a Company Secretary or where there is no company secretary, by a Director of the company.

In the present case, Vikram Overseas Pvt. Ltd. has filed its annual return for the relevant financial year signed only by one director of the company. Therefore, the act of the company is in order.

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

Entrepreneurs are required to obtain Statutory clearances relating to Pollution Control and Environment for setting up an industrial project, for various types of projects as listed, environmental clearance needs to be obtained from the Ministry of Environment, Government of India. This list includes industries like petrochemical complexes, petroleum refineries, cement, thermal power plants, bulk drugs, fertilizers, dyes, paper etc.

The Central Pollution Control Board has specified list of industries as requiring a pollution license. The Ministry of Environment carries out this classification, Forest and Climate Change, to differentiate between industries with the highest pollution index and those with the lowest as follows:

- (i) *Red category* : These industries have the highest pollution index, such as big manufacturing industries, large hotels, super speciality hospitals, etc.
- (ii) *Orange category* : These industries are relatively medium-sized enterprises, which still generates comparatively high levels of pollutants like cashew nut processing, coffee seed processing, pharmaceutical formulation.
- (iii) *Green category* : These are the industries with low pollution Index like small bakeries, storage of food grains, leather footwear, and products, cement products.
- (iv) *White category* : These are the industries with no pollution practically like Biscuit trays, rolled PVC sheet (using automatic vacuum forming machines)

Industries categorized under Red, Orange and Green category are covered under consent management for obtaining Consent to Establish (CTE) and Consent to Operate (CTO) under The Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981.

Industries which fall under white category are exempted from obtaining consent under Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981. Industries and business under white category need to self-governed themselves and need to intimate various State Pollution Control Board (SPCB) within 30 days of commencement of their business.

The White Category of industries has to however satisfy these condition to be eligible for this pollution license exemption:-

1. The industry is being established in the locality demarcated for them;
2. Their investment in the industry is not more than Rs. One Crore on plant and machinery;
3. There will not be any discharge of trade effluent from the industry into stream or

well or sewer or onto land and/or that industry will not discharge any air pollution including noise into the atmosphere;

4. The industry will not discharge any toxic/hazardous wastes and will not handle any toxic/hazardous chemicals.

**Answer 3(d)**

- (i) *Commercial establishment means :*

- (i) a premise where any trade, business, profession or any work is undertaken,  
 (ii) which may include society, charitable or another trust, journalistic and printing establishments, contractors and auditor's establishments, educational institutes, premises where the business of banking, insurance stocks, and shares, the brokerage is undertaken, restaurants and eating houses, residential hotels, clubs, theatres and other places of public amusement or entertainment.

Establishments are defined as shop, a commercial establishment, residential hotel, restaurant, eating-house, theatre or other places of public amusement or entertainment. Further, establishments as defined by the Act may also include such other establishments as defined by the Government by notification in the Official Gazette. However, factories are not covered by the shops & establishments Act and are regulated by the Factories Act, 1948.

- (ii) *Assignment of Copyright*

The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. The assignment mentions the rights, duration, the territorial limits of the assignment and the royalty payable thereon and should be in writing signed by the assignor or by his duly authorized agent.

<i>If the assignment of Copyright does not contain any provision mentioned below</i>	<i>Then the following provisions prescribed by the Act will prevail</i>
Where the assignee does not exercise the rights assigned to him within a period of one year from the date of assignment	shall lapse after the expiry of the said period unless otherwise specified in the assignment
If the period of assignment is not stated	it shall be deemed to be five years from the date of assignment
If the territorial extent of assignment of the rights is not specified	it shall be presumed to extend within the whole of India

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

**Question 4**

- (a) *Any business entity doing business in India requires a PAN (Permanent Account Number) whether it is registered in India or not. Elucidate. (3 marks)*

- (b) *Garg Builders Pvt. Ltd. has changed its name. There is no alteration in the constitution or legal status of the company. The fact of alteration of name was not brought to the notice of the Tribunal. Has the company got a right to execute a decree in its new name after change of name ?* (3 marks)
- (c) *Triveni Pvt. Ltd. incorporated on 1st August, 2018 having its registered office at Shahdara, New Delhi. Management of the Company kept some of the statutory records in the other branch of the Company in Janakpuri, New Delhi. Explain whether Company is eligible to keep its statutory records at place other than its registered office under the Companies Act, 2013 ?* (3 marks)
- (d) *Are the Enterprises required mandatorily to maintain cash records in the era of Digitalization ?* (3 marks)
- (e) *Ramesh is going to setup a manufacturing, storing and packaging plant of cow ghee. He seeks your advice on the types of FSSAI license required to take before starting food business. Advise.* (3 marks)

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

**Question 4A**

- (i) *Briefly discuss prime objectives of different labour legislations with its type of interventions/ areas dealt with therein.*
- (ii) *Discuss Udyog Aadhar Memorandum.*
- (iii) *What are the circumstances under which RBI may cancel the license granted to a banking company regulated under the Banking Regulation Act, 1949 ?*
- (iv) *Explain the deductions that can be made from the wages of an employee under Payment of Wages Act, 1936.*
- (v) *Abhinav has joined Vuddle Modulars Pvt. Ltd. as Trainee, to the Secretarial & Legal Department of the Company. He has been asked to prepare a checklist of compliances under Environmental Laws attributing Waste Management, Air Emissions and Contamination. Help him prepare the same. (3 marks each)*

**Answer 4(a)**

A Permanent Account Number (PAN) is vital document for any taxpayer. PAN number is unique to each cardholder and helps identify the income tax payer. PAN enables the department to identify/ link all transactions of the PAN holder with the department. These transactions include tax payments, TDS/TCS credits, returns of income, specified transactions, correspondence etc, and so on. It also serves as an identity proof for a large number of purposes.

The Income-tax Act, 1961 was amended and Section 206AA, as inserted in 2009 by the Finance Act, now mandates all foreign parties too that provide or generate payment to a counterpart in India to provide their PAN. This includes not only individuals but also incorporations, companies, limited companies and any other form of entity. Therefore, as per the statutory requirements, any business entity doing business in India, whether it is registered in India or abroad, requires a PAN card. Equally, an individual which is engaged in a business with an Indian firm/entity requires a PAN card.

Companies, regardless of whether they are registered abroad or in India, are required

to pay tax for businesses carried out in India. Without the PAN, the government has the mandate to deduct tax at the highest possible rate.

Therefore, a body corporate, company, firms other than LLP, One Person Company, LLP firm, Sole Proprietorship, Trusts, Corporations, Company with Limited Liability, Private Firms, other Associations, Foreign Institutional Investors (FIIs), Hedge Funds all are required to have a PAN card in India.

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

The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company in its former name may be continued by or against the company in its new name. [*Solvex Oils and Fertilizers v. Bhandari Cross-Fields (P) Ltd.*, (1978) 48 Com Cases 260 (P & H)].

In case of Garg Builders Pvt. Ltd., there is no alteration in the constitution or the legal status of the company. Even after the name of a company is altered by special resolution and sanction by the Registrar is accorded, the company continues to possess the same rights and is subject to the same obligations as existed before the change in the name of Company.

Therefore, if a company has the power to execute a decree in its old name, it has a right after the change to execute the decree in its new name.

The fact that alteration in the name was not brought to the notice of the NCLT would not in any manner render defective or irregular proceedings initialized by a company in its former name. A decree obtained by a company in its former name can be executed by it in the new name after it has obtained a certificate for the altered name.

The change of the name does not affect the rights of the company. It is not necessary that the new name should have been entered in the decree.

#### **Answer 4(c)**

Section 128 of Companies Act, 2013 mentions that every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the Registrar a notice in writing giving the full address of that other place.

Further, as per Section 94 of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company.

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the



register of members reside, if approved by a special resolution passed at a general meeting of the company.

Hence, in this case Triveni Pvt. Ltd., after complying with the above mentioned provisions of the Companies Act, 2013, is eligible to keep its statutory records in their branch at Janakpuri, New Delhi.

#### **Answer 4(d)**

Yes, despite all advances in banking technology and facilities, businesses must still undertake a large number of transactions in cash. Due to the very sensitive nature of cash holdings and transactions, it is important from a business as well as reporting perspective to have a tight handle on the cash in circulation within the enterprise.

To be able to actively ascertain the exact amount of cash available, a business must maintain two principal documents:

- Cash collection register, to record and reconcile all collections made by the business in cash, and
- Day books/Cash book to map the inward and outward movement of cash from the business.

#### **Answer 4(e)**

FSSAI license is mandatory before starting any food business. All the manufacturers, traders, restaurants who are involved in food business must obtain a 14-digit registration or a license number which must be printed on food packages. Any person or entity that is not classified as a petty food business operator is required to obtain a FSSAI license for operating a food business in India. FSSAI license is of two types:

- (1) *State FSSAI License* : FSSAI State License is needed for small to medium sized Food Companies which has an annual turnover of Rs 12 Lakhs - Rs 20 Crores. State FSSAI license is required for medium sized food manufacturers, processor and transporters.
- (2) *FSSAI Central License* : It is mandated for Food giants with an annual turnover of more than Rs 20 Crores. Based on the size and nature of the business, the licensing authority would change. Large food manufacturer/ processors/ transporters and importers of food products require central FSSAI license.

The fee and procedure for obtaining a FSSAI license is more extensive when compared to a FSSAI registration. FSSAI license application should be made in Form B by applying online on the FoSCoS portal, along with the necessary self-attested declaration, affidavit and annexures, as applicable. Fee for the State is dependent on respective state rules.

FSSAI license is granted for a period of 1 to 5 years as request by the food business operator. Higher fee would be applicable for obtaining FSSAI license for more years. If registration is obtained for one or two years, then the license can be renewed by making an application, no later than 30 days prior to the expiry date of the FSSAI license.

**Answer 4A(i)**

**The Trade Unions Act, 1926** - The objective of this Act is to enable Workers of a number of small units to form and register trade unions, who can bargain wages and other conditions of work and also to define the law relating to registered trade unions. Trade unions are an important part of an industrial set up. The legislation regulating these trade unions is the Indian Trade Unions Act, 1926. The Act deals with the registration of trade unions, their rights, their liabilities and responsibilities as well as ensures that their funds are utilized properly. It gives legal and corporate status to the registered trade unions. It also seeks to protect them from civil or criminal prosecution so that they could carry on their legitimate activities for the benefit of the working class.

**The Industrial Disputes Act, 1947** - The objective of this Act is to enable for the investigation and settlement industrial disputes on wages and the conciliation machinery to intervene. The Industrial Disputes Act, 1947 is the main legislation for investigation and settlement of all industrial disputes. The Act enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial unit can be closed down and several other matters related to industrial employees and employers.

**The Equal Remuneration Act, 1976** - The objective of this Act is to assure equal wage to women for same or similar work and prevention of discrimination against women in employment.

**The Payment of Wages Act, 1936** - The objective of this Act is to regulate the manner of payment of wages to certain classes of persons and their realisation in case of non-payment. The Payment of Wages Act, 1936 was enacted to regulate payment of wages to workers employed in industries and to ensure speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages in current coin, or currency notes or by cheque or by crediting in the bank account of the workers.

**The Contract Labour (Regulation & Abolition) Act, 1970** - The contractor is required to pay wages and in case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. This Act is enacted to regulate employment of contract labour so as to place it at par with labour employed directly, with regard to the working conditions and certain other benefits. Contract labour refers to “the workers engaged by a contractor for the user enterprises”. These workers are generally engaged in agricultural operations, plantation, construction industry, ports & docks, oil fields, factories, railways, shipping, airlines, road transport, etc.

**Minimum Wages Act, 1948** - The objective of this Act is to ensure payment of minimum wages to all types of workers including unskilled, semi- skilled and skilled.

**Answer 4A(ii)****Udyam Registration**

Any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online in the Udyam Registration portal, based on self-declaration

with no requirement to upload documents, papers, certificates or proof. On registration, an enterprise (referred to as “Udyam” in the Udyam Registration portal) will be assigned a permanent identity number to be known as “Udyam Registration Number”. An e-certificate, namely, “Udyam Registration Certificate” shall be issued on completion of the registration process.

**Answer 4A(iii)**

The Reserve Bank of India may cancel a license granted to a banking company under section 22(4) of the Banking Regulation Act, 1949, in the following circumstances:

- (a) if the company ceases to carry on banking business in India; or
- (b) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1) of section 22; or
- (c) if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled.

Provided that before cancelling a license under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank of India, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

**Answer 4A(iv)**

The following deductions can be made from the wages of an employee under Section 7 of the Payment of Wages Act, 1936:

- (i) Fines;
- (ii) Absence from Duty;
- (iii) Damage to or loss of goods expressly entrusted to the Employee;
- (iv) Housing Accommodation and Amenities provided by the Employer;
- (v) Recovery of Advances or Adjustment of overpayments of Wages;
- (vi) Recovery of loans made from any Fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof;
- (vii) Subscriptions to and for repayment of advances from any provident fund;
- (viii) Income-Tax;
- (ix) Payments to Co-operative Societies approved by Appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office;
- (x) Deductions made with the written authorisation of the Employee for payment of any premium on his Life Insurance Policy or purchase of securities.

**Answer 4A(v)****Checklist of Compliances under Environmental Laws attributing Waste Management, Air Emissions and Contamination**

<i>S.No.</i>	<i>COMPLIANCES</i>	<i>ACTION</i>
<b>WASTE MANAGEMENT</b>		
1.	Are appropriate Waste Management Practices being followed?	
2.	Is the full duty of care being completed?	
3.	Has the legal compliances of waste carriers been checked?	
4.	Are waste transfer notes being retained?	
5.	Is hazardous waste being disposed of according to legislative rule?	
6.	Are all waste streams being segregated effectively?	
7.	Does the organization need to register as a producer of hazardous waste?	
8.	Are good housekeeping and recycling measures being followed to prevent waste being needlessly sent to landfill?	
<b>AIR EMISSIONS</b>		
1.	Is there any waste being burnt on site?	
2.	Has all equipment been checked to ensure that there are no unnecessary emission to air?	
<b>CONTAMINATION</b>		
1.	Are all chemical substances and fuel being stored appropriately?	
2.	Is all pollution control equipment working effectively? Eg. Bunding	
3.	Are spill kits present and accessible?	
4.	Are all hazardous or contaminated materials being disposed of correctly?	
5.	Is there any evidence of past unreported spills?	
6.	Are all chemicals being stored and handled in accordance with the product data sheets and/or guidance information?	
7.	Are all necessary employees aware and knowledgeable of spill procedures?	

**PART C****Question 5**

- (a) *In a winding up petition filed before NCLT, one of the recognized Trade Union raised its voice against such winding up for the reasons inter alia that the closure of the unit affects the livelihood of the workers/employees. Decide whether workmen have a right to be heard before winding up petition is admitted ?*  
(3 marks)
- (b) *In the case of Unique Metals Limited, all the creditors have been satisfied. Can the Adjudicating Authority without waiting for 180 days of Resolution Process, approve Resolution Plan under Section 31 of IBC ?*  
(3 marks)
- (c) *What is the threshold limit for making an application for insolvency and liquidation of corporate persons ?*  
(3 marks)
- (d) *What are the various compliance requirements by a Dormant Company ?*  
(3 marks)
- (e) *Can a petition for winding up be made by a profit making company ? Discuss.*  
(3 marks)

**Answer 5(a)**

The workers of a company are entitled to appear at the hearing of the winding-up petition whether to support or to oppose it. They have a locus standi to appear and be heard both before the petition is admitted and an order for advertisement is made as also after the admission and advertisement of the petition until an order is made for winding up the company.

It is in view of the judgement of the Supreme Court in *National Textile Workers' Union vs. P. R. Ramakrishnan* that the workers' union have a right to be heard before winding up petition is admitted, and an order for its advertisement is passed because closure of unit affects the livelihood of the workers / employees.

**Answer 5(b)**

According to Section 12 of the Insolvency and Bankruptcy Code, 2016, the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process.

Section 31(1) of the Insolvency and Bankruptcy Code, 2016 mentions that if the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

Where all creditors have been satisfied, Adjudicating Authority, without waiting for 180 days of resolution process may approve resolution plan under Section 31 after recording its satisfaction that all creditors have been paid/ satisfied and any other creditor do not claim any amount in absence of default and required to close the Insolvency Resolution Process. If approval of the plan is granted, the moratorium order passed shall cease to have effect in view of sub-section (3) of Section 31. (*Prowess International Pvt. Ltd. vs Parker Hannifin India Pvt. Ltd. 2017 140 CLA 217 NCLAT*)

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

The provisions relating to the insolvency and liquidation of corporate debtors shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one crore rupees.

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.

Provided further that the Central Government may, by notification, specify such minimum amount of default of higher value, which shall not be more than one crore rupees, for matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A.

*Note:* Vide S.O. 1205 (E), dated 24.03.2020 the Central Government specifies one crore rupees as the minimum amount of default. Additionally, vide Notification S.O. 1543(E), dated 09.04.2021, the Central Government has specified ten lakh rupees as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code.

### **Answer 5(d)**

#### **Compliance Requirement by a Dormant Company**

The ROC maintains the Register of dormant companies. The compliance requirements to retain the status of a dormant company are as follows:

- A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.
- A dormant company is required to file a "Return of Dormant Company" in form MSC-3 annually, inter- alia, indicating financial position duly audited by a chartered accountant in practice along with such annual fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year.
- A Dormant Company shall continue to file the return or returns of allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.
- A Dormant Company need not enclose cash flow statements in its annual accounts.
- A Dormant Company is required to convene at least one meeting of the Board of

Directors in each half of a calendar year and the gap between the two meetings is not less than ninety days. [Section 173(5) of the Companies Act, 2013]

- The provisions of the Companies Act, 2013 in relation to the rotation of auditors are not applicable to dormant companies.
- If a company has not obtained the status of a dormant company under section 455 or has not made any application for it and has not been carrying on any business or operation for a period of two immediately preceding financial years, the Registrar may remove the name of the company from the Register of Companies under Section 248 of the Companies Act, 2013 after sending a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. [Section 248(1)]

#### **Answer 5(e)**

It cannot be contended that merely because the company is a profit making company, it cannot be wound up. Once the company court has come to the conclusion that substantial amounts are undisputedly due and payable by the company to the creditor, there is no question of dismissing the petition of winding up merely on the ground that the company is a profit making company. [*Sicom Ltd. v. Entertainment World Developers (P.) Ltd. [2016] 134 CLA (Snr.) 5 (Bom.)*]

Hence, in view of the above, a petition for winding up be made by a profit making company.

#### **Question 6**

- (a) List the types of companies which cannot be removed/strike off under the provisions of Section 248 (1) and (2) of the Companies Act, 2013.
- (b) Describe the procedure mentioned under Section 53 of Insolvency and Bankruptcy Code (IBC), 2016 for distribution of assets. (5 marks each)

#### **Answer 6(a)**

Type of Companies which cannot be removed under the provisions of Section 248(1) & (2) of the Companies Act, 2013 are as under:

- I. Listed Companies;
- II. Companies registered under section 8 of the Companies Act, 2013;
- III. Companies having charges which are pending for satisfaction;
- IV. Companies whose application for compounding is pending before the competent authority for compounding of offences committed by the company or any of its officers in default;
- V. Companies against which any prosecution for an offence is pending in any court;
- VI. Vanishing Companies;
- VII. Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;

- VIII. Companies where inspection or investigation is ordered and being carried out or actions on such order are yet to be taken up or were complete but prosecutions arising out of such inspection or investigation are pending in the court;
- IX. Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- X. Companies where notices under section 234 of the Companies Act, 1956 or 206 or 207 of the Companies Act, 2013 have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 has not yet been submitted or follow up of instructions on report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court.

**Answer 6(b)**

Section 53 of the Insolvency and Bankruptcy Code, 2016, provides for the manner of distribution of assets in case of liquidation and order of priority of distribution. It is pertinent to note that this order of priority is notwithstanding anything contrary which is contained in any other Central or State law. This order of priority is also known as the "waterfall arrangement" since each of category of persons comes in priority after the previous one.

"Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified:

- (a) Insolvency resolution process costs and liquidation costs paid in full;
- (b) Following debts shall rank equally between and among the following:
  - (i) Workmen's dues for the period of 24 months preceding the liquidation commencement date;
  - (ii) Debts owed to secured creditor in the event such secured creditor has relinquished security under section 52;
- (c) Wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date;
- (d) Financial debts owed to unsecured creditors;
- (e) Following dues shall rank equally between and among the following:
  - (i) Any amount due to the Central and the State Government including amount to be received on account of Consolidated Fund of India and Consolidated Fund of a State, if any, in respect of whole or any part of the period of two years preceding the liquidation commencement date;
  - (ii) Debts owed to a secured creditor for any amount unpaid following enforcement of security interest;
- (f) Any remaining debts and dues;
- (g) Preference shareholders, if any; and



(h) Equity shareholders or partners, as the case may be.

Any contractual arrangements between recipients above with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.

The fees payable to the liquidator shall be deducted proportionately from proceeds payable to each class of recipients and proceeds to the relevant recipient shall be distributed after such deduction.

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## TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

Total number of Questions : 100

Note : All questions in Part-I relate to the Income Tax Act, 1961 and Assessment Year 2022-23, unless stated otherwise.

### PART I

1. Highest Administrative Authority for Income Tax in India is :
  - (A) Director of Income Tax
  - (B) Finance Minister
  - (C) Central Board of Direct Taxes
  - (D) President of India
  
2. Hitarth who is resident and not ordinarily resident in India, earns the following income during the previous year ended 31st March, 2022 : Interest on U.K. development Bonds (1/4th being received in India) : ₹4,00,000 profits on sale of a building in India but received in Holland : ₹4,00,000. What is the income liable to tax for the assessment year 2022-23 ?
  - (A) ₹5,00,000
  - (B) ₹8,00,000
  - (C) ₹4,00,000
  - (D) ₹1,00,000
  
3. AB & Co. received ₹21,00,000 as compensation from PQ & Co. for premature termination of contract of agency. Amount so received by AB & Co. is :
  - (A) Capital receipt and taxable
  - (B) Capital receipt and not taxable
  - (C) Revenue receipt and taxable
  - (D) Revenue receipt and not taxable
  
4. Nayak, a non-resident, residing in US since 1990, came back to India on 1st April, 2020 for permanent settlement. What will be his residential status for assessment year 2022-23 ?
  - (A) Resident and Ordinary Resident (ROR)
  - (B) Not Ordinary Resident (NOR)
  - (C) Non Resident (NR)
  - (D) ROR, NOR and NR all

5. Which of the following lands is to be treated as urban agricultural land :
- (A) A land situated at area 10 km. from the municipality having population exceed 10,00,000
  - (B) A land situated at area 3 km. from the municipality having population exceed 1,00,000 but not exceed 10,00,000
  - (C) A land situated at area 7 km. from the municipality having population exceed 1,00,000 but not exceed 10,00,000
  - (D) A land situated at area 3 km. from the municipality having population exceed 10,000 but not exceed 1,00,000
6. Where yearly contribution of employee did not exceed ₹2,50,000, then amount received from recognized provident fund after five years of continuous service is:
- (A) fully taxable
  - (B) fully exempt
  - (C) taxable to the extent of employer's contribution and interest thereon
  - (D) taxable at the special rate of 10%
7. After serving for 28 years and 7 months in M Steels Ltd., Nitin retired on 30th September, 2021. He is covered by the Payment of Gratuity Act, 1972. The company has paid him a gratuity of ₹14,21,500. At the time of retirement, he was getting basic salary ₹37,800, dearness allowance ₹3,800 and house rent allowance ₹5,200 per month. However his average salary for last 10 months is ₹36,400. Determine the amount of gratuity exempt under section 10(10) of Income Tax Act, 1961.
- (A) ₹5,27,800
  - (B) ₹5,09,600
  - (C) ₹6,96,000
  - (D) ₹6,72,000
8. Ashwani is an employee of Bright Public School. His daughter, Asha is studying in the said school at concessional fees of ₹600 per month (Actual fee : ₹4,000 per month). The amount of perquisite taxable in the hands of Ashwani will be :
- (A) Nil
  - (B) ₹40,800
  - (C) ₹48,000
  - (D) ₹28,800
9. A member of parliament is entitled to salary, constituency allowance and daily allowance when the Parliament is in session. Which out of the following statements is correct ?
- (A) His entire income is taxable under the head "Salaries"
  - (B) His salary component and constituency allowance is taxable under the head "Income from other sources". Daily allowance is exempted

- (C) Only his salary component is taxable under the head "Income from other sources". Constituency allowance and daily allowance are exempted
- (D) Only his salary component is taxable under the head "Salaries". Constituency allowance and daily allowance are exempted
10. Raj an employee of the Central Government claims the benefit of lower slab rate tax under section 115BAC. His Basic Salary is ₹25,000 p.m. and entitled to ₹ 1,500 p.m. as entertainment allowance. He is entitled to deduction under section 16(ii) from gross salary in respect of entertainment allowance for assessment year 2022-23 is :
- (A) ₹5,000
- (B) ₹18,000
- (C) ₹60,000
- (D) Nil
11. Abhinav has three residential house properties, all of which are self-occupied, the annual value of :
- (A) All the house properties shall be computed as if all these are deemed to be let out
- (B) All the three house properties shall be Nil
- (C) One house property shall be nil and for the other two properties, annual value shall be computed as if these are let out
- (D) Two house properties shall be nil and for one house property annual value shall be computed as if it is deemed to be let out
12. Rani received rent from a House Property in Rural Area ₹20,000 p.m. This Rent is taxable under the head of :
- (A) Income from Business & Profession
- (B) Income from House Property
- (C) Income from Other Sources
- (D) Not Taxable (Exempted Income)
13. Javed borrowed ₹ 5,00,000 @ 12% p.a. on 1st April, 2013 for construction of let out house property whose construction was completed on 15th March, 2019. The loan was repaid on 31st August, 2021. The deduction of interest for previous year 2021- 22 shall be :
- (A) ₹ 60,000
- (B) ₹ 85,000
- (C) ₹ 25,000
- (D) ₹ 30,000

14. Nishit was allowed deduction of unrealized rent to the extent of ₹1,20,000 in F.Y. 2020-21, although the total unrealized rent during the F.Y. 2020-21 was ₹1,60,000. In F.Y. 2021-22 he is able to recover from the tenant ₹90,000 on account of such unrealized rent. His Income under the head of House Property for assessment year 2022-23 is :
- (A) ₹90,000  
(B) ₹63,000  
(C) ₹35,000  
(D) ₹50,000
15. Which of the following losses is/are not allowed as a deduction, in computing income from Business and Profession ?
- (i) Pre-incorporation losses  
(ii) Capital Losses, which are dealt with under the head Capital Gain  
(iii) Loss incurred after closure of business
- (A) (i) and (ii)  
(B) (ii) and (iii)  
(C) (iii)  
(D) (i), (ii), (iii)
16. Harshit acquired following intangible assets in his business during the financial year 2021-22. (1) On 25th June, 2021 he purchased goodwill of business : Cost of acquisition ₹50 crore (2) On 7th October, 2021 he purchased Tenancy rights: Cost of acquisition ₹25 crore No other assets are in this block. Compute the allowed depreciation for assessment year 2022-23.
- (A) ₹18.75 Crore  
(B) ₹15.625 Crore  
(C) ₹3.125 Crore  
(D) ₹12.5 Crore
17. Girdhari, a retail businessman, acquired furniture on 12th May, 2021 for ₹10,000 in cash and on 18th May, 2021, for ₹35,000 and ₹40,000 by a bearer cheque and account payee cheque, respectively. Depreciation allowable for A.Y. 2022-23 would be :
- (A) ₹4,000  
(B) ₹5,000  
(C) ₹7,500  
(D) ₹8,500

18. *Shyam Ltd. paid ₹6,60,00,000 during the previous year 2020-21 for acquiring the telecommunication rights which is effective for 11 years. It commenced the business of operating the telecommunication service with effect from 10th April, 2021. Shyam Ltd. shall be entitled to a deduction of :*
- (A) ₹60 Lakh p.a. w.e.f. previous year 2020-21
  - (B) ₹60 Lakh p.a. w.e.f. previous year 2021-22
  - (C) ₹66 Lakh p.a. w.e.f. previous year 2021-22
  - (D) *Deduction is not allowed because this is a Capital expenditure*
19. *PQR, an eligible assessee, following mercantile system of accounting, carrying on eligible business under section 44AD provides the following details :*
- Total turnover for the financial year 2021- 22 is ₹65 lakh. Which includes following:*
- ₹12.5 lakh received by A/c payee cheque during the financial year 2021- 22; –
  - ₹25 lakh received by cash during the financial year 2021-22;
  - ₹12.5 lakh received by A/c payee bank draft before the due date of filing of return;
  - ₹15 lakh not received till due date of filing of return
- What shall be the amount of deemed profits of PQR under section 44AD(1) for A. Y. 2022-23 ?*
- (A) ₹5,20,000
  - (B) ₹3,50,000
  - (C) ₹2,75,000
  - (D) ₹4,70,000
20. *Which out of the following transactions are deemed to be speculative transactions?*
- (A) *Purchase and Sale of shares otherwise than by actual delivery*
  - (B) *Forward contracts*
  - (C) *Trading in derivatives or commodity derivatives*
  - (D) *Hedging Contract in respect of Raw Materials or Merchandise*
21. *XYZ a partnership firm is earning book profit of ₹5,00,000 during the financial year 2021-22. The firm paid Remuneration as per Partnership deed to working partner ₹4,50,000 and to non-working partner ₹90,000. Calculate what amount of Remuneration is disallowed to firm u/s 40(b) of Income Tax Act, 1961 for assessment year 2022-23 :*
- (A) ₹60,000
  - (B) ₹90,000
  - (C) ₹1,50,000
  - (D) ₹3,50,000

22. Which out of the following is the capital asset ?
- (A) A maruti dealer holding cars for sale  
 (B) A maruti dealer has honda city car for his personal use  
 (C) Jewellery held by a jeweller for his personal use  
 (D) Jewellery held by a jeweller which has been held as SIT
23. Suresh entered into an agreement with Ramesh for sale of a building for ₹30,00,000 in June, 2021. Suresh received advance of ₹3,00,000. Subsequently the agreement was cancelled and Suresh forfeited the advance money. The advance money is .....
- (A) Taxable under the head of Income from Other Sources in the year it is forfeited  
 (B) Taxable under the head of Income from Capital Gain in the year it is forfeited  
 (C) Deduction from cost of acquisition of such asset after doing indexation  
 (D) Deduction from Cost of acquisition of such asset before doing indexation
24. If new agricultural land purchased for which exemption was claimed u/s 54B is transferred within 3 years then.
- (A) Capital gain exempt u/s 54B earlier shall be separately taxable as capital gains  
 (B) Capital gain exempt u/s 54B earlier shall be added to the cost of acquisition of new house property  
 (C) Capital gain exempt u/s 54B earlier shall be reduced from cost of acquisition of new house property  
 (D) The entire capital gain on new transfer shall be taxable
25. Purushotam has transferred 250 equity shares of TCS Ltd. (a listed company) on 1st March, 2022 @ ₹3,200 per share and paid securities transaction tax on the same. He purchased these shares on 1st January, 2017 @ 2400 per share. The Quoted Price of TCS Ltd. share on 31st January, 2018 was ₹ 2,550 per share. What will be the taxability in hands of Purushotam for assessment year 2022-23 ?
- (Cost inflation index for F.Y. 2016-17 = 264, 2017-18 = 272 and 2021-22 = 317)
- (A) ₹ 1,62,500 is taxable @ 10%  
 (B) ₹ 79,545 is taxable @ 20%  
 (C) ₹ 62,500 is taxable @ 10%  
 (D) ₹ 57,031 is taxable @ 20%
26. Kirti acquired a house property on 25th July, 2015 for ₹8,00,000. On 15th June, 2021 she became a partner in a partnership firm. On this day, she transferred this property to partnership firm as her capital contribution. The fair market value of the property as on 15th June, 2021 was ₹20,00,000, but it was recorded

*in the books of account of the firm at ₹18,00,000. Compute capital gain chargeable to tax in the hands of Kirti for the assessment year 2022-23 ?*

*(Cost inflation index for F.Y. 2014-15=240, 2015-16=254 and 2021-22=317)*

- (A) LTCG ₹8,01,575
- (B) LTCG ₹10,01,575
- (C) LTCG ₹7,43,333
- (D) Not Taxable
27. *Surjeet, invested ₹ 22,00,000 in equity oriented mutual fund specified under section 10(23D), during the previous year 2021-22, he earned Dividend Income of ₹ 7,50,000 from above investment. For this Investment Purpose, he has taken loan from Axis bank and paid Interest of ₹ 2,20,000 during the previous year 2021-22. Income from other sources included in the hands of Surjeet for previous year 2021-22 would be :*
- (A) ₹7,50,000
- (B) ₹6,00,000
- (C) ₹5,30,000
- (D) ₹4,30,000
28. *Vankatesh has received ₹35,000 from each of his two friends on 14th, February 2022 on the occasion of his marriage anniversary. What would be the taxability of the said sum in the hands of Vankatesh for the assessment year 2022-23 ?*
- (A) Entire ₹70,000 is exempt from tax
- (B) Entire ₹70,000 is chargeable to tax
- (C) Only ₹35,000 is chargeable to tax
- (D) Only ₹20,000 is chargeable to tax
29. *Champa Lal (age 65 years) received interest from M.P. State Government due to late payment of compensation for compulsory acquisition of capital asset amounting to ₹12,00,000 on 17th July, 2021. What amount is taxable under head Other Sources for assessment year 2022-23 ?*
- (A) ₹6,00,000
- (B) ₹7,00,000
- (C) ₹12,00,000
- (D) Nil
30. *At the time of fixation of marriage of Yash on 10th June, 2021, his father Sunder gifted land to his would be daughter in law Rashmi. The marriage was held on*



21st January, 2022. The income accruing on land after marriage shall be taxable in the hands of :

- (A) Yash
  - (B) Rashmi
  - (C) Sunder
  - (D) Not Taxable in any person
31. Mandeep, (whose total income excluding this income is greater) has three minor daughters, whose total income are ₹ 4,500, ₹ 1,000 and ₹ 3,500 respectively. Total income clubbed in the hands of Mandeep for financial year 2021-22 is :
- (A) ₹ 4,500
  - (B) ₹ 5,000
  - (C) ₹ 5,500
  - (D) ₹ 9,000
32. Nishant gifted a house property valued at ₹ 40 lakhs to his wife, Sarita, who in turn has gifted the same to her daughter-in-law Babita. The house was let out at ₹ 30,000 per month throughout the P.Y. 2021-22. In which hand and how much income from house property is chargeable to tax for A. Y 2022- 23 ?
- (A) ₹ 2,52,000 is taxable in the hands of Nishant
  - (B) ₹ 2,52,000 is taxable in the hands of Babita
  - (C) ₹ 2,52,000 is taxable in the hands of Sarita
  - (D) ₹ 3,60,000 is taxable in the hands of Sarita
33. Brought forward loss from house property of ₹ 2,25,000 of A. Y. 2021-22 is allowed to be set-off against income from house property of A. Y. 2022-23 of ₹ 4,00,000 to the extent of :
- (A) ₹ 2,00,000
  - (B) ₹ 2,25,000
  - (C) ₹ 1,75,000
  - (D) ₹ 4,00,000
34. A partnership firm with 3 equal partners has brought forward depreciation of ₹ 3 lakh and business loss of ₹ 6 lakh relating to assessment year 2021-2022. On 1st April, 2021, one partner retired. The amount that assessee firm can set-off against its income for the assessment year 2022-23 would be :
- (A) Unabsorbed depreciation of ₹ 3 lakh plus brought forward business loss of ₹ 6 lakh
  - (B) Unabsorbed depreciation of ₹ 2 lakh plus brought forward business loss ₹ 4 lakh
  - (C) Unabsorbed depreciation ₹ 2 lakh plus brought forward business Loss ₹ 6 lakh
  - (D) Unabsorbed depreciation ₹ 3 lakh plus brought forward business loss of ₹ 4 lakh

35. *Where an assessee has not exercised option u/s 115BAC, deduction under section 80EEB is allowed to an individual on account of interest payable on loan taken by him from any financial institution for the purpose of purchase of an electric vehicle subject to maximum of Rupees :*
- (A) ₹ 50,000
  - (B) ₹ 1,00,000
  - (C) ₹ 1,50,000
  - (D) ₹ 2,00,000
36. *Adjusted GTI (Gross Total Income) for the purpose of section 80G of Income Tax Act, 1961 means .....*
- (A) *Gross Total Income - STCG u/s 111A– LTCG u/s 112/112A– Exempt Incomes*
  - (B) *Gross Total Income - STCG u/s 111A– LTCG u/s 112/112A– Exempt Incomes - All deductions under chapter VI-A except Deduction u/s 80G.*
  - (C) *Gross Total Income – STCG u/s 111A– LTCG u/s 112/112A– All deductions under chapter VI-A except Deduction u/s 80G*
  - (D) *Gross Total Income – All deductions under chapter VIA except Deduction u/s 80G*
37. *Where an assessee has not exercised option u/s 115BAA, 115BAC or 115BAD, deduction u/s 80IBA, shall be allowed if the carpet area of the shops and other commercial establishments include in the housing project does not exceed :*
- (A) *1% of the aggregate carpet area*
  - (B) *2% of the aggregate carpet area*
  - (C) *3% of the aggregate carpet area*
  - (D) *5% of the aggregate carpet area*
38. *Deduction u/s 80TTB of Income Tax Act, 1961, shall be allowed if the Total Income includes :*
- (A) *interest on deposits in a Savings Account with a Bank or Post Office*
  - (B) *interest on deposits in a Savings Account with a Cooperative Bank*
  - (C) *interest on deposits in a Fixed Deposit Account with Bank or Post Office*
  - (D) *any of the above*
39. *Ayaan, aged 75 years and a resident in India, has a total income of ₹ 2,60,00,000, comprising long term capital gain taxable under section 112 of ₹ 35,00,000, long term capital gain taxable under section 112A of ₹ 30,00,000 and other income of ₹ 1,95,00,000. What would be his tax liability for A. Y. 2022-23. Assume that Ayaan has not opted for the provisions of section 115BAC :*
- (A) ₹ 86,45,000

- (B) ₹ 86,14,840
- (C) ₹ 86,58,000
- (D) ₹ 96,26,800
40. XYZ Pvt. Ltd. a manufacturing company incorporated in India on 1st June, 2021. During the financial year 2021-22, it earned income from business of ₹ 20 lakh. The company wants to opt the benefit u/s 115BAB. The tax rate of XYZ Ltd. for the assessment year 2022-23 shall be :
- (A) Taxable @ 15%
- (B) Taxable @ 22%
- (C) Taxable @ 25%
- (D) Taxable @ 30%
41. The net profit as per P & L A/c of ZARA Ltd., domestic company for the year ended 31st March, 2022 is ₹ 210 lakh, it includes ₹ 15 lakh as dividend from subsidiary company and Profit on sale of land ₹ 18 lakh. The book profit u/s 115JB of ZARA Ltd. for assessment year 2022-23 would be :
- (A) ₹ 243 lakh
- (B) ₹ 177 lakh
- (C) ₹ 195 lakh
- (D) ₹ 210 lakh
42. Nirmala (age 52 years) having adjusted total income of ₹ 45 lakh. She has opted the provision of section 115BAC for assessment year 2022-23. The Alternate Minimum Tax is applicable u/s 115JC @ :
- (A) 18.5% plus H & EC
- (B) 15% plus H & EC
- (C) 9% plus H & EC
- (D) AMT Not Applicable
43. Under the Income Tax Act, 1961, Salary received by a partner from a partnership firm is chargeable under the head of :
- (A) Profits and gains of business or profession
- (B) Income from other sources
- (C) Income from Salary
- (D) Not Taxable Exempted Income
44. Distribution of assets at the time of complete partition of HUF shall :
- (A) be regarded as a transfer in the hands of HUF

- (B) not be regarded as transfer in the hands of HUF
- (C) be regarded as a transfer in hands of family members
- (D) Either (A) or (C)
45. M Limited a domestic company received dividend ₹ 12 lakh from a specified foreign company, in which it holds 33% of equity share. The dividend so received by M Limited is :
- (A) Taxable @ 10%
- (B) Taxable @ 15%
- (C) Exempt
- (D) Taxable as per regular rates
46. Deepika won ₹ 8,500 from Rajasthan Patrika Crossword Puzzle. Determine the amount of Tax to be deducted as per section 194B of Income Tax Act, 1961.
- (A) ₹ 2,550 + cess
- (B) ₹ 850 + cess
- (C) ₹ 1,700 + cess
- (D) Nil
47. Raja Ltd. makes the following payments to Rani, a contractor, for work contract during the Previous Year 2021-22 :
- ₹ 25,000 on 10th May, 2021
- ₹ 22,000 on 10th August, 2021
- ₹ 27,000 on 10th December, 2021
- ₹ On 10th March, 2022, a payment of ₹ 30,000 is due to Rani on account of a work contract. Determine the liability of Raja Ltd. to deduct tax at source under section 194C from payments made to Rani on 10th March, 2022.
- (A) ₹ 1,040
- (B) ₹ 300
- (C) ₹ 2,080
- (D) Nil
48. Suresh died on 30th March, 2021 & his total income till this date was ₹ 5,55,000. Thereafter the business of Suresh was inherited by his son Kishan and his total income from such business was ₹ 4,25,000. The son does not have any other income. In this case the son :
- (A) has to file only one income tax return on behalf of his father for ₹ 5,55,000
- (B) has to file only one income tax return on behalf of his father for ₹ 9,80,000

- (C) has to file separate income tax returns, one on behalf of his father for ₹ 5,55,000 & other in his own capacity for ₹4,25,000
- (D) has to file a consolidated income tax return for the amount of ₹9,80,000
49. The Intimation order u/s 143(1) of Income Tax Act, 1961 cannot be sent after the expiry of :
- (A) Nine months from the end of the financial year in which the return is made
- (B) Twelve months from the end of the financial year in which the return is made
- (C) Four years from the end of the financial year in which the return is made
- (D) One year and Nine months from the end of the financial year in which the return is made
50. Which of the following default is not covered under section 276CC of the Income Tax Act, 1961 ?
- (A) Willful attempt to evade the payment of any Tax, Interest and Penalty
- (B) Willful failure to file return of income in time u/s 139(1)
- (C) Willful failure to Response to notice u/s 142 (1)
- (D) Willful failure to Response to notice u/s 148

#### PART II

51. Which out of the following options is not the correct answer relating to GST Council:
- (A) The GST Council meets from time to time to revise the GST rates for various products
- (B) The GST Council is chaired by the Union Finance Minister
- (C) Quorum of GST Council should be 3/4th of the total members
- (D) GST Council decides the Goods & Services which are exempt from GST
52. GST on Petroleum Crude, High Diesel, Motor Spirit (commonly known as Petrol), Natural Gas and Aviation Turbine Fuel:
- (A) is levied, but exempt
- (B) is not levied at all
- (C) will be levied from a date to be notified on the recommendations of the GST Council
- (D) will be levied from 1st April, 2022
53. XYZ Ltd., manufacturer of goods opted for composition scheme for financial year 2021- 22. It supplied taxable goods of ₹ 70,00,000 and exempted goods of ₹ 10,00,000 in financial Year 2021-22. The GST liability of XYZ Ltd. would be:
- (A) ₹ 70,000
- (B) ₹ 80,000
- (C) ₹ 1,40,000
- (D) ₹ 1,60,000

54. As per Schedule II of the CGST Act, 2017, Renting of immovable property for residential purpose is:
- (A) Supply of goods
  - (B) Supply of services
  - (C) Either be treated as supply of goods or services
  - (D) Neither be treated as supply of goods nor supply of services
55. As per Section 2(30) of CGST Act, 2017, which out of the following supply is constituted as Composite Supply?
- (A) Package of canned foods such as burger, chocolates, sweets, cake etc.
  - (B) A Five-star hotel provides four days and three nights package, with breakfast
  - (C) Combo packs of Tie, watch, wallet, pen bundle as a kit and supplied for a single price
  - (D) Rent deed executed for renting of two different floors of a building-one for residential and another for commercial purpose to same person
56. A registered person can claim the benefit of composition scheme for service supplied u/s 10(2A) of the CGST Act, 2017 read with notification No. 2/2019, provided his aggregate turnover in the preceding financial year must not exceed.....:
- (A) ₹ 75 lakhs
  - (B) ₹ 150 lakhs
  - (C) ₹ 20 lakhs
  - (D) ₹ 50 lakhs
57. Priyanka, a registered dealer under composition scheme of Goods & Service Tax wants to withdraw composition scheme for financial year 2021-22. She should file the application in form:
- (A) GST CMP-02
  - (B) GST CMP-04
  - (C) GST CMP-08
  - (D) GSTR-10
58. GST is payable in respect of services rendered to an employer by an employee on:
- (A) regular basis in the course of employment
  - (B) contract basis not in the course of employment
  - (C) Neither (A) nor (B)
  - (D) Both (A) and (B)

59. The relief of not paying GST at the time of receipt of advance under forward charges is available in case of:
- (A) Supply of Goods
  - (B) Supply of Services
  - (C) Supply of Goods and Services
  - (D) Neither Supply of Goods nor Service
60. Domino's Ltd. sold Pizza voucher worth ₹5,000 to its customer on 10th August, 2021, this voucher is not convertible into cash and only usable at Domino's pizza outlet within one year. Customer redeems ₹3,500 of this voucher on 14th February, 2022 and balance ₹1,500 on 31st March, 2022 at Domino's outlet. The time of supply in this case is :
- (A) 10th August, 2021 for ₹5,000
  - (B) 14th February, 2022 for ₹5,000
  - (C) 14th February, 2022 for ₹3,500 and 31st March, 2022 for ₹1,500
  - (D) 31st March 2022 for ₹5,000
61. Indigo Airlines sells various products of packed food, chocolate etc. to its passengers on board during the flights. The flight originates from Delhi, halts at Mumbai and finally lands in Chennai. What would be the place of supply of such product as per Section 10 of IGST Act, 2017?
- (A) Delhi
  - (B) Chennai
  - (C) Location where passengers buying goods disembark
  - (D) Location where goods were taken on board
62. As per Rule 32(2)(b) of the CGST Rules, 2017, the option to determine value in relation to supply of foreign currency, including Money Changing shall be deemed to be ..... for an amount exceeding ₹10,00,000.
- (A) ₹5,500 + 0.1% of the gross amount of currency exchanged
  - (B) ₹60,000
  - (C) Lower of (A) or (B)
  - (D) Higher of (A) or (B)
63. There was increase in GST rate from 12% to 18% with effect from 1st January, 2022. Which of the following rate is applicable when service supplied and invoice raised after change in rate in January 2022, but payment received in November 2021.
- (A) 12 % as it is lower of the two
  - (B) 18 % as it is higher of the two
  - (C) 12 % as payment was prior to change in effective rate of tax
  - (D) 18 % since invoice was issued and supply was made after change in effective rate of tax

64. *Kabir wants to start a new business of trading of footwear in Jammu & Kashmir. In order to expand his business he will also make such supplies through e-commerce operator who will collect tax at source. In this respect, he has approached you to seek an advice on GST registration. Determine when he is required to get registered under GST?*
- (A) *Required to get registered when the turnover reaches the threshold limit of ₹ 40 lakh*
  - (B) *Required to get registered when the turnover reaches the threshold limit of ₹ 10 lakh*
  - (C) *Required to get registered when the turnover reaches the threshold limit of ₹ 20 lakh*
  - (D) *Required to get registered mandatorily irrespective of the turnover limit as he will be making supplies through e-commerce platform*
65. *A dealer sent some goods to another dealer for Sales on Approval Basis. In absence of any confirmation even after 6 months, it will be treated as ..... of CGST Act, 2017.*
- (A) *Sales Return*
  - (B) *Purchase Return*
  - (C) *Deemed Supply of Goods*
  - (D) *Deemed Sales Return*
66. *As per Section 15(2) of CGST Act, 2017, Interest on late fees or penalty for delayed payment of any consideration for any supply.....*
- (A) *Shall be included if amount exceeds ₹ 50,000*
  - (B) *Shall be included in the value of taxable supply only if the same is recovered from the recipient by the supplier*
  - (C) *Shall always be excluded from the value of taxable supply since it is consideration for delay in payment and not a consideration for supply of goods/ services*
  - (D) *Shall always be included in the value of taxable supply*
67. *As per Section 24 of CGST Act, 2017, which out of the following statements is true for a Casual Taxable Person (CTP).*
- (A) *Registration required only for supply of services not for goods*
  - (B) *Registration required only for supply of goods not for services, if turnover exceeds threshold limit*
  - (C) *Registration not mandatory but may opt voluntarily*
  - (D) *Registration mandatory*



68. *HP Ltd. is engaged in manufacture of taxable goods. Compute the ITC available for the month of October, 2021 from the following particulars:*
- Input 'A' ₹ 2,30,000 out of which one invoice on which GST Payable was ₹60,000 is missing.*
- Input 'B' ₹ 75,000 in which inputs are received in 5 installments (Second installment received in Oct. 2021).*
- (A) ₹3,05,000  
(B) ₹2,45,000  
(C) ₹1,70,000  
(D) ₹1,85,000
69. *As per Section 17(5) of CGST Act, 2017, ITC of motor vehicles is allowed for following:*
- (i) *Vehicle used for Transportation of goods*  
(ii) *Vehicle used for Transportation of passengers having seating capacity of 15 persons*  
(iii) *Vehicle used for Taxable supplies of imparting training on driving*
- (A) (i) and (iii)  
(B) (ii) and (iii)  
(C) (i), (ii) and (iii)  
(D) Only (ii)
70. *Which one of the following is not a condition as per section 16(2) of CGST Act, 2017, to avail Input Tax Credit (ITC):*
- (A) *Recipient has possession of tax invoice issued by supplier*  
(B) *Goods or Services is actually consumed by Recipient*  
(C) *Filing of valid return by supplier*  
(D) *Supplier pays the tax to the government*
71. *As per Rule 36(4) of CGST Rules, 2017, the Input Tax Credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by suppliers in GSTR-I and not reflected in GSTR 2A of the recipient, shall not exceed ..... of the eligible credit available in respect of uploaded invoices.*
- (A) 20 %  
(B) 10 %  
(C) 100 %  
(D) 5 %

72. Determine the amount of Input tax credit admissible to PQR Ltd. in respect of the following goods procured by it in the month of January 2022:
- Goods used in construction of an additional floor of office building ₹ 25,000
- Packing Materials used in a factory ₹ 8,000 Goods destroyed due to natural calamities ₹ 17,000
- (A) ₹ 25,000
- (B) ₹ 8,000
- (C) ₹ 7,000
- (D) ₹ 50,000
73. Input Tax credit as credited in Electronic Credit ledger can be utilized for:
- (A) Payment of Interest
- (B) Payment of late fees
- (C) Payment of Taxes
- (D) Payment of Interest and payment of late fees both
74. X of Jaipur, registered dealer, purchased goods from Y of Kota, unregistered dealer for ₹ 10,00,000. He sold the same goods to Z of Kota, registered dealer, at Profit margin of 20% on Purchase Cost. GST rate on such goods is 12%. Compute the GST payable by X.
- (A) CGST ₹ 72,000 and SGST ₹ 72,000
- (B) CGST ₹ 60,000 and SGST ₹ 60,000
- (C) CGST ₹ 12,000 and SGST ₹ 12,000
- (D) CGST ₹ 24,000 and SGST ₹ 24,000
75. The time limit beyond which if inputs sent for job work is not returned will be treated as supply in CGST Act, 2017:
- (A) 1 Year
- (B) 2 Years
- (C) 3 Years
- (D) 5 Years
76. As per Section 24 of CGST Act, 2017 which out of the following is not liable for registration under GST from the following:
- (A) non-resident person making taxable supply
- (B) casual taxable person making taxable supply
- (C) an agriculturist selling product out of cultivation of land
- (D) dealer engaged in inter-state supply

77. *A dealer who is a resident of Manipur has business place both at Manipur and Himachal Pradesh. His taxable supply of goods in the state of Manipur is ₹12 lakh and in the state of Himachal Pradesh is ₹6 lakh. From where he has to take GST Registration?*
- (A) *From Manipur only*
  - (B) *From Himachal Pradesh only*
  - (C) *Registration required in both the state of Manipur and Himachal Pradesh*
  - (D) *Not required to take compulsory registration*
78. *As per Rule 21 of CGST Rules, 2017, the proper officer may cancel the registration of a person who has taken voluntary registration under Section 25(3) has not commenced business within..... from the date of registration.*
- (A) *3 months*
  - (B) *6 months*
  - (C) *9 months*
  - (D) *12 months*
79. *In case of taxable supply of services by NBFC Company, invoice shall be issued within a period of ..... from the date of supply of service.*
- (A) *45 days*
  - (B) *30 days*
  - (C) *60 days*
  - (D) *90 days*
80. *Dynamic Quick Response (QR) Code is applicable to suppliers who issue invoice to unregistered person exceeding:*
- (A) *₹ 1.5 crores*
  - (B) *₹ 5 crores*
  - (C) *₹ 50 crores*
  - (D) *₹ 500 crores*
81. *Rajendra is registered dealer under GST, supplied the exempted goods to his customer within state, in this case he shall issue:*
- (A) *Tax invoice*
  - (B) *Bill of supply*
  - (C) *Receipt Voucher*
  - (D) *Tax Invoice or Receipt Voucher (as per choice of Assessee)*

82. Annual return of GSTR 9 under u/s 44 of CGST Act, 2017, shall be filed by :
- (A) Every registered person
  - (B) Registered person having annual turnover 1.5 crore or more
  - (C) Registered person having annual turnover 2 crore or more
  - (D) Registered person having annual turnover 2 crore or more
83. The transporter starts the movement of goods on 2nd March, 2022 for destination which is 600 kms. from the place of dispatch, the e-way bill is generated is valid till:
- (A) 4th March, 2022
  - (B) 5th March, 2022
  - (C) 8th March, 2022
  - (D) 7th March, 2022
84. Which out of the following is not the type of Ledgers prescribed by the government under CGST Act, 2017:
- (A) Electronic Payment Ledger
  - (B) Electronic Cash Ledger
  - (C) Electronic Liability Ledger
  - (D) Electronic Credit Ledger
85. A dealer has an SGST Credit of ₹ 4 Lakh in his ITC ledger for the month of December 2021 and the same month he has CGST output Liability of ₹ 3 Lakh. What an amount should be deposited by that dealer to his Electronic cash ledger maintained in GSTN portal to file a valid return?
- (A) No deposit is required
  - (B) ₹ 4 Lakh
  - (C) ₹ 3 Lakh
  - (D) ₹ 1 Lakh
86. During the month of June, Tata Ltd. sold goods to Bata Ltd. for ₹ 4,40,000 and charged GST @ 18%. However, owing to some defect in the goods, Bata Ltd. returned some of the goods by issuing debit note of ₹ 27,000 plus GST in the same month. Tata Ltd. records the return of goods by issuing a credit note of ₹ 27,000 plus GST in the same month. In this situation, GST liability of Tata Ltd. for the month of June will be:
- (A) ₹ 79,200
  - (B) ₹ 74,340
  - (C) ₹ 63,000
  - (D) ₹ 69,480

87. *The Special Audit report u/s 66 of CGST Act, 2017, is to be submitted to Assistant Commissioner normally within a period of:*

- (A) 30 days
- (B) 60 days
- (C) 90 days
- (D) 180 days

88. *Section 56 of the CGST Act, 2017 states that if any tax ordered to be refunded under section 54 is not refunded within ..... from the date of receipt of application, interest at such rate not exceeding ..... per annum, shall be payable in respect of such refund.*

- (A) 30 days, 9%
- (B) 60 days, 6%
- (C) 90 days, 6%
- (D) 90 days, 9%

89. *Karishma Ltd. has provided following information for the month of September 2021:*

<i>Intra-State taxable outward supply</i>	<i>₹ 12,00,000</i>
<i>Inter-State exempt outward supply</i>	<i>₹ 4,00,000</i>
<i>Turnover of exported goods</i>	<i>₹ 6,00,000</i>
<i>Payment made for availing GTA services</i>	<i>*₹ 2,00,000</i>

*\*GTA not paying tax @ 12%*

*Calculate the aggregate turnover of Karishma Ltd.*

- (A) ₹ 18,00,000
- (B) ₹ 24,00,000
- (C) ₹ 22,00,000
- (D) ₹ 16,00,000

90. *What is the highest approved prescribed rate under UTGST Act, 2017 ?*

- (A) 12%
- (B) 28%
- (C) 20%
- (D) 40%

91. Which of the following liability cannot be adjusted against input tax credit of UTGST ?
- (A) IGST
  - (B) UTGST
  - (C) CGST
  - (D) Both(A) and (C)
92. The Advance Ruling Authority shall comprise of :
- (A) One member from amongst the officers of Central tax
  - (B) One member from amongst the officers of Union Territory tax (to be appointed by the Central Government) as the case may be
  - (C) Both (A) and (B)
  - (D) Neither (A) nor (B)
93. As per Section 7 of CGST Act, 2017, the Provisional Compensation payable to a State shall be released at the end of every .....
- (A) 2 months period
  - (B) 3 months period
  - (C) 5 months period
  - (D) 1 month period
94. GST (Compensation to States) Act, 2017 is applicable to :
- (A) Whole of India excluding Jammu & Kashmir, Union Territories of Dadra, Nagar Haveli, Daman and Diu
  - (B) Whole of India excluding Jammu & Kashmir
  - (C) Whole of India
  - (D) Whole of World
95. The Projected nominal growth rate of revenue subsumed for a state during the transaction period shall be ..... p.a.
- (A) 14%
  - (B) 12
  - (C) 10%
  - (D) 16%
96. The rates of Basic Custom Duty are specified under.....
- (A) Custom Tariff Act, 1975
  - (B) Custom Act, 1962
  - (C) UTGST Act, 2017
  - (D) Central Board of Indirect Taxes and Customs (CBIC)

97. *FOB value of goods - US \$ 12,000. Sea freight US \$ 2,500. Cost of insurance US \$ 150. Currency exchange rate 1 \$ = ₹75. Assessable value will be.....*
- (A) ₹11,09,737
  - (B) ₹10,90,125
  - (C) ₹10,91,250
  - (D) ₹10,98,750
98. *The date of determination for the rate of duty and tariff valuation of imported goods in the case of goods entered for home consumption under section 46 of Custom Act, 1962, is the .....*
- (A) *Date of presentation of bill of entry*
  - (B) *Date of entry inwards to the vessel*
  - (C) *Date of presentation of bill of entry or date of entry inwards to the vessel whichever is earlier*
  - (D) *Date of presentation of bill of entry or date of entry inwards to the vessel whichever is later*
99. *Which of the following is not a part of Rule 3 of “Rules of Interpretation” of the First Schedule to Customs Tariff Act?*
- (A) *Akin Rule*
  - (B) *Specific over General*
  - (C) *Essential character principle*
  - (D) *Latter the better*
100. *Javed imported computers for his office use and paid ₹4,00,000 as import duty. The computers are re-exported after being use of 13 months. The amount of allowed Duty Drawback under Custom Laws is:*
- (A) *No Drawback*
  - (B) ₹4,00,000
  - (C) ₹ 2,80,000
  - (D) ₹2,60,000

**ANSWER KEY**  
**TAX LAWS - SELECT SERIES**

Q.No.	Ans	Q.No.	Ans	Q.No.	Ans
<b>PART I</b>					
1	C	34	D	67	D
2	A	35	C	68	C
3	A	36	B	69	C
4	B	37	C	70	B
5	B	38	D	71	D
6	B	39	B	72	B
7	C	40	A	73	C
8	A/B/D	41	D	74	A
9	C	42	D	75	A
10	D	43	A	76	C
11	D	44	B	77	C
12	A/B/D	45	B	78	B
13	B	46	D	79	A
14	B/C	47	A	80	D
15	B/D	48	C	81	B
16	C	49	A	82	*
17	B	50	A	83	A
<b>PART II</b>					
18	B	51	C	84	A
19	D	52	C	85	C
20	A	53	B	86	B
21	C	54	B	87	C
22	C	55	B	88	B
23	A	56	D	89	C
24	C	57	B	90	C
25	C	58	B	91	C
26	A	59	A	92	C
27	B	60	A	93	A
28	B	61	D	94	C
29	A	62	C	95	A
30	B	63	D	96	A
31	B/D	64	D	97	D
32	A	65	C	98	D
33	B	66	B	99	A
				100	D



**Notes**

- Q. No. 8 Question does not specify whether Mr. Ashwani is a specified employee or not. Option A is correct if Mr. Ashwani is not a specified employee. Option B i.e. Rs. 40800 is correct if Mr. Ashwani is specified employee and Rs. 1000 per month limit of exemption is not deducted because as per rule 3 of the Income tax rules, concessional fees would be exempt upto Rs. 1000 per month only. Above the limit full value would be taxable i.e. Perquisites taxable with respect to concessional fees would be Rs. 4000 -600 i.e. amount actually recovered x 12 month = Rs. 40800. Option D i.e. Rs. 28800 is correct if Mr. Ashwani is specified employee and Rs. 1000 per month limit of exemption is deducted by applying the circular issued by CBDT in case of taxability of meal i.e. Perquisites taxable with respect to concessional fees would be (Rs. 4000 -600-1000) x 12 month = Rs. 28800.
- Q. No. 12 The question is silent whether the rural house property is situated on agriculture land or not. **Option D** is correct if the house property is situated on agriculture land in rural area. **Option A** is correct if the house property is situated on non-agriculture land and if Ms. Rani is in the business of let out of property. **Option B** is correct if the house property is situated on non-agriculture land and if Ms. Rani is not in the business of let out of property.
- Q. No. 14 Option B is correct i.e. Rs. 63000 (90000 - 30%) assuming unrealised rent received subsequently does not impact the calculation of GAV in the previous year 2020-21. Option C is correct i.e. Rs. 35000 [90000 - 40000) - \* 30%] assuming unrealised rent received subsequently does impact the calculation of GAV in the previous year 2020-21.
- Q. No. 15 Correct option is D. However, Option B may also be considered as correct if Pre-incorporation losses would be covered under section 35D i.e. deduction of preliminary expenses.
- Q. No. 31 Option B is correct i.e. Rs. 5000 assuming Mr. Mandeep has not opted for section 115BAC of the Income tax Act, 1961. Option D is correct i.e. Rs. 9000 assuming Mr. Mandeep has opted for section 115BAC of the Income tax Act, 1961.
- Q. No. 82 "None of the Options are appropriate. Same option is written in C & D due to typing error. "Notification No. 31/2021 – Central Tax New Delhi, the 30th July, 2021 Exempts the registered person whose aggregate turnover in the financial year 2020-21 is **upto two crore rupees**, from filing annual return for the said financial year."This notification shall come into force from the 1st day of August, 2021."

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