

GUIDELINE ANSWERS

PROFESSIONAL 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)

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003

Phones : 41504444, 45341000; Fax : 011-24626727

E-mail : info@icsi.edu; Website : www.icsi.edu

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

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

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PROFESSIONAL PROGRAMME EXAMINATION

DECEMBER 2022

**GOVERNANCE, RISK MANAGEMENT, COMPLIANCES
AND ETHICS**

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer **ALL** Questions.

PART I

Question 1

Singh & Associates LLP, a firm of practicing chartered accountants, being statutory auditors of Decent Industries Ltd., a listed entity since last 4 years. The auditors have proposed for hefty increase in their audit fees which the company is not in a position to accept. They expressed their inability to continue as statutory auditors and submitted their resignation to the company addressed to the BOD on 6th August, 2021. The next board meeting of the company was scheduled to be held on 9th August, 2021 to consider its quarterly results. The company secretary of the company informed the stock exchanges about said resignation without bringing to the knowledge of the audit committee as well as the Board. The chairman of the audit committee took a strong objection and pointed out a serious lapse on the part of the company. He suggested the ways to avoid such a lapse without any non-compliance. The company secretary placed the proposal before the Audit Committee & Board of Directors for appointment of New Auditors in casual vacancy arisen due to resignation of current Auditors (Outgoing).

- (a) What are the issues involved in terms of SEBI (LODR) regulations, 2015 ?*
- (b) What steps could have been taken to avoid such a lapse ?*
- (c) Whether Audit Committee and the Board should take cognizance of the resignation when it is already intimated to the SEs before such meetings ?*
- (d) Whether the authority, powers and structure of Audit Committee and the Board are undermined ?*

(5 marks each)

Answer 1(a)

As per Regulation 30 of SEBI (LODR) Regulations, 2015 read with Schedule III thereof, in case of resignation of the auditor of a listed entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than 24 hours of receipt of such reasons from the auditor. Further, as per Regulation 18(3) of SEBI (LODR) Regulations, 2015 read with Schedule II thereof, recommendation for appointment, remuneration and terms of appointment of auditors of a listed entity falls within the role of the Audit Committee.

In the given case, it has been informed that while the intimation to the Stock Exchange was done, the information regarding resignation of auditor was not placed before the

Audit Committee and the Board. However, the proposal for appointment of New Auditors in casual vacancy was placed before the Audit Committee and Board.

Accordingly, the provisions of the SEBI (LODR) Regulations, 2015 seems to have been complied with respect to intimation to Stock Exchange, however. Further, it would have been a better practice on part of the Company Secretary to also keep the Audit Committee and the Board informed about the resignation of the Statutory Auditors forthwith on intimation to Stock Exchange.

Answer 1(b)

The next Board Meeting of the Company was scheduled to be held on 9th August 2021 to consider its quarterly results i.e., after 3 days of receipt of the notice of resignation of Statutory Auditors. The Company Secretary could have taken the following steps in this matter –

1. Immediately on receipt of the notice of resignation of statutory auditors inform to the Chairman of the Audit Committee and Chairman of the Board of Directors about the resignation of statutory auditors by way of an email and also that same will be intimated to Stock Exchange within 24 hours as required by SEBI (LODR) Regulations, 2015;
2. As soon as possible and not later than 24 hours, intimate to Stock Exchange the detailed reasons for resignation of the Statutory Auditors in terms of Regulation 30 of SEBI (LODR) Regulations, 2015 read with Schedule III thereof;
3. Place the information relating to resignation of statutory auditors before the Board in the meeting scheduled on 09th August and apprise them regarding the further course of action to be taken in the matter the requirement for calling for an Audit Committee Meeting.

Answer 1(c)

Intimation to stock exchange within 24 hours is a statutory requirement whereas Board and Audit Committee meetings cannot be convened immediately to intimate such matters. As and when the next meeting happens only, the matter can be placed before the meeting. Thus, in the given situation, the Company Secretary being a Compliance Officer has carried out his duty in intimating to the Stock Exchange.

However, the Chairman, Audit Committee may think fit and appropriate to take note of it with a serious notice to the Company Secretary to be careful in future and may also advise the Managing Director of the Company to ensure that such matters are strictly complied with.

Answer 1(d)

The Company Secretary being the Compliance Officer of the Company was duty bound to intimate the Stock Exchange about the resignation of Statutory Auditors as soon as possible and not later than 24 hours of receipt of such reasons from the auditor. There is no requirement under the SEBI (LODR) Regulations, 2015 to first intimate the same to Board or the Audit Committee. There appears an apparent undermining of authority, power or structure of the Audit Committee and the Board in the given situation. Company Secretary could have also simultaneously intimated this resignation to the

Chairman of the Audit Committee and the Board by way of an email. Bypassing and adopting of a shortcut approach are of grave concern from compliance point of view. Company Secretary realised his mistake and assured the Audit Committee and the Board that he will take care in future.

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

Question 2

(a) *ABC Pvt. Ltd. is a Company having 175 shareholders and eight directors on its Board. The said Company has voluntarily proposed to adopt “Green initiative in Corporate Governance” that allows paperless compliance by companies for legal validity of compliances under the Companies Act, 2013 through electronic mode. A Board Meeting was convened on July 14, 2022 to discuss amongst other subjects, inter alia, to consider and take on record the following businesses of the agenda :*

- (i) *To adopt ‘Green Initiative’ in corporate governance especially for disseminating communication and annual reports to the shareholders.*
- (ii) *To approve the unaudited financial statements of the company for the first quarter ended 30-06-2022.*
- (iii) *To enter into certain contracts with a Company whereby one of the director is interested.*

In the said Board Meeting, two directors attended the meeting physically, one interested director attended through video conferencing after disclosing his interest and the rest six directors expressed their inability to attend the meeting and hence sought leave of absence.

In the light of the above inputs, answer the following under the provisions of the Companies Act,

- (i) *What shall be the quorum for the said Board Meeting ? Can the Board Meeting validly transact the businesses of the agenda ?*
- (ii) *Maintenance of attendance register of Board Meetings and meetings of Committee, wherein directors could attend the meeting either physically or through electronic mode ?*

(5 marks)

(b) *XYZ Ltd., is a profit making, dividend paying, export oriented, Public Company engaged in manufacturing of food processors. As per the latest Audited Financial Statements for the year ended 31-03-2022, the following is the summary of financial highlights :*

	(₹ in crore)
<i>Paid up Equity Share Capital</i>	410.00
<i>Free Reserves and Surplus</i>	103.00
<i>Current Liabilities</i>	112.75
<i>Tangible Fixed Assets</i>	1,500.00
<i>Turnover</i>	1,250.00
<i>Outstanding Secured Loans</i>	65.00
<i>Net Profit</i>	6.75

On 10-10-2022, the Company constituted a CSR Committee comprising of the following Director :

Name and Designation in the Board	Status in the CSR Committee
Mr. X, Executive Chairman	Chairman
Mr. Y, Non-Executive, Non-Independent	Member
Mrs. Z, Non-Executive, Non-Independent Women Director	Member

At the time of its constitution, the Company had 6 directors on its Board including two Independent Directors. With reference to the above and in the light of the provisions of the Companies Act, 2013, answer the following :

- (i) Is the CSR Committee validly constituted ? If not, state how the CSR Committee should be constituted.
- (ii) What is the role of Independent Directors as enumerated in Part II of Schedule IV of the Companies Act, 2013 ?
- (5 marks)
- (c) M/s X & Company, a firm of practicing company secretaries is appointed as a Lead Manager (LM) to the issue of ABC Limited. State the disclosures which X & Company is required to make in the draft offer document and offer document.
- (5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Omega Private Limited Company (OPLC) is a professionally managed Company ensuring good corporate governance, integrity and transparency in all its dealings. The Company is engaged in developing customised software package for automobile manufacturers. It has a paid-up share capital of ₹55 crore and borrowings from Banks and Financial Institutions to the tune of ₹56 crore as at 31st March, 2022. Mr. Ropher, an American Citizen, a qualified Certified Public Accountant (CPA) honoured in Australia and a Member of ICAI, holding Certificate of Practice was appointed as the Statutory Auditor of OPLC at the Annual General Meeting (AGM) of the Company convened on 18-11-2017 for a period of five consecutive years. Since his term of office is getting expired on completion of five years, the Company is proposing to re-appoint Mr. Ropher for a second term of five consecutive years at the AGM to be convened on 29-09-2022 considering his excellent audit work and professional knowledge. With reference to the provisions of the Companies Act, 2013, answer the following :
- (i) Is the re-appointment of Mr. Ropher for a second term of five years valid in Law ?
- (ii) Will your answer differ, if a different firm of auditors have been appointed as the Statutory Auditors in the year 2017 and whether the firm is eligible for re-appointment for a second term of five years, if Mr. Ropher is appointed as a partner in the audit firm in the year 2022 ?
- (5 marks)

- (iii) *EXCEL Finance Ltd. a listed entity, along with other companies, has promoted a company called ACTIVE Trading Ltd.*

Following is the composition of Board of ACTIVE Trading Ltd. a listed company as on 31st March, 2022 :

Mr. A – Non-Executive Chairman

Mr. B – Managing Director

Mr. C – Executive Director

Mr. D – Nominee Director (Standard Lease Finance Ltd.)

Ms. E – Independent Director

Mr. Z, an Independent Director, has resigned w.e.f. 28th Feb., 2022.

Mr. A, Chairman of the company is also an independent director of EXCEL Finance Ltd., a listed Company. Examine the composition of the Board of ACTIVE Trading Ltd. and advise for due compliance with various regulatory provisions.

(5 marks)

- (iv) *Reserve Bank of India (RBI) has taken a vital step by introducing the post of Chief Risk Officer (CRO) in Non-Banking Financial Companies (NBFCs). Explain the essentials which NBFCs shall strictly adhere at the time of appointment of CRO.*

(5 marks)

Answer 2 (a)(i)

In terms of Section 17 of the Companies Act, 2013 the Quorum for a Meeting of the Board shall be one-third of the total strength of the Board, or two Directors, whichever is higher. Directors participating through Electronic Mode in a Meeting shall be counted for the purpose of Quorum, unless they are to be excluded for any items of business under the provisions of the Act or any other law.

In the present case, the Company is a Private Limited Company and out of eight directors on the Board, two directors attended the meeting physically and one interested director attended through video conferencing after disclosing his interest. In other words, three director attended the meeting which satisfies 1/3rd of the total strength. ($1/3$ of 8 = 2.66 or 3 directors).

A Director shall neither be reckoned for Quorum nor shall be entitled to participate in respect of an item of business in which he is interested. However, in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest pursuant to Section 184 of the Act, provided, it has not committed default in filing its financial statements under section 137 of the Act or Annual return under section 92 of the Act, with the Registrar of Companies. In other words, in the case of a Private Company, if a director is interested in a contract and has disclosed his interest, then, he is entitled to participate in respect of such item, and his presence would form part of the quorum.

In view of the above, the Quorum is satisfied as per the above provision of law and the Board meeting can validly transact the businesses of the agenda.

Answer 2(a)(ii)

- Every company shall maintain attendance register for the Meetings of the Board and Meetings of the Committee.
- 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.
- The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.
- The attendance register is open for inspection by the Directors. Even after a person ceases to be a Director, he shall be entitled to inspect the attendance register of the Meetings held during the period of his Directorship.
- The attendance register shall be preserved for a period of at least eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board.
- The attendance register shall be in the custody of the Company Secretary.
- Leave of absence shall be granted to a Director only when a request for such leave has been communicated to the Company Secretary or to the Chairman or to any other person authorised by the Board to issue Notice of the Meeting.

Answer 2(b)(i)

As per the Section 135 of the Companies Act, 2013 every company having:

- (i) Net worth of rupees five hundred crore or more, or
- (ii) Turnover of rupees one thousand crore or more or
- (iii) Net profit of rupees five crore or more

during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under section 149(4), it shall have in its Corporate Social Responsibility Committee two or more directors. In other words, all unlisted public companies on which Independent director is not mandatory, are exempted from having Independent director in their CSR Committee.

Further, as per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following classes of companies shall have atleast two directors as Independent Directors.

- (i) Public Companies with paid up capital of Rs. 10 Crore or more
- (ii) Public Companies with turnover of Rs. 100 crores or more
- (iii) Public companies with aggregate outstanding loans, debentures and deposits exceeding Rs.50 crore.

As per the information given, the Company satisfies the requirement of Rule 4 and is thus required to appoint Independent Directors and have so appointed the Independent Directors.

Further, in the present case, for the year ended 31.03.2022, the Net Worth of the Company (i.e. Paid Up Capital + Free Reserves and Surplus) is Rs. 513 Crore (i.e. Rs. 410 Cr+ Rs. 103 Cr) and the Turnover of the Company is Rs. 1,250 Crore and the Net Profit is Rs.6.75 Crore, the provisions of Section 135 of the Companies Act 2013 applies and accordingly, the Company needs to constitute a separate CSR Committee comprising of at least three directors out of which at least one director shall be an Independent Director.

Whereas, the present constitution of the CSR Committee is without an Independent Director. Therefore, the present constitution of the CSR Committee is not validly constituted and the Company needs to re-constitute the CSR Committee by including at least one Independent Director in the Committee.

Answer 2(b)(ii)

Role of independent directors as specified in part II of schedule IV are as under:

The independent directors shall:

- (1) help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;
- (2) bring an objective view in the evaluation of the performance of board and management;
- (3) scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;
- (4) satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;
- (5) safeguard the interests of all stakeholders, particularly the minority shareholders;
- (6) balance the conflicting interest of the stakeholders;
- (7) determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;

- (8) moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholder's interest.

Answer 2(c)

Regulation 24 of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 states the following:-

- (1) The draft offer document and offer document shall contain all material disclosures which are true and adequate to enable the applicants to take an informed investment decision.
- (2) Without prejudice to the generality of sub-regulation (1), the red-herring prospectus, and prospectus shall contain: (a) disclosures specified in the Companies Act, 2013 and; (b) disclosures specified in Part A of Schedule VI.
- (3) The lead manager(s) shall exercise due diligence and satisfy themselves about all aspects of the issue including the veracity and adequacy of disclosure in the draft offer document and the offer document.
- (4) The lead manager(s) shall call upon the issuer, its promoters and its directors or in case of an offer for sale, also the selling shareholders, to fulfil their obligations as disclosed by them in the draft offer document and the offer document and as required in terms of these regulations.
- (5) The lead manager(s) shall ensure that the information contained in the draft offer document and offer document and the particulars as per restated audited financial statements in the offer document are not more than six months old from the issue opening date.

Answer 2A(i)(i)

Section 139(2) of the Companies Act, 2013 read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014 provides that all private limited companies having paid up share capital of rupees 50 crore or more shall not appoint or re-appoint-

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years.

Also, an individual auditor who has completed his term of five consecutive years shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term.

In view of the above, Mr. Ropher, as an Individual, cannot be re-appointed as the Statutory Auditor of the company for the second term of five years.

Answer 2A(i)(ii)

Section 139(2) of the companies Act, 2013 read with Rule 5 of the Companies (Audit and Auditors) Rules, 2014 provides that all private limited companies having paid up share capital of rupees 50 crore or more shall not appoint or re-appoint-

- (a) an individual as auditor for more than one term of five consecutive years; and
- (b) an audit firm as auditor for more than two terms of five consecutive years.

Thus, an audit firm which has completed one term of five consecutive years, is

eligible for reappointment as auditor in the same company for a second term of five years after the completion of the first term.

Further, Section 139 of the Companies Act, 2013 provides that – “Provided further that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.”

Since the firm was holding office as Auditor for the first term of five years from 2017-2022, it can still be re-appointed for the second term as for a firm two terms are permitted and given that Mr. Ropher would not have held office in this company as 2017-2022 also the firm was only holding office.

Answer 2A(ii)

As per the provisions of SEBI (LODR) Regulations, 2015,

- Board of Directors shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than 50% of the board of directors shall comprise of non-executive directors;

In the case presented, there are totally 6 directors till 28.02.2022 out of which 2 are executive and 4 are non-executive thus requirement of 50 % of Non-Executive Directors is complied. Since Ms. E is there on Board, the requirement of woman director is also complied.

- Where the chairman of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors and where the listed entity does not have a regular non-executive chairman, at least half of the board of directors shall comprise of independent directors:

Where the regular non-executive chairman is a promoter of the listed entity or is related to any promoter or person occupying management positions at the level of board of director or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of independent directors.

An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than three months from the date of such vacancy.

In the case presented, Mr. A is the Non-Executive Chairman and thus Board is required to have atleast 1/3rd as Independent Directors which condition is satisfied till 28.02.2022. On resignation of Mr. Z, there is requirement to appoint another Independent Director within 3 months.

Answer 2(A)(iii)

1. Appointment of Chief Risk Officer (CRO) for NBFCs

With the increasing role of NBFCs in direct credit intermediation, there is a need for NBFCs to augment risk management practices. While Boards of NBFCs should strive to follow best practices in risk management, it has been decided

that NBFCs with asset size of more than Rs. 50 billion shall appoint a CRO with clearly specified role and responsibilities. The CRO is required to function independently so as to ensure highest standards of risk management.

2. The NBFCs shall strictly adhere to the following instructions in this regard:
 - a) The CRO shall be a senior official in the hierarchy of an NBFC and shall possess adequate professional qualification/ experience in the area of risk management.
 - b) The CRO shall be appointed for a fixed tenure with the approval of the Board. The CRO can be transferred/removed from his post before completion of the tenure only with the approval of the Board and such premature transfer/ removal shall be reported to the Department of Non-Banking Supervision of the regional office of the Bank under whose jurisdiction the NBFC is registered. In case the NBFC is listed, any change in incumbency of the CRO shall also be reported to the stock exchanges.
 - c) The Board shall put in place policies to safeguard the independence of the CRO. In this regard, the CRO shall have direct reporting lines to the MD & CEO/ Risk Management Committee (RMC) of the Board. In case the CRO reports to the MD & CEO, the RMC/ Board shall meet the CRO without the presence of the MD & CEO, at least on a quarterly basis. The CRO shall not have any reporting relationship with the business verticals of the NBFC and shall not be given any business targets. Further, there shall not be any 'dual hatting' i.e. the CRO shall not be given any other responsibility.
 - d) The CRO shall be involved in the process of identification, measurement and mitigation of risks. All credit products (retail or wholesale) shall be vetted by the CRO from the angle of inherent and control risks. The CRO's role in deciding credit proposals shall be limited to being an advisor.
 - e) In NBFCs that follow committee approach in credit sanction process for high value proposals, if the CRO is one of the decision makers in the credit sanction process, the CRO shall have voting power and all members who are part of the credit sanction process, shall individually and severally be liable for all the aspects, including risk perspective related to the credit proposal.

Question 3

- (a) *Mention disclosures to be made by a listed company with respect to Demat Suspense Account. (3 marks)*
- (b) *Explain the role of the lead independent director to enhance Board Effectiveness. (3 marks)*
- (c) *Explain the procedure of passing of Resolution by Circulation. (3 marks)*
- (d) *“The Independent Directors of the company shall hold at least one meeting in a financial year without the attendance of non-independent director and member of management.” Discuss the statement and also mention the agenda items to be taken upon such a meeting as per the relevant provisions of SEBI (LODR), Regulations, 2015. (3 marks)*

(e) *Mention any six of 'Clarkson Principles of Stakeholders Management'.*

(3 marks)

Answer 3(a)

The listed entity shall disclose the following details in its annual report, as long as there are shares in the demat suspense account or unclaimed suspense account, as applicable:

- (a) Aggregate number of shareholders and the outstanding shares in the suspense account lying at the beginning of the year;
- (b) Number of shareholders who approached listed entity for transfer of shares from suspense account during the year;
- (c) Number of shareholders to whom shares were transferred from suspense account during the year;
- (d) Aggregate number of shareholders and the outstanding shares in the suspense account lying at the end of the year;
- (e) That the voting rights on these shares shall remain frozen till the rightful owner of such shares claims the shares.

Answer 3(b)

The lead independent director is a highly versatile and act as an intermediary between the chair, the board and the board's stakeholders. The lead independent director must keep a keen eye on whether the chair is performing their role to the board's satisfaction without losing objectivity or independence.

They monitor the relationship between the Chair and the CEO, and ensure that it is a well-functioning working relationship without becoming too close or powerful. The lead independent director also coordinates the activities of other non-employee directors and advises the chairman on issues ranging from the schedule of board meetings to recommending retention of advisors and consultants to the management.

Role of the lead independent director

- Acts as the principal liaison between the independent directors of the Board and the Chairman of the Board;
- Develops the agenda for and preside over executive sessions of the Board's independent directors;
- Advises the Chairman of the Board regarding appropriate schedule for Board meetings, seeking to ensure that the independent directors can perform their duties responsibly while not interfering with the flow of Company operations;
- Approves with the Chairman of the Board the agenda for Board and Board Committee meetings and the need for special meetings of the Board;
- Advises the Chairman of the Board with respect to the quality, quantity and timeliness of the information submitted by the Company's management that is necessary or appropriate for the independent directors to effectively and responsibly perform their duties;

- Recommends to the Board on the retention of advisors and consultants who report directly to the Board;
- Interviews, along with the chair of the Nominating and Corporate Governance Committee, all Board candidates, and make recommendations to the Nominating and Corporate Governance Committee;
- Assists the Board and Company officers in ensuring better compliance with and implementation of the Governance Guidelines;
- Serves as Chairman of the Board when the Chairman is not present; and
- Serves as a liaison for consultation and communication with shareholders.

Answer 3(c)

Procedure : A Resolution proposed to be passed by circulation shall be sent in draft, together with the necessary papers, to all the Directors including Interested Directors on the same day.

The draft of the Resolution to be passed and the necessary papers shall be circulated amongst the Directors by hand, or by speed post or by registered post or by courier, or by e-mail or by any other recognised electronic means.

Each business proposed to be passed by way of Resolution by circulation shall be explained by a note setting out the 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 or interest, if any, of any Director in the proposal, which the Director had earlier disclosed and the draft of the Resolution proposed. The note shall also indicate how a Director shall signify assent or dissent to the Resolution proposed and the date by which the Director shall respond.

Approval : The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.

Answer 3(d)

1. The independent directors of the company shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management;
2. All the independent directors of the company shall strive to be present at such meeting;
3. The meeting shall:
 - (a) review the performance of non-independent directors and the Board as a whole;
 - (b) review the performance of the Chairperson of the company, taking into account the views of executive directors and non-executive directors;
 - (c) assess the quality, quantity and timeliness of flow of information between the company management and the Board that is necessary for the Board to effectively and reasonably perform their duties.

Answer 3(e)

Clarkson Principles of Stakeholders' Management are as under:

- *Principle 1* : Managers should acknowledge and actively monitor the concerns of all legitimate stakeholders, and should take their interests appropriately into account in decision-making and operations.
- *Principle 2* : Managers should listen to and openly communicate with stakeholders about their respective concerns and contributions, and about the risks that they assume because of their involvement with the corporation.
- *Principle 3* : Managers should adopt processes and modes of behavior that are sensitive to the concerns and capabilities of each stakeholder constituency.
- *Principle 4* : Managers should recognize the interdependence of efforts and rewards among stakeholders, and should attempt to achieve a fair distribution of the benefits and burdens of corporate activity among them, taking into account their respective risks and vulnerabilities.
- *Principle 5* : Managers should work cooperatively with other entities, both public and private, to insure that risks and harms arising from corporate activities are minimized and, where they cannot be avoided, appropriately compensated.
- *Principle 6* : Managers should avoid altogether activities that might jeopardize inalienable human rights (e.g., the right to life) or give rise to risks which, if clearly understood, would be patently unacceptable to relevant stakeholders.
- *Principle 7* : Managers should acknowledge the potential conflicts between (a) their own role as corporate stakeholders, and (b) their legal and moral responsibilities for the interests of stakeholders, and should address such conflicts through open communication, appropriate reporting and incentive systems, and, where necessary, third party review.

PART II**Question 4**

- (a) *“Risk Identification should involve continuous implementation as new phases, experiences, and viewpoints are introduced.” Explain the essentials to risk identification that guarantee maximum results.*
- (b) *Explain the steps involved in managing strategic risks which must be integrated within the strategic planning.*
- (c) *“Responsibilities and accountabilities of the person handling risks need to be identified and assigned.” Explain the ways of handling the different types of risk existing in the business.*
- (d) *ISO 31000 (International Standards for Risk Management) helps in the success of an organization. Explain.*

(5 marks each)

Answer 4(a)

Identification is a process of brainstorming. It isn't an exact science and should

involve continuous implementation as new phases, experiences, and viewpoints are introduced. Being vital to the management process, there are some essentials to risk identification that guarantee maximum results.

1. *Team Participation* : Face-to-face interactions between the project managers and the team, which promises better and more comprehensive communication. The team must feel comfortable to find and share hidden or elusive risks.
2. *Repetition* : Information changes appear as the risk management process proceeds. Keeping identified risks current and updated means the system is focused on mitigating the most prevalent issues.
3. *Approach* : Certain objectives require distinct approaches to best combat identification failure. One method is to identify all root causes, undesirable events and map their potential impacts. Another is to identify essential functions the project must enact, then find possible issues with each function or goal. Both methods work well, but the latter may be easier due to its defined scope.
4. *Documentation* : Consistent and exhaustive documentation leads to comprehensive and reliable solutions for a specific project or future risk management team's analysis. Most communication is recorded by a project manager and data is copied, stored, and updated for continued risk prevention.
5. *Roots and Symptoms* : It is essential in the risk identification phase to find the root causes of a risk instead of mistaking them with the symptoms. A symptom can be confused with the root cause, making it critical to discover the origin of risks and denote what are their symptoms. Other essentials of risk identification involve the analysis phase. This is where identified risks are further researched and understood.
6. *Project Definition Rating Index (PDRI)* : PDRI is a risk assessment tool that helps develop mitigation programs for high-risk areas. It facilitates the team's risk assessment within the defined project scope, budget and deadlines. It also provides further detail of individual risks and their magnitude, represented by a score. The summation of scores is statistically compared to the project performance as a certainty level for the entire project
7. *Event Trees* : Commonly used in reliability studies and probabilistic risk assessments; event trees represent an event followed by all factors and faults related to it. The top of the tree is the event and it is supported by any condition that may lead to that event, helping with likelihood visibility.

Answer 4(b)

Managing strategic risk involves five steps which must be integrated within the strategic planning and execution process in order to be effective:

1. Define business strategy and objectives. There are several frameworks that companies commonly use to plan out strategy, from simple SWOT analysis to the more nuanced and holistic Balanced Scorecard. The one thing that these frameworks have in common, however, is their failure to address risk. It is crucial, then, that companies take additional steps to integrate risk at the planning stage.

2. Establish key performance indicators (KPIs) to measure results. The best KPIs offer hints as to the levers the company can pull to improve them. Thus, overall sales make a poor KPI, while sales per customer lets the company drill down for answers.
3. Identify risks that can drive variability in performance. These are the unknowns, such as future customer demand, that will determine results.
4. Establish key risk indicators (KRIS) and tolerance levels for critical risks. Whereas KPIs measure historical performance, KRIS are forward-looking leading indicators intended to anticipate potential roadblocks. Tolerance levels serve as triggers for action.
5. Provide integrated reporting and monitoring. Finally, companies must monitor results and KRIS on a continuous basis in order to mitigate risks or grasp unexpected opportunities as they arise.

Answer 4(c)

The ownership of risk should be allocated. Responsibilities and accountabilities of the person handling risks need to be identified and assigned. The person concerned when the risk arises, should document it and report it to the higher ups in order to have the early measures to get it minimized. Risk may be handled in the following ways:

- 1) *Risk Avoidance* : Risk Avoidance means to avoid taking high risk project or choosing of less risky business/ project. For example, one may avoid investing in stock market due to price volatility in stock prices and may prefer to invest in debt instruments.
- 2) *Risk Retention/Absorption* : The enterprise handles the unavoidable risk internally and the firm bears/absorbs it due to the fact that either insurance cannot be purchased of such type of risk or it may be too expensive to cover the risk and much more cost-effective to handle the risk internally.. Usually, retained risks occur with greater frequency, but have a lower severity. An insurance deductible is a common example of risk retention to save money, since a deductible is a limited risk that can save money on insurance premiums for larger benefit. There are two types of retention methods for containing losses as under:
 - Active Risk Retention: Where the risk is retained as part of deliberate management strategy after conscious evaluation of possible losses and causes.
 - Passive Risk Retention: Where risk retention occurred through negligence. Such type of retaining risk is unknown or because the risk taker either does not know the risk or considers it a lesser risk than it actually is.
- 3) *Risk Reduction* : In many ways physical risk reduction (or loss prevention, as it is often called) is the best way of dealing with any risk situation and usually it is possible to take steps to reduce the probability of loss. The ideal time to think of risk reduction measures is at the planning stage of any new project when considerable improvement can be achieved at little or no extra cost. The cautionary note regarding risk reduction is that, as far as possible expenditure should be

related to potential future savings in losses and other risk costs; in other words, risk prevention generally should be evaluated in the same way as other investment projects.

- 4) *Risk Transfer* : This refers to legal assignment of cost of certain potential losses to another. The insurance of 'risks' is to occupy an important place, as it deals with those risks that could be transferred to an organization that specialises in accepting them, at a price. Usually, there are 3 major means of loss transfer viz.,
- By Tort,
 - By contract other than insurance,
 - By contract of insurance.

The main method of risk transfer is insurance. The value of the insurance lies in the financial security that a firm can obtain by transferring to an insurer, in return for a premium, the risk of losses arising from the occurrence of a specified peril. Thus, insurance substitutes certainty for uncertainty. Insurance does not protect a firm against all perils but it offers restoration, at least in part of any resultant economic loss.

Answer 4(d)

ISO 31000 contains 11 key principles that position risk management as a fundamental process in the success of the organization.

ISO 31000 is designed to help organizations:

- Increase the likelihood of achieving objectives
- Encourage proactive management
- Be aware of the need to identify and treat risk throughout the organization
- Improve the identification of opportunities and threats
- Comply with relevant legal and regulatory requirements and international norms
- Improve financial reporting
- Improve governance
- Improve stakeholder confidence and trust
- Establish a reliable basis for decision making and planning
- Improve controls
- Effectively allocate and use resources for risk treatment
- Improve operational effectiveness and efficiency
- Enhance health and safety performance, as well as environmental protection
- Improve loss prevention and incident management
- Minimize losses

- Improve organizational learning
- Improve organizational resilience.
- Proactively improve operational efficiency and governance.

PART III

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

Question 5

- (a) *What is Risk Based Internal Audit (RBIA) ? Explain its significances in the effective risk management of the banks.*
- (b) *Discuss the guiding principles of International Integrated Reporting Council (IIRC) which underpin the preparation of an Integrated report, specifying the contents of report and how information is to be presented.*
- (c) *Sustainability reporting can help organizations to measure, understand and communicate their economic, environmental, social and governance performance, set goals, and manage change more effectively, but many organizations find it difficult to prepare sustainability. Explain the challenges which may be considered in the mainstreaming sustainability reporting.*
- (d) *Write a note on Entity's Risk Assessment Process.*

(5 marks each)

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *Internal control is a process for assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting, and compliance with laws, regulations and policies. In this reference explain the control activities, that may relevant to an audit, which may be categorized as policies and procedures.* (5 marks)
- (ii) *Internal Control System is a topical issue following global fraudulent financial reporting and accounting scandals in both developed and developing countries. A proactive preventive approach to the problem required a critical evaluation of existing internal control structures in organizations to determine their capacity to ensure that the organizational activities are carried out in accordance with established goals, policies and procedures. Explain the prevention measures which can be taken into consideration to prevent improprieties in an organization.* (5 marks)
- (iii) *"A sustainability report is the key platform for communicating sustainability performance and impacts." Explain the benefits of sustainability reporting for an organization.* (5 marks)
- (iv) *"Non-financial reporting is the practice of measuring, disclosing and being accountable to internal and external stakeholders for organizational performance towards the goal of sustainable and inclusive development of a company." Critically analyze.* (5 marks)

Answer 5(a)

The Institute of Internal Auditors defines Risk Based Internal Auditing (RBIA) as a methodology that links internal auditing to an organization's overall risk management framework and that allows internal audit to provide assurance to the board that risk management processes are managing risk effectively, in relation to the risk appetite. Compliance Procedures are tests designed to obtain reasonable assurance that those internal controls on which audit reliance is to be placed are in effect.

The auditor needs to ensure that internal control exist and that the internal control is operating effectively and being operating continuously throughout the period under audit to ensure that they can be relied upon. In summary, by doing Compliance Tests, the auditor can then able to ascertain the existence, effectiveness and continuity of the internal control system. Compliance Procedures are tests designed to obtain reasonable assurance that those internal controls on which audit reliance is to be placed are in effect.

The significance of risk-based approach of the internal audit function in Banks are as follows:

- It appropriately defines the audit universe and identifies the auditable branches within the Bank for which these analyses would be carried out.
- It assists the management in identification of appropriate risk factors to reflect the managements concerns.
- It results in development of an appropriate format for evaluating risk factors so that the more important risk factors play a more prominent role in the risk assessment process than less important risk factors.
- It develops a combination rule for each branch, which will properly reflect its riskiness over several risk factors that have been identified and a method of setting up audit priorities for the branches.
- It results in appropriate audit coverage plan, which provides a roadmap for the management of internal audit staff skills so that they are available to carry out audits of appropriate scope when they are needed the most.

This risk-based internal audit results in a process oriented audit with a risk management perspective, which gives advice to management on the steps to be taken for effective risk management on a bank-wide basis.

Answer 5(b)

The International Integrated Reporting Council (IIRC) has prescribed Guiding Principles which underpin the preparation of an integrated report, specifying the content of the report and how information is to be presented are as under:

- *Strategic focus and future orientation* : An integrated report should provide insight into the organization's strategy and how it relates to the organization's ability to create value in the short, medium and long term, and to its use of and effects on capital.
- *Connectivity of information* : An integrated report should show a holistic picture

of the combination, interrelatedness and dependencies between the factors that affect the organization's ability to create value over time.

- *Stakeholder relationships* : An integrated report should provide insight into the nature and quality of the organization's relationships with its key stakeholders, including how and to what extent the organization understands, takes into account and responds to their legitimate needs and interests.
- *Materiality* : An integrated report should disclose information about matters that substantively affect the organization's ability to create value over the short, medium and long term.
- *Conciseness* : An integrated report should be concise.
- *Reliability and completeness* : An integrated report should include all material matters, both positive and negative, in a balanced way and without material error.
- *Consistency and comparability* : The information in an integrated report should be presented:
 - (a) on a basis that is consistent over time; and
 - (b) in a way that enables comparison with other organizations to the extent it is material to the organization's own ability to create value over time.
- All organizations depend on various forms of capital for their success. It is important that all such forms of capital are disclosed to stakeholders to enable informed investment decision making.

Answer 5(c)

The Sustainability Reporting is relatively a new concept. Many organizations find it difficult to prepare sustainability REPORT. Following may be considered as the challenges in mainstreaming sustainability reporting:

1. *Government Encouragement* : In many jurisdictions, there are no guidelines on sustainability reporting to encourage the corporate sector to prepare sustainability report. While on the other hand, there are voluntary as well as mandatory guidelines from regulators for reporting on Sustainability aspects like in India we have SEBI framework of Business Responsibility Report. In South Africa, listed companies are required to prepare Integrated Report which is one step ahead of sustainability reporting. It is the need of the hour that governments should encourage the corporate in their jurisdiction to adopt the sustainability reporting as a measure of good corporate governance.
2. *Awareness* : lack of awareness about the emerging concept of sustainability reporting is also a major challenge which the government and corporate governance bodies need to address by arranging the sustainability awareness programme for the Professionals, Board of Directors and Management in the corporate sector, as these are the persons who will drive sustainability reporting initiative for an organisation. The government/regulators should organize such awareness programme jointly with the experts in the field of Sustainability Reporting.

3. *Expertise Knowledge* : Sustainability Reporting is relatively a new concept in many jurisdictions and organization found it very difficult to prepare a sustainability report in the absence of expert guidance on the subject. The Sustainability Reporting concept is emerging as a good tool to showcase the corporate governance practices of an organisation and this area demand professionals having expert knowledge of sustainability reporting. The professional bodies in various jurisdictions should impart the expert knowledge of sustainability reporting to their members to develop a good cadre of experts in this emerging area of sustainability reporting.
4. *Investor Behaviour* : It is a recognized principle that investors should consider the Environmental, Social and Governance (ESG) issues while making investment decisions. There are specific regulators guidelines for the institutional investor to be vigilant on voting aspects and be concerned about the governance practices of the companies in which they invest. However, the investor behaviour may vary from company to company and sometimes they invest in companies without considering the ESG issues either due to lack of awareness on ESG issues or some other business reasons. It should be made a practice that the investor fund flow to those organization following the good governance including reporting on sustainability aspects.

Answer 5(d)

For financial reporting purposes, the entity's risk assessment process includes how management identifies business risks relevant to the preparation of financial statements in accordance with the entity's applicable financial reporting framework, estimates their significance, assesses the likelihood of their occurrence, and decides upon actions to respond to and manage them and the results thereof. For example, the entity's risk assessment process may address how the entity considers the possibility of unrecorded transactions or identifies and analyzes significant estimates recorded in the financial statements.

Risks relevant to reliable financial reporting include external and internal events, transactions or circumstances that may occur and adversely affect an entity's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements. Management may initiate plans, programs, or actions to address specific risks or it may decide to accept a risk because of cost or other considerations. Risks can arise or change due to circumstances such as the following:

- *Changes in operating environment* : Changes in the regulatory or operating environment can result in changes in competitive pressures and significantly different risks.
- *New personnel* : New personnel may have a different focus on or understanding of internal control. New or revamped information systems: Significant and rapid changes in information systems can change the risk relating to internal control.
- *Rapid growth* : Significant and rapid expansion of operations can strain controls and increase the risk of a breakdown in controls.
- *New technology* : Incorporating new technologies into production processes or information systems may change the risk associated with the internal control.

- *New business models, products, or activities* : Entering into business areas or transactions in which an entity has little experience may introduce new risks associated with internal control.
- *Corporate restructurings* : Restructurings may be accompanied by staff reductions and changes in supervision and segregation of duties that may change the risk associated with internal control.
- *Expanded foreign operations* : The expansion or acquisition of foreign operations carries new and often unique risks that may affect internal control, for example, additional or changed risks from foreign currency transactions.
- *New accounting pronouncements* : Adoption of new accounting principles or changing accounting principles may affect risks in preparing financial statements.

Answer 5A(i)

Generally, control activities that may be relevant to an audit may be categorized as policies and procedures that pertain to the following:

- *Performance reviews* : These control activities include reviews and analyses of actual performance versus budgets, forecasts, and prior period performance; relating different sets of data - operating or financial - to one another, together with analyses of the relationships and investigative and corrective actions; comparing internal data with external sources of information; and review of functional or activity performance.
- *Information processing* : The two broad groupings of information systems control activities are application controls, which apply to the processing of individual applications, and general IT controls, which are policies and procedures that relate to many applications and support the effective functioning of application controls by helping to ensure the continued proper operation of information systems.
- *Physical controls* : Controls that encompass:
 - The physical security of assets, including adequate safeguards such as secured facilities over access to assets and records.
 - The authorization for access to computer programs and data files.

The periodic counting and comparison with amounts shown on control records (for example, comparing the results of cash, security and inventory counts with accounting records).

- The extent to which physical controls intended to prevent theft of assets are relevant to the reliability of financial statement preparation, and therefore the audit, depends on circumstances such as when assets are highly susceptible to misappropriation.
- *Segregation of duties* : Assigning different people the responsibilities of authorizing transactions, recording transactions, and maintaining custody of assets. Segregation of duties is intended to reduce the opportunities to allow any person to be in a position to both perpetrate and conceal errors or fraud in the normal course of the person's duties.

- Certain control activities may depend on the existence of appropriate higher level policies established by management or those charged with governance. For example, authorization controls may be delegated under established guidelines, such as investment criteria set by those charged with governance; alternatively, non-routine transactions such as major acquisitions or divestments may require specific high level approval, including in some cases that of shareholders.

Answer 5A(ii)

A variety of internal control techniques can help in preventing improprieties. The following points in this regard are worth mentioning:

- There should be clear division of the work.
- Segregation of the work should be in such a manner that the work done by one person is the beginning of the work for another person.
- There should be the clarity of the responsibility.
- The work flow process be documented or standardized so that the staff may perform the work as suggested in the work flow chart.
- No single persons should be allowed to have access or control over any important business operation.
- There should be job rotation of the staff duties periodically.
- Staff should be asked to go on mandatory leave periodically so that other person may come to know if someone is playing foul with the system.
- Persons having the charge of the important assets should not be allowed to have access to the books of accounts.
- Periodical inspection of the physical assets be carried out to ensure its physical existence as well in good working conditions.
- The valuable items like cash and others, by physically inspected and the periodicity should be at irregular intervals, so that the person under whose charge the assets are, cannot know in advance, when the inspection will take place and manage the affairs.

Answer 5A(iii)

Sustainability reporting can help organizations to measure, understand and communicate their economic, environmental, social and governance performance, and then set goals, and manage change more effectively. A sustainability report is the key platform for communicating sustainability performance and impacts - whether positive or negative.

Internal benefits of sustainability reporting for companies and organizations can include:

- Increased understanding of risks and opportunities
- Emphasizing the link between financial and non-financial performance

- Influencing long term management strategy and policy, and business plans
- Streamlining processes, reducing costs and improving efficiency
- Benchmarking and assessing sustainability performance with respect to laws, norms, codes, performance standards, and voluntary initiatives
- Avoiding being implicated in publicized environmental, social and governance failures
Comparing performance internally, and between organizations and sectors
External benefits of sustainability reporting can include:
- Mitigating - or reversing - negative environmental, social and governance impacts.
- Improving reputation and brand loyalty
- Enabling external stakeholders to understand the organization's true value, and tangible and intangible assets
- Demonstrating how the organization influences, and is influenced by, expectations about sustainable development.

Answer 5A(iv)

Apart from financial reporting, the non-financial reporting under the annual reports is also being made by the companies. It contains the information relating to the company's performance during the previous year, future projections, award achievements and penalty imposed, if any by any regulators, are apprised to the Stake holders by way of reporting in the annual report. It is a structured way of presenting information about one's performance.

Non-financial reporting is the practice of measuring, disclosing and being accountable to internal and external stakeholders for organisational performance towards the goal of sustainable and inclusive development. There has been a general perception that right from the time of Industrial Revolution, economic development has come at the cost of environment and has brought about large scale destruction of nature and growth process has not been inclusive.

Due to the negative externalities of economic development, the practice of non-financial reporting started largely in response to pressure from non-governmental organisations (NGOs) and civic society, which claimed that many firms lacked social and environmental responsibility. It epitomises that a company's financial health is dependent on much more than the assets on its balance sheet and the movements on its profit and loss account. Non-financial reporting is an opportunity to communicate in an open and transparent way with stakeholders. In their non-financial reports, firms volunteer an overview of their environmental and social impact during the previous year. The information in nonfinancial reports contributes to building up a company's risk-return profile.

PART IV

Question 6

- (a) *Discuss the process to declare a person as a Fugitive Economic Offender, indicating provisions relating to application, attachment, notice, proceedings*

and declaration, confiscation appeal etc. as mentioned in Fugitive Economic Offender Act, 2018.

(b) What is Net Zero ? Why is it relevant in the industry ? Why should companies care about it ? (5 marks each)

Answer 6(a)

Process to Declare a Person as a Fugitive Economic Offender under Fugitive Economic Offender Act, 2018:

Application (Section 4)

The process of declaring a person as a fugitive economic offender starts with an application that is to be filled by the director or any other person who is not below the position of deputy director. The application needs to contain the following:

1. Reason behind believing that such a person is an economic offender.
2. Any information about his whereabouts.
3. List of all the properties which are believed to be proceeds of crime or Benaim property.
4. List of people having interest in the said property.

Attachment (Section 5)

The Authorities may attach any property which is mentioned in the above application with the prior approval of the special court. Such an attachment will be valid for 180 days, which may be extended to the discretion of the court.

Notice (Section 10)

The individual against whom the proceedings have been initiated will be served a notice by the special court. Such a notice will require the said individual to be present at the specified date on the specified date, failure to report on that date will result in declaring that person as a fugitive economic offender. It must be noted that the court will give a minimum time of six weeks to the alleged offender to be present before the court.

Proceedings and Declaration (Section 11 & 12)

If the alleged offender appears before the court within the prescribed time then the proceedings will be terminated, and if he is represented by his council then the court will grant them a period of one week to file a reply after which if the court doesn't find him as an fugitive economic offender then all his properties will be released. If that individual fails to appear in the stipulated date then he will be declared as a fugitive economic offender.

Confiscation (Section 12)

If the alleged person is found to be a fugitive economic offender then the special court may confiscate all the properties which are acquired from the proceeds of crime, Benami property. All the rights of this confiscated property shall solely vest with the central government. The central government has all the right to dispose of these properties after 90 days of confiscation.

Appeal (Section 17)

The offender, if unsatisfied with the order, may appeal to the High Court within 30 of the order.

Answer 6(b)*Net-Zero*

Net-zero is a climate outcome where any greenhouse emissions through man-made sources are countered by removing such gases in equal amount. The net effect is that the global temperature remains unchanged. There are two ways to achieve this drastically reduce emissions and simultaneously use methods to neutralize or remove greenhouse gases.

Why's it relevant in the industry?

Foremost is to avoid an impending climate catastrophe. Consider carbon budget-the maximum limit of emissions that the Earth can handle before heating up. If we continue to release emissions. on a net basis, that budget is breached and temperature continues to rise. For example, a water tank that is filled three-fourths. And a stream is connected to the tank that constantly keeps filling it. The idea of net zero is that we reduce the flow of the stream so that the water doesn't start to overflow

Policymakers across the globe have a consensus that setting net zero goals is a plausible way to contain further damage and hopefully, reverse some of it. Under the landmark 2016 Paris climate agreement, countries including India Net Carbon - Zero Goal One step toward Sustainable development

Developed nations such as the UK, France and Denmark, with higher emissions, have already codified in law their commitment to net-zero by 2050, according to the Energy and Climate Intelligence Unit. The European Union, South Korea and Canada have also proposed similar legislation The US, Japan and Germany are considering making it a law.

India, a developing nation with relatively lower per capita emissions, doesn't have a net zero target. But authorities are said to be considering pledging to net-zero by 2050.

Why Should Companies Care?

Bulk of the emission comes from industries-particularly in the energy, metals and transportation sectors. Any climate action will have to start by reducing or offsetting emissions that come from the industrial and commercial activity.

There is also the need to negate potential business losses. According to the Carbon Disclosure Project, Indian stand to collectively lose over Rs 7.14 lakh crore if they do nothing to mitigate climate risks in the next five years. These risks come from physical phenomena like floods, emerging regulations, emission caps, changing customer behaviour and preferences, and even potential legal issues. But if done right, opportunities worth Rs 2.9 lakh crore could emerge.

Indian suppliers of multinational firms also risk losing \$274 billion worth of exports every year if they fail to curb carbon emissions, according to Standard Chartered.

ADVANCED TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

2. ALL the references to sections in Part-II of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2022-23 unless stated otherwise.
3. Wherever necessary, suitable assumptions can be made and the same be stated clearly in the answer.
4. Working notes should form part of the answer.

PART I

Question 1

- (a) Suresh Private Ltd., registered in Uttar Pradesh, is engaged in supplying of services, its turnover was Rs. 30 lakh in the financial year 2020-21. It has provided the following information of outward supply for the month of May, 2022

S. No.	Particulars	Amount (Rs.)
(i)	Fee for the coaching provided to students for competitive exams. The coaching centre is run by Suresh Private Ltd. in Uttar Pradesh	6,00,000
(ii)	Receipts for services provided in relation to conduct of examination in Saransh University, Delhi (Providing education recognized by Indian Laws)	20,000
(iii)	Amount received from Kamal Public School, a higher secondary school at Noida (Uttar Pradesh) for transportation of students from their residence and back.	50,000
(iv)	Amount received for providing the security and housekeeping services in VT Public School—a pre-school at Delhi	30,000

Note: Rate of CGST, SGST and IGST are 9%, 9% and 18% respectively. All the amount given above are exclusive of taxes.

Compute the total GST Liability of Suresh Private Ltd. for the month of May, 2022.

(5 marks)

- (b) Aditi Company Ltd. is engaged in the manufacturing of heavy machinery. It procured the following items during the month of April, 2022:

S. No.	Items	GST Paid (Rs.)
(i)	Electrical transformers to be used in the manufacturing process	5,00,000
(ii)	Trucks used for the transport of raw material	1,20,000
(iii)	Goods purchased from R traders (Invoice of R Traders is received in the month of April, 2022 and debited in the books of account in the April, 2022, but goods were received in the month of May, 2022)	1,50,000
(iv)	Confectionery items for consumption of employees working in the factory	20,000

Determine the amount of input tax Credit (ITC) available with Aditi Company Ltd., in the month of April, 2022 by giving necessary explanations for treatment of various items. Assume that:

- All the conditions necessary for availing the ITC have been fulfilled
- Aditi Company Ltd. is not eligible for any threshold exemption.

(5 marks)

- (c) Suncity Private Ltd., a manufacturer registered in the state of Rajasthan, sold synthetic cloth to a retail seller in Maharashtra, at a value of Rs. 49,000 (excluding IGST leviable @ 5%). Now, it wants to send the consignment of such cloth to the retail seller in Maharashtra.

You are required to advise Suncity Private Ltd. on the following issues with reference to the provisions relating to the electronic way bill (e-way bill) as prescribed under the GST law:

- Whether e-way bill is mandatorily required to be generated in respect of such movement of goods?
- If yes, who is required to generate the e-way bill?
- What will be the consequences for non-issuance of e-way bill?

(5 marks)

- (d) RP Manufacturers Ltd., registered in Mumbai (Maharashtra), is a manufacturer of footwear. It imports a footwear making machine from USA. RP Manufacturers Ltd. enters into a contract with Kartik Logistics, a licensed customs broker with its office at Ahmedabad (Gujarat), to meet all the legal formalities in getting the said machine cleared from the customs station.

Apart from this, RP Manufacturers Ltd. authorises Kartik Logistics to incur, on its behalf, the expenses in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of RP Manufacturers Ltd. expenses shall be reimbursed on the actual basis in addition to agency charges. Kartik Logistics provided following details in the invoice issued by it to RP Manufacturers Ltd.:

S. No.	Particulars	Amount (Rs.)
(i)	Agency charges	4,00,000
(ii)	Unloading of machine at Kandla port, Gujarat	45,000
(iii)	Charges for transportation of machine from Kandla port, Gujarat to Kartik Logistics' godown in Ahmedabad, Gujarat	25,000
(iv)	Charges for transportation of machine from Kartik Logistics' Ahmedabad godown to the warehouse of RP manufacturers Ltd. in Mumbai, Maharashtra	31,000
(v)	Dock dues paid	60,000
(vi)	Port charges paid	30,000
(vii)	Prepared and submitted Bill of Entry and paid customs duty	6,00,000
(viii)	Hotel expenses	47,000
(viii)	Travelling expenses	48,000

According to GST law, compute the value of supply made by Kartik Logistics with the help of given information.

Note: All amounts are exclusive of GST.

(5 marks)

Answer 1(a)

Computation of GST liability of Suresh Private Ltd. for the month of May, 2022:

Sr. No.	Particulars	Value	CGST @ 9%(Rs.)	CGST @ 9%(Rs.)	IGST @18% (Rs.)
(i)	Fee for the coaching provided to students for competitive exams. (Note -1)	6,00,000	54,000	54,000	-
(ii)	Receipts for services provided in relation to conduct of examination in Saransh University, Delhi (Note -2)	20,000	-	-	-
(iii)	Amount received for transportation of students from their residence to Kamal Public School, Noida (Note -3)	50,000	-	-	-
(iv)	Amount received for providing the security and housekeeping services in VT public School (Note -4)	30,000	-	-	-
	GST Liability		54,000	54,000	-

Note-1: Coaching centre run by Sukesh Private Ltd. is not an educational institution since competitive exam coaching does not lead to grant of a qualification recognised by law. Therefore, fee received for coaching provided at such coaching centre is taxable.

Note-2: Since Saransh University provides qualification recognised by India laws. It is an educational institution and services provided to an educational institution, in relation to conduct of examination by such institutions are exempt from GST.

Note-3: Since Kamal Public School provides education up to higher secondary school. It is Educational Institution and services of transportation of student provided to an educational institution are exempt from GST.

Note-4: Since VT Public School provides pre-school education. It is an Educational Institution. Security and house-keeping services provided within the premises of an educational institution are exempt from GST.

Answer 1(b)

Computation of ITC available with Aditi Company Ltd. for the month of April, 2022

Sr. No.	Particulars	Amount (Rs.)
i.	Electrical transformers [Being goods used in the course or furtherance of business, ITC thereon. is available in terms of section 16(1) of Central Goods and Services Tax Act (CGST Act), 2017].	5,00,000
ii.	Trucks used for the transport of raw material [Input Tax Credit (ITC) on motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) has been specifically disallowed under section 17(5) (a) of CGST Act 2017, ITC on motor vehicles used for transportation of goods is allowed.	1,20,000
iii.	Goods purchased from R Traders [Receipt of goods by the recipient is a basic condition for availment of ITC under section 16(2)(b) of the CGST Act, 2017. Since the goods have been received in the month of May 2022, ITC thereon can be availed in May 2022 and not in April, 2022 even though the invoice for the same has been received and debited in April, 2022]	Nil
iv.	Confectionery items for consumption of employees working in the factory [ITC on food or beverages is specifically disallowed (blocked) unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply Section 17(5)(b)(i) of CGST Act, 2017]	Nil
	Total ITC	6,20,000

Answer 1(c)

- (i) Rule 138(1) of the Central Goods and Services Tax (CGST) Rules, 2017 provides that e-way bill is mandatorily required to be generated if the goods are moved, inter alia, in relation to supply and the consignment value exceeds Rs. 50,000. Further, explanation 2 to Rule 138(1) of CGST Rules, 2017 stipulates that the consignment value of goods shall be the value, determined in accordance with the provisions of section 15 declared in an invoice, and also includes Central Goods and Services Tax (CGST), State Goods and Services Tax (SGST)/ Union Territory Goods and Services Tax (UTGST), Integrated Goods and Services Tax (IGST) and cess charged, if any, in the document.

Accordingly, in the given case, the consignment value will be as follows:

$$= 49,000 \times 105\% = 51,450$$

Since the movement of goods is in relation to supply of goods and the consignment value exceeds Rs. 50,000, e-way bill is mandatorily required to be issued in the given case.

- (ii) As per Rule 138(2) of CGST Rules, 2017, an e-way bill contain two parts namely, part A to be furnished by the registered person who is causing movement of goods of consignment value exceeding Rs. 50,000 and part B (Transport details) is to be furnished by the person who is transporting the goods.

Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or public conveyance, by road, the said person shall generate the e-way bill on the common portal after furnishing information in Part B.

In the present case, the movement is appears to be caused by Suncity Private Limited, e-way bill is liable to be prepared by it.

- (iii) As per section 122(1)(xiv) of Central Goods and Services Tax Act 2017, a taxable person who transports any taxable goods without the cover of specified documents (e-way bill is one of the specified documents) shall be liable to a penalty of Rs.10,000 or tax sought to be evaded (wherever applicable) whichever is greater.

Also all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and penalty provisions under section 129 of CGST Act.

Answer 1(d)**Value of Supply made by Kartik Logistics is as follows:**

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
(i)	Agency Charges	4,00,000
(ii)	Add : Unloading of Machine at Kandla Port, Gujarat	NIL
(iii)	Add : Charges for transport of Machine from Kandla Port, Gujarat to its godown in Ahmedabad, Gujarat	NIL
(iv)	Add : Charges for transport of Machine from Kartik	

	Logistics' Ahmedabad godown to the warehouse of RP Export Import House in Mumbai, Maharashtra	NIL
(v)	Add : Customs Duty	NIL
(vi)	Add : Dock Charges	NIL
(vii)	Add : Port Charges	NIL
(viii)	Add : Hotel Expenses	47,000
(ix)	Add : Travelling Expenses	48,000
	Value of supply	4,95,000

In the given case, Kartik Logistics has entered into a contractual agreement with recipient of supply, RP Manufacturers Ltd., to incur, on behalf of such recipient, the expenses mentioned in S. No. (ii) to (vii) incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient. Further, Kartik Logistics does not hold any title to said services and does not use them for his own interest.

Kartik Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Kartik Logistics is a **pure agent** of R P Manufacturers Ltd.

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

Question 2

(a) Determine the place of supply according to IGST Act, 2017 in the following independent cases:

- (i) Suresh (New Delhi) boards the New Delhi-Udaipur train at New Delhi. Suresh sells the goods taken on board by him (at New Delhi) in the train, at Chittorgarh (Rajasthan) during the journey
- (ii) Ajay Spinners Ltd. imports electric food processors from USA for its Kitchen Store in Bhilwara (Rajasthan). Ajay Spinners Ltd. is registered in Rajasthan.
- (iii) Amit, a manager in a bank is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Amit's family is stationed in Kanpur, Uttar Pradesh. He hires Hari Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal.
- (iv) Baldev, a resident of Jaipur, opens his saving account in Jaipur branch of a nationalized Bank after undergoing the KYC process. He goes to Amritsar (Punjab) for some official work and withdraws money from Bank's ATM in Amritsar thereby crossing his limit of free ATM withdrawals.
- (v) Chandrasekhar, an architect (New Delhi), enters into a contract with John of New York to provide professional services in respect of his immovable properties located in Pune and New York.

(5 Marks)

(b) Virat rents out a commercial building owned by him to Rohit for the month of October 2021, for which he charges a rent of Rs.20,00,000. Virat paid the maintenance charges of Rs. 1,00,000 (for October 2021) as charged by the

local society. The charges have been reimbursed to him by Rohit. Additionally, Rohit had given Rs. 2,50,000 to Virat as interest free refundable security deposit. Also, Virat has paid the municipal taxes of Rs. 2,85,000 which he has not charged from Rohit. You are required to determine the value of supply and the GST liability of Virat for October 2021 assuming CGST and SGST rates to be 9% each. Note: All the amounts given above are exclusive of GST.

(5 marks)

- (c) From the following information of independent cases, your expert advice, with appropriate reasoning is sought on the applicability of TDS/TCS provisions of the CGST Act, 2017. You shall also quantify the amount of TDS/TCS, as the case be, if the same is applicable. Note: Rate is CGST, SGST and IGST are 9%, 9% and 18% respectively. All the amounts given are exclusive of taxes.

(i) Avis Fashions, a designer cloth dealer registered in the state of Rajasthan, effected supply through 'FARE DEAL', an electronic commerce operator (ECO). Net value of taxable intra-State supplies effected for the month of October, 2021 was Rs. 2,00,000

(ii) Tarun, a registered supplier in Maharashtra, was awarded a work contract by Government of Maharashtra amounting Rs. 4,00,000. Of this, value of exempt supply was Rs. 1,00,000.

(5 marks)

- (d) "A Registered person opted for consumption scheme under section 10(1) of the CGST Act, 2017 can not provide Supply of any service either outward or inward service".

Discuss the validity of the above statement.

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Determine the time of supply under CGST Act, 2017 by giving reason in brief in the following independent cases assuming that GST is payable under reverse charge mechanism (RCM) :

S. No.	Date of payment by recipient for supply of service	Date of issue of invoice by supplier of service
i.	August 11, 2021	June 29, 2021
ii.	August 11, 2021	June 1, 2021
iii.	Part payment made on June 30, 2021 and balance amount paid on September 1, 2021	June 29, 2021
iv.	Payment is entered in the books of account of recipient on June 28, 2021 and debited in recipient bank account on June 30, 2021	June 1, 2021
v.	Payment is entered in the books of account of recipient on June 30, 2021 and debited in recipient bank account on June 26, 2021	June 29, 2021

(5 marks)

- (ii) *What are the matters on which advance ruling can be sought under GST law?*
(5 marks)
- (iii) *Anil, a retailer who keeps zero inventories, presents the following expected information for the year:*
- (a) *Purchase of goods: Rs. 50 lakh (GST @ 5% extra)*
- (b) *Sales (at fixed selling price inclusive of all taxes): Rs.60 lakh (GST rate on such goods is @ 5%).*
- Discuss whether he should opt for composition scheme under GST law if composition tax is 1% of turnover. Expenses for keeping detailed statutory records required under the GST Law will be Rs. 1,75,000 p.a., which shall get reduced to Rs. 75,000 if composition scheme is opted for. Other fixed expenses are Rs. 2,75,000 p.a.*
- (5 marks)
- (iv) *Raj, a registered supplier, runs a general store in Bhilwara, Rajasthan. Some of the goods sold by him are exempt whereas some are taxable. You are required to advise him on the following issues:*
- (a) *Whether Raj is required to issue a tax invoices in all cases, even if he is selling the goods to the end consumers?*
- (b) *Raj sells some exempted as well as taxable goods valuing Rs.6,000 to a school student. Is he mandatorily required to issue two separate GST documents?*
- (c) *Raj wishes to know whether it is necessary to show tax amount separately in the tax invoices issued to the customers?*
- (5 marks)

Answer (2)(a)

- (i) Section 10(1) (e) of the Integrated Goods and Services Tax (IGST) Act 2017, lays down that place of supply of goods supplied on board a conveyance like aircraft, train, vessel, or a motor vehicle, is the location where such goods have been taken on board.
- Thus, in the given case, the place of supply of the goods sold by Suresh is the location at which the goods are taken on board, i.e., New Delhi and not Chittorgarh, where they have been sold.
- (ii) As per section 11(a) of the Integrated Goods and Services Tax (IGST) Act 2017, if the goods have been imported in India, the place of supply of goods is the place where the importer is located. Thus, in the present case, the place of supply of the goods imported by Ajay Spinners Ltd. is Bhilwara (Rajasthan).
- (iii) As per section 12(8) of the Integrated Goods and Services Tax (IGST) Act 2017, the place of supply of services by way of transportation of goods, including by mail or courier provided to an unregistered person, is the location at which such goods are handed over for their transportation.
- Since in the given case, the recipient Amit an unregistered person, the place of supply is the location where goods are handed to Hari Carriers over for their transportation, i.e. Kanpur (Uttar Pradesh).

- (iv) As per section 12 (12) of the Integrated Goods and Services Tax (IGST) Act 2017, the place of supply of banking and other financial services, to any person is the location of the recipient of services in the records of the supplier of services. Thus, in the given case the place of supply is the location of the recipient of services in the records of the supplier bank, i.e. Jaipur (Rajasthan.)
- (v) As per section 13(4) read with section 13(6) of the Integrated Goods and Services Tax (IGST) Act 2017, where services supplied directly in relation to an immovable property are supplied at more than one location, including a location in the taxable territory, the place of supply is the location in the taxable territory.

Since in the given case, the immovable properties are located in more than one location including a location in the taxable territory, the place of supply of architect service is the location in the taxable territory, i.e. Pune (Maharashtra).

Answer (2)(b)

Computation of the Value of Supply and the GST Liability of Mr. Virat for the month of October, 2021

<i>Particulars</i>	<i>Amount (Rs.)</i>
Rent of the commercial building	20,00,000
Maintenance charges paid to the local society, reimbursed by Mr. Rohit	1,00,000
[Being reimbursed by the tenant- Mr. Rohit, such charges ultimately form part of the rent paid by Mr. Rohit to Mr. Virat and thus, will form part of the value section 15(2)(b) of CGST Act, 2017	
Interest free refundable security deposit [Being refundable, the security deposit does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value]	Nil
Municipal taxes paid by Mr. Virat [Being an expenditure incurred by the supplier, the same is not includible in the value since such taxes are not charged to the recipient.]	Nil
Value of Supply	21,00,000
CGST @9% = Rs.1,89,000 and SGST @ 9% = Rs. 1,89,000	

Answer (2)(c)

- (i) An Electronic Commerce Operator (ECO) is required to collect TCS - an amount @1% (CGST 0.5% and SGST @ 0.5%) of the net value of taxable supplies made through it by other suppliers.
 = Rs.2,00,000 x 0.5% = Rs. 1,000 (CGST) & Rs. 1,000 (SGST)
- (ii) A State Government is required to deduct tax from the payment made to the supplier of taxable goods and/or services, where the total value of such supply (excluding GST) under a contract, exceeds Rs. 2,50,000.

TDS to be deducted in the given intra-State supply (since place of supply and location of supplier is in Maharashtra) is as follows:

$$= (4,00,000 - 1,00,000) \times 1\%$$

$$= \text{Rs. } 3,000 \text{ (CGST) and Rs. } 3,000 \text{ (SGST)}$$

TDS Applicable on Amount Excluding Tax.

Answer (2)(d)

The statement is **not correct**.

Notwithstanding anything to the contrary contained in this act but subject to the provisions of sub- sections (3) and (4) of section 9 of CGST Act, 2017 a registered person, may opt for composition scheme for supply of goods and restaurant services.

Optees of composition scheme allowed to provide limited quantum of service –

A person who opts to pay tax under composition scheme may supply services (other than restaurant service) of value **not exceeding ten percent** of turnover in a State or Union territory in the preceding financial year **or five lakh rupees, whichever is higher**.

For the above purpose, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account.

There is **no restriction on inward supply of service**.

Answer 2A(i)

S. No.	Date of payment by recipient for supply of services	Date of issue of invoice by	Date immediately supplier of services following 60 days from invoice	Time of Supply of service (earlier of (1) and (3))
	(1)	(2)	(3)	(4)
i.	August 11, 2021	June 29, 2021	August 29, 2021	August 11, 2021
ii.	August 11, 2021	June 01, 2021	August 01, 2021	August 01, 2021
iii.	Part payment made on June 30 and balance amount paid on September 01	June 29, 2021	August 29, 2021	June 30, 2021 for part payment and August 29, 2021 for balance amount
iv.	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 01, 2021	August 01, 2021	June 28, 2021

v.	Payment is entered in the books of account on June 30 and debited in recipient's Bank account on June 26	June 29, 2021	August 29, 2021	June 26, 2021
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Answer 2A(ii)

As per section 97 of the CGST Act, the Advance Ruling can be obtained on the following matters:

- (i) Classification of any goods or services or both.
- (ii) Applicability of a notification issued under provisions of the Act.
- (iii) Determination of time and value of the supply of goods or services or both.
- (iv) Admissibility of input tax credit of tax paid or deemed to have been paid
- (v) Determination of the liability to pay tax on any goods or services or both.
- (vi) Whether applicant is required to be registered.
- (vii) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both within the meaning of that term.

Answer 2A(iii)

The Cost to the ultimate consumer under two schemes is as under:

<i>Particulars</i>	<i>Normal GST Scheme</i>	<i>Composition Scheme</i>
Cost of goods sold (No credit under composition scheme, hence, cost of goods sold will be higher)	50,00,000	52,50,000 (50,00,000+5%)
Add : Costs of maintaining records	1,75,000	75,000
Add : Other Fixed Expenses	2,75,000	2,75,000
Total Costs (A)	54,50,000	56,00,000
Sales (inclusive of all taxes)	60,00,000	60,00,000
Less : Tax (Normal GST Scheme Rs. 60 lakh x 5/105); (Composite Scheme = Rs. 60 lakh x 1%)	2,85,714	60,000
Sales (net of taxes) (B)	57,14,286	59,40,000
Profit of the dealer (Sales, net of taxes - Total Costs) (A-B)	2,64,286	3,40,000

Conclusion : Profit of the dealer is higher if the dealer opts for composition scheme. Hence, **Composition Scheme should be opted.**

Answer 2A(iv)

(a) As per section 31(3)(b) of the Central Goods and Services Tax (CGST) Act 2017, read with Rule 46 of the Central Goods and Services Tax (CGST) Rules 2017, a registered person other than the supplier engaged in making supply of services by way of admission to exhibition of cinematograph films in multiplex screens may not issue a tax invoice if:

- (i) value of the goods supplied < Rs. 200,
- (ii) the recipient is unregistered; and
- (iii) the recipient does not require such invoice.

Instead such registered person shall issue a Consolidated Tax Invoice for such supplies at the close of each day in respect of all such supplies.

So, Raj is not required to issue tax invoice in all cases.

(b) As per Rule 46A of the Central Goods and Services Tax (CGST) Rules 2017, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single “invoice- cum-bill of supply” may be issued for all such supplies. Thus, there is no need to issue a tax invoice and a bill of supply separately to the school student in respect of supply of the goods and exempted goods respectively.

(c) As per section 33 of the Central Goods and Services Tax (CGST) Act 2017, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made. Hence, Raj has to show the tax amount separately in the tax invoices issued to customers.

Question 3

(a) From the following details of April, 2022, calculate the amount to be paid, for release of goods detained or seized u/s 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable tax and penalty. Details are as follows :

Particulars	Amount (₹)
Value of goods	30,00,000
Applicable GST on such goods	3,60,000

Would your answer be different if goods were exempted from GST and value remains the same Rs. 30,00,000 ?

(4 marks)

(b) Explain circumstances when the Proper Officer can cancel registration under GST laws on his own. (4 marks)

(c) Ghumte Raho Ltd, a tour operator, availed input tax credit (ITC) in respect of certain transactions where no such supplier was existent or from a person not doing any business from the registered place of business. Jurisdictional Deputy Commissioner of GST wants to restrict the utilization of the credit by Ghumte

Raho Ltd. You have been approached by Ghumte Raho Ltd. to give your advice on the following questions raised by it:

- (i) *Is it possible for the Department to restrict the utilization of credit which is already availed?*
- (ii) *If yes, under what circumstances this can be done by the Department?*
(4 marks)
- (d) *Discuss the provisions relating to issue of an invoice/document in the following circumstances under GST law:*
- (i) *Advance payment is received against a supply, but subsequently no supplies are made.*
- (ii) *Goods are sent on approval for sale or return basis and are removed before the supply takes place.*
- (iii) *Miss Dhanvi provides continuous supply of services to her client, where the due date of payment for such services are not ascertainable. No advance has been received in this behalf.*
(4 marks)
- (e) *J & Co. self-assessed its tax liability as Rs. 80,000 for the month of April, 2022 but failed to make the payment. Subsequently the Department initiated penal proceedings against J & Co. for recovery of penalty under section 73 of the CGST Act, 2017 for failure to pay GST and issued show cause notice on 9th August, 2022 which was received by J & Co. on 13th August, 2022 J & Co. deposited the tax along with interest on 25th August, 2022 and informed the department on the same day. Department is contending that company is liable to pay a penalty of Rs. 40,000 (i.e. 50% of Rs. 80,000). Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act, 2017. Explain the relevant provisions in brief.*
(4 marks)

Answer 3(a)

If owner of the goods does not come forward for payment of applicable tax and penalty, the amount to be paid for release of goods detained or seized under section 129 of the Central Goods and Services Tax (CGST) Act 2017, is payment of penalty equal to 50% of value of goods or 200% of tax, whichever is higher.

Therefore, amount payable higher of:

50% of Rs. 30,00,000 = Rs. 15,00,000

Or

200 % of Rs. 3,60,000 = Rs. 7,20,000

So Rs. 15,00,000 to be paid.

However, in case of exempted goods, amount to be paid for release of goods detained is equal to 5% of the value of goods or Rs. 25,000, whichever is less.

= 5% of Rs. 30,00,000 or Rs. 25,000, whichever is less

= Rs. 1,50,000 or Rs. 25,000

= Rs. 25,000 to be paid

In all the above situations, the goods shall also be released on furnishing of security equal to the amount of penalty determined under each such situation.

Answer 3(b)

The proper officer may cancel the registration of a person in following cases:

(I) If the person is in default under section 29 of the CGST Act, 2017:

- (i) The business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of or
- (ii) There is any change in the constitution of the business or
- (iii) The taxable person is no longer liable to be registered prescribed under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25 or
- (iv) A person paying tax under section 10 has not furnished returns for three consecutive tax periods or
- (v) Any registered person, other composition supplier has not furnished returns for a continuous period of six months or
- (vi) Any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration or
- (vii) Registration has been obtained by means of fraud, willful misstatement or suppression of facts.

(II) If the person is in default under Rule 21 of CGST Rules, 2017:

- (i) Does not conduct any business from the declared place of business; or
- (ii) Issues invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder; or
- (iii) Violates the provisions of section 171 of the Act or the rules made thereunder; or
- (iv) Violates the provision of Rule 10A; or
- (v) Avails input tax credit in violation of the provisions of section 16 of the CGST Act, 2017 or the rules made there under; or
- (vi) Furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or
- (vii) Violates the provision of Rule 86B.

Answer 3(c)

- (i) As per Rule 86(A) of CGST Rules, 2017, yes, it is possible for the Department to restrict the utilization of credit which is already availed if there are reasons to believe that such Input Tax Credit (ITC) has been fraudulently availed or is ineligible.
- (ii) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as
 - a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under Rule 36 :
 - i. issued by a registered person who has been found non-existent or not to be conducting any business From any place for which registration has been obtained; or
 - ii. without receipt of goods or services or both; or
 - b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
 - c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under Rule 36.

In the present case, since the Input Tax Credit (ITC) has been availed in respect of transaction for which no supplier exists or from a person not doing business from its registered place of business, the credit can very well be restricted by the Commissioner or other officer not below the Assistant Commissioner.

Such order of restriction however can be withdrawn by the officer when the circumstance leading to the order of restriction does not exist. In any case, such order shall lapse after the expiry of twelve months from the date of imposing such restrictions.

Answer 3 (d)

- (i) As per section 31(3)(e) of the Central Goods and Services Tax (CGST) Act 2017, where advance payment is received against a supply for which receipt voucher has been issued, but subsequently no supplies are made and no tax invoice is issued in pursuance thereof, a refund voucher may be issued to the person who had made the advance payment.
- (ii) As per section 31(7) of the Central Goods and Services Tax (CGST) Act 2017, where the goods are sent on approval for sale or return and are removed before the supply takes place, the invoice shall be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier?

- (iii) As per section 31(5)(b) of the Central Goods and Services Tax (CGST) Act 2017, in case of continuous supply of services, where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment.

Answer 3(e)

Due date for payment of tax for the month of April is 20th May.

As per section 73(11) of the Central Goods and Services Tax (CGST) Act 2017, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or Rs.10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of Show Cause Notice (SCN) to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, J & Co. has not paid the self-assessed tax within 30 days of due date (i.e. 20th May).

Penalty equivalent to:

- (i) 10% of tax, viz., Rs.8,000 (10% of Rs. 80,000) or
(ii) Rs. 10,000,

Whichever is higher, is payable by him. Thus, penalty payable is Rs. 10,000.

Hence, the stand taken by the Department that penalty will be levied on J & Co. is correct, but the amount of penalty of Rs. 40,000 as sought to be imposed on J & Co., is not correct.

Question 4

- (a) Mrs. Nandini, an Indian resident who was on a visit to London, returned after 45 days. She was carrying with her the following items :

S. No.	Particulars	Amount (Rs.)
(i)	Personal effects	80,000
(ii)	Laptop computer	75,000
(iii)	Jewellery-30 grams (Purchased in London)	1,30,000
(iv)	Music System	60,000

Compute the customs duty payable by Mrs. Nandini with reference to the Baggage Rules, 2016

- (b) What will be the dates of commencement of the definitive anti-dumping duty in the following cases under Section 9A of the Customs Tariff Act, 1975 and the rules made thereunder :
- (i) Where anti-dumping duty is imposed retrospectively from a date prior to the date of imposition of provisional duty.
(ii) Where no provisional duty is imposed
(iii) Where provisional duty is imposed.

(5 marks each)

Answer 4(a)**Computation of customs duty payable by Mrs. Nandini**

<i>Particulars</i>	<i>Amount (₹)</i>
Personal Effects [Duty free clearance is allowed]	Nil
Laptop Computer [One laptop computer is exempt when imported into India by a passenger equal to or more than 18 years of age]	Nil
Jewellery [Duty free jewellery allowance is not available to Mrs. Nandini since she did not reside abroad for more than 1 year]	1,30,000
Music System	60,000
Total Value	1,90,000
<i>Less</i> : General duty free baggage allowance	50,000
Value of baggage liable to customs duty	1,40,000
Customs Duty @ 38.50% (including social welfare surcharge)	53,900

Answer 4(b)

The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.

- (i) In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.
- (ii) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.
- (iii) In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.

PART II**Question 5**

- (a) *With reference to Income Tax Act, 1961, compare the benefits available, where the asset is acquired on lease and assets purchase from own fund.*
- (b) *The net result of the business carried on by a branch of foreign company in India for the year ended 31st March, 2022 was at a loss of Rs. 150 lakh after*

charging off head office expenses of Rs. 220 lakh allocated to the branch. Explain with reasons the income to be declared by the branch in its Income tax return for the assessment year 2022-23.

- (c) On 31st December, 2021, Miss Saroj paid a sum of 6,000 USD to Samarveera, a management consultant practicing in Tokyo (Japan), specializing in project financing. The payment was made in Japan. Samarveera is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to Income Tax in India in the hands of Samarveera for the assessment year 2022-23 ?
- (d) With reference to Income Tax Act, 1961, briefly discuss the difference between General Anti Avoidance Rules 'GAAR' and Specific Anti Avoidance Rules 'SAAR'.
- (e) "Liaison office maintained in India to explore the opportunity of business in India does not constitute business connection". In the context of provisions contained in the Income Tax Act, 1961, examine the correctness of the above statement if above activity is approved by the Reserve Bank of India.

(3 marks each)

Answer 5(a)

Points	Assets acquired on Lease	Assets acquired from own fund (Purchase)
Depreciation	Not Allowed	Allowed u/s 32 of the Income Tax Act, 1961.
Revenue expenditure to the extent allowed	<ol style="list-style-type: none"> Lease Rent allowed u/s 37(1) of the Income Tax Act, 1961. Repairs allowed u/s 31 of the Income Tax Act, 1961. 	<ol style="list-style-type: none"> Insurance premium and current repairs allowed u/s 31 of the Income Tax Act, 1961. Interest on borrowed funds allowed u/s 36 of the Income Tax Act, 1961.
Status of the Assets	Leased assets cannot be mortgaged.	Owned tangible assets can be mortgaged.

Answer 5(b)

Section 44C of the Income tax Act, 1961 restricts the allowability of the head office expenses to the extent of lower of an amount equal to 5% of the adjusted total income or the amount actually incurred as is attributable to the business of the assessee in India.

For the purpose of computing the adjusted total income, the head office expenses of Rs. 220 Lakhs charged to the profit and loss account have to be added back.

The amount of Income to be declared by the assessee for A.Y. 2022-23 will be as under:

<i>Particulars</i>	<i>Amount</i>
Net loss for the year ended on 31.03.2022	(150 lakhs)
<i>Add:</i> Amount of head office expenses to be considered separately as per section 44C of the Income tax Act, 1961	220 lakhs
Adjusted Total Income	70 lakhs
<i>Less :</i> Head office expenses allowable u/s 44C is the lower of following:	(3.5 lakhs)
(i) Rs. 3.5 lakhs being 5% of Rs. 70 lakhs or	
(ii) Rs. 220 lakhs	
Income to be declared in the Income tax Return for AY 2022-23	66.50 lakhs

Answer 5(c)

A non-resident is chargeable to tax in India with respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

Income deemed to accrue or arise in India under section 9 of the Income tax Act, 1961, comprises, inter alia, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, payment to a management consultant relating to project financing is covered within the scope of "fees for technical services".

The Explanation below section 9(2) of the Income tax Act, 1961 clarifies that income by way of, inter alia, fees for technical services, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.

In the instant case, since the services were utilized in India, the payment received by Samarveera, a non-resident, in Japan is chargeable to tax in his hands in India as it is deemed to accrue or arise in India.

Answer 5(d)**Specific Anti Avoidance Rules 'SAAR'**

- SAAR is specific and help to reduce time and costs involved in tax litigation.
- SAAR provide certainty to any taxpayer while formalizing specific arrangements. These don't provide any discretion to the tax authorities.
- There is always a possibility that the taxpayers find loopholes and circumvent these limited application, specific provisions.

General Anti Avoidance Rules 'GAAR'

- These involve necessarily granting the discretion to the tax authorities to invalidate the arrangements as impermissible tax avoidance.

- They have a far broader application and hence interpreted in a more extensive manner.
- GAAR has the potential to counter more effectively and outsmart the taxpayers in their “out of the box thinking” and their approach in devising new means of tax avoidance.

Answer 5(e)

The statement is correct.

If a liaison office is maintained solely for the purpose of carrying out activities which are preparatory or auxiliary in character and such activities are approved by the Reserve Bank of India, then no business connection is established.

In this case, the liaison office is maintained for the purpose of exploring the business opportunity which is in the nature of preparatory or auxiliary activity and such activities are approved by the Reserve Bank of India.

Since it does not undertake any commercial, trading or industrial activity, directly or indirectly, the liaison office does not constitute a business connection in this case.

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

Question 6

- (a) SKK Pvt. Ltd. has prepared its Statement of Profit and Loss as per Schedule III to the Companies Act, 2013. The net profit for the year ended 31st March, 2022 as per Statement of Profit and Loss was ₹ 220 lakh. Following are the details furnished :

S. No.	Particulars	Amount (₹ in lakh)
(i)	Provisions of income tax debited	50
(ii)	Proposed dividend debited	40
	Other expenses debited includes :	
(i)	Provision for doubtful debts	10
(ii)	Provision for warranty (Uncertain liability)	30
(iii)	Penalty for infraction of law	11
(iv)	Depreciation (It includes depreciation on revalued assets ₹100 lakh)	600
(v)	Bank interest on term loan	80
	(Note : Actually paid during the previous year and upto filing of ITR u/s 139(1) was ₹65 lakh)	
(vi)	Expenses incurred on violation of section 40A(3A)	18
(vii)	Expenses incurred but TDS not deducted up to the date of filing of ITR u/s 139(1)	10

You are required to compute book profit under section 115JB of the Income Tax Act, 1961 for the assessment year 2022-23. (5 marks)

- (b) With reference to the Income Tax Act, 1961, discuss whether the following acts can be considered as tax evasion, tax avoidance, tax planning, tax management or otherwise for the assessment year 2022-23 :
- (i) J Ltd. issued a credit note for ₹85,000 for brokerage payable to Amar who is son of Q, managing director of the company. The purpose is to increase total income of Amar from ₹1,60,000 to ₹2,45,000 and reduce Company's income correspondingly.
 - (ii) Sunil is using a Car for his personal purposes, but charged car related expenses as business expenditure.
 - (iii) ABC industries Ltd. installed an air-conditioner costing ₹65,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.
 - (iv) A bank obtaining declaration from depositors in Form No. 15G/15H and forwarding the same to income-tax authorities.
 - (v) Mahesh deposited 50,000 in PPF account with the Post Office to avail tax deduction under section 80C. (Assume he has not opted for section 115BAC of the Income Tax Act, 1961).
- (5 marks)
- (c) The Assessing Officer have to consider some factors while selecting the appropriate transfer pricing method. Discuss those factors in brief. (5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

- (i) Sanjay, a resident of India received gifts during the financial year 2021-22 as follows :
- (a) ₹40,000 from his elder brother residing in Jaipur,
 - (b) ₹1,99,000 from his friend residing in USA
 - (c) ₹49,000 from his friend residing in New Delhi (received on the occasion of birthday of Sanjay)
 - (d) Shares received from his father, the fair market value (i.e. value as per stock exchange) of the shares on the date of gift was ₹3,00,000
 - (e) ₹60,000 from his friend residing in Mumbai (received on the occasion of marriage of Sanjay).

You need to advice Sanjay with regard to tax treatment of each of the above item and calculate the total taxable value of the gifts in the hands of Sanjay for the assessment year 2022-23.

(5 marks)

- (ii) K Ltd., a public company incorporated under the Companies Act, 2013 has two units—one engaged in manufacture and the other involved in service. As the company is planning for restructuring of the company, it has decided to sell its Manufacturing unit as a going concern by way of slump sale for ₹50,000 to a new company called M Ltd., in which it holds 73% equity shares.

The balance sheet of K limited as on 31st March, 2022, being the date on which Manufacturing unit has been transferred, is given hereunder :

Balance Sheet as on 31-03-2022

Liabilities	Amount (₹)	Assets	Amount (₹)
Paid up Share Capital	40,000	<u>Fixed Assets :-</u>	
General Reserve	13,000	Service unit	18,000
Share Premium	8,000	Manufacturing unit	25,000
Revaluation Reserve	13,400	<u>Debtors :-</u>	
<u>Current Liabilities :-</u>		Service unit	15,000
Service unit	8,000	Manufacturing unit	16,000
Manufacturing unit	6,000	<u>Inventories :-</u>	
		Service unit	10,500
		Manufacturing unit	3,900
Total	88,400	Total	88,400

Company has furnished following additional information :

- The Manufacturing unit is in existence since June, 2016.
- Fixed Assets of Manufacturing unit includes land which was purchased at ₹6,000 in the month of July 2016 and revalued at ₹8,000 as on March 31, 2022
- Fixed assets of Manufacturing unit is at ₹17,000 (₹25,000 minus land value 8,000) is written down value of depreciable assets as per books of account. However, the written down value of these assets under section 43(6) of the Income Tax Act, 1961 is ₹11,000.

For the assessment year 2022-23, Ascertain the tax liability, which would arise to K Limited from slump sale.

Cost inflation index for the financial year 2016-17 was 264 and for 2021-22 it was 317.

(5 marks)

- State with brief reasons, which method of determination of Arm's Length Price (ALP) will be most appropriate in the following cases :
 - AY Ltd., Bengaluru provided identical call centre services to both related and unrelated parties.

(b) *B Co. Ltd., Mumbai is engaged in manufacture of garments. It manufactured and supplied as per the variation and customization in finishing of products to its associated enterprises Xylo Inc. UK as compared to the goods regularly sold to third parties.*

(c) *JEF Co. Ltd., is engaged in manufacture of medicines. It manufactured semifinished drugs in bulk and sold to related parties located in India and outside India. It adds gross profit mark up on direct and indirect costs of production.*

(5 marks)

Answer 6(a)

Computation of Book Profit u/s 115JB of SKK Ltd. for AY 2022-23

<i>Particulars</i>	<i>Amount (in Lakh)</i>
Net Profit as per statement of P&L account	220
<i>Add :</i>	
(i) Provision for Income tax debited	50
(ii) Proposed Dividend debited	40
(iii) Provision for Doubtful Debts	10
(iv) Provision for Warranty (unascertained liability)	30
(v) Penalty for infraction of law – no adjustment is required	Nil
(vi) Depreciation debited (it includes depreciation on revalued assets Rs. 100 lakhs)	600
(vii) Bank interest on term loan debited – fully allowed	Nil
(viii) Expenses incurred in violation of section 40A(3A) – no adjustment is required	Nil
(ix) Expenses incurred but TDS not deducted upto the date of filing the ITR u/s 139(1) – no adjustment is required.	Nil
<i>Less : Depreciation other than depreciation on revalued assets</i>	(500)
Book Profits	450

Answer 6(b)

- (i) Net effect of transaction is reduction of tax liability of the company by improper means. The company is liable to tax at the flat rate of 30% whereas individual i.e. Mr. Amar would not be liable to pay tax since income does not exceed the basic exemption limit of Rs. 2,50,000. Therefore, the issue of credit note to reduce the liability of company amounts to Tax Evasion.
- (ii) Treating a personal expenditure as business expenditure is an unlawful Act, which is disallowed under the Income tax Act, 1961. Mr. Sunil is resorting to

unfair means to claim deduction by falsification of records. Therefore, it is Tax Evasion and illegal.

- (iii) It is a case of tax evasion as the air-conditioner fitted at residential place would be considered as furniture and would be depreciable at 10% whereas the rate of depreciation applicable for plant and machinery fitted at Quality control section in the factory is 15%. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduces profit unlawfully. Therefore, it is Tax Evasion.
- (iv) Obtaining declaration from depositors by a bank in Form 15G/15H and forwarding the same to the Income Tax Authorities is an act of Tax Management.
- (v) Claiming of deduction from Gross Total Income u/s 80C of the Income tax Act, 1961 by depositing Rs. 50,000 in PPF with the Post Office falls under the purview of Tax Planning.

Answer 6(c)

As per Rule 10C of the Income Tax Rules, 1962, the factors to be considered by the Assessing Officer while selecting an appropriate transfer pricing method are as under:

1. The nature and class of the International or Specified Domestic Transaction.
2. The class or classes of Associated Enterprises entering into the transactions and the functions performed by them taking into account assets employed or to be employed and risk assumed by each enterprise.
3. The availability, coverage and reliability of data necessary for application of the method.
4. The degree of comparability existing between the international transaction or Specified Domestic Transaction and the uncontrolled transaction, and between the enterprises entering into such transaction
5. The extent to which reliable and accurate adjustments can be made to account for differences, if any, between the International or Specified Domestic Transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions.
6. The nature, extent and reliability of assumptions required to be made in the application of the method.

Answer 6A(i)

The tax treatment of Gifts in the hands of Mr. Sanjay will be as follows:

- a) Rs. 40,000 received from elder brother will not be charged to tax because elder brother is covered in the definition of 'relative'. Gift received from relatives is exempt and not chargeable to tax under the Income tax Act, 1961.
- b) Rs. 1,99,000 received from his friend will be chargeable to tax and to be included in the income of Mr. Sanjay because friend is not covered in the definition of 'relative'.

- c) Birthday is not covered in the list of prescribed occasion on which Gift is not chargeable to Tax. Hence Rs. 49,000 received on the occasion of birthday will be included in income of Mr. Sanjay.
- d) Shares received by Mr. Sanjay from his father (FMV of Shares Rs. 300000) will not be included in income of Mr. Sanjay, since father comes under the definition of 'relative'. Gift received from relatives is exempt and not chargeable to tax under the Income tax Act, 1961.
- e) Marriage is covered in the list of prescribed occasion on which gift is not chargeable to tax. Hence Rs. 60,000 received by Mr. Sanjay on the occasion of his marriage will not be chargeable to tax.

Total taxable Income Rs. 1,99,000 + Rs. 49,000 = Rs. 2,48,000. Since, Total taxable income from Gifts exceed Rs. 50000, Hence, entire Rs. 2,48,000 is taxable.

Answer 6A(ii)

Computation of Net Worth of Manufacturing Unit

<i>Particulars</i>	<i>Amount</i>
Depreciable assets (WDV as per Income Tax Act)	11000
Land	6000
Debtors	16000
Inventory	3900
Total Assets	36900
<i>Less : Current Liability</i>	(6000)
Net Worth	30900

Computation of Capital Gains on transfer of manufacturing unit

Full Value of Consideration	=	Rs. 50,000
<i>Less : Net worth of service unit</i>	=	Rs. (30,900)
Long Term Capital Gains	=	Rs. 19,100

Notes:

- Capital Gains = "Slump sale consideration" minus "Net worth of the Undertaking or division" and "Net worth" = Aggregate value of total assets of the undertaking or division transferred minus Value of Liabilities of the undertaking or division transferred as appearing in its books of account.
- For computing the "net worth", non-depreciable assets are to be taken at their book values.
- For computing the "net worth", in case of depreciable assets, the written down value of such assets shall be computed as per section 43(6)(c)(i)(C).

- Capital Gains are long term since period of holding of unit shall be from June 2016 to March 2022.
- As per section 50B of the Income tax Act, 1961, Cost inflation indexation benefit not available for computing capital gains in case of slump sale.

Answer 6(A)(iii)

- (a) AY Ltd., Bengaluru provided identical call centre services to both related and unrelated parties. In respect of provision of services, the most appropriate method can be the Comparable Uncontrolled Price (CUP) method. Further, Cost Plus Method (CPM) and Transactional Net Margin method (TNMM) can also be considered, since in all these three methods there are similar transactions with related parties and unrelated parties; and adjustments are made for functional differences.
- (b) B Co. Ltd, Mumbai has manufactured and supplied garments as per the variations and customization in finishing of products in accordance with its Associated Enterprise i.e. Xylo Inc. However, such customization is not carried by it on the goods sold to other unrelated parties. In cases of contract manufacturing transactions with AEs, the most appropriate method is the Transactional Net Margin Method (TNMM) or Cost plus method.
- (c) JEF Co. Ltd. manufactures semi-finished drugs in bulk and sells them to related parties. In case of sale of semi-finished goods to related parties, the most appropriate method is the Cost Plus Method (CPM), in which adjustment of gross profit mark-up is to be made on the direct and indirect costs of production.

DRAFTING, PLEADINGS AND APPEARANCES

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

- (a) Draft a Specimen Resolution passed by postal ballot.
- (b) Write a note on Debt Recovery Tribunal.
- (c) Explain Regulatory and Appellate Authority under Real Estate (Regulation and Development) Act, 2016.
- (d) Explain the ingredients of an agency contract. (5 marks each)

Answer 1(a)

Specimen Resolution Passed by Postal Ballot

Name of the Company.....
CIN
Registered Address
Telephone.....
Email
Website

RESOLUTIONS PASSED BY POSTAL BALLOT ON

The Company had, on dispatched to all the Shareholders, Notice dated..... under Section 110 of the Companies Act, 2013 and rules made thereunder from time to time for obtaining the consent of the Shareholders to the following Ordinary Resolution by means of postal ballot:

“**RESOLVED** that the consent of the Company be and is hereby accorded pursuant to Section 110(1)(a)/110(1)(b) and other applicable provisions of the Companies Act, 2013, to the Board of Directors of the Company (the Board) to sell, lease or otherwise dispose of at such consideration and with effect from such date as the Board may think fit the whole or substantially the whole of the undertaking of the Company at engage in the business of manufacture of.....

RESOLVED FURTHER that the Board be and is hereby authorised to do or cause to be done all such acts, deeds and other things as may be required or considered necessary or incidental thereto for giving effect the aforesaid Resolution”.

The dispatch of Notice and accompanying documents were completed..... (on date) to all Members appearing in the record of the Company as on (cut-off date).

Mr was appointed as Scrutiniser on..... (date) to and (name of Agency) was appointed as an Agency on..... (date) for Providing and Supervising Electronic Platform for e-voting.

It was mentioned in the said Notice dated..... that the postal ballot forms sent therewith should be returned by the Shareholders duly completed so as to reach the Scrutiniser on or before..... The Notice also indicated the date of commencement of e-voting as(day) (Date)..... and the last date e-voting as(day) (Date) along with the process and manner of voting by electronic means. The Scrutiniser was required to submit his report to the Chairman after completion of the Scrutiny.

Mr.....(Scrutiniser) carried out the scrutiny of all the postal ballot forms and electronic votes received up to the close of working hours on..... He submitted his Report dated.....on.....(date) and the Chairman accepted the said Report.

The following is the result of the postal ballot as per the Scrutiniser's Report:

Number of valid ballot forms received	
Number of valid votes by electronic mean	
Votes in favour of the Resolution including votes cast by electronic means	
Votes against the Resolution including votes cast by electronic means	
Number of invalid postal ballot forms received	
Number of invalid votes cast by electronic means	

In view of the foregoing the Ordinary Resolution set out in the Notice dated..... has been therefore duly approved/not approved by the requisite majority of the Shareholders.

Place

Date

Chairman

Answer 1(b)

The Debt Recovery Tribunals (DRT) have been constituted under section 3 of the Recovery of Debts due to Banks and Financial Institutions (RDDBFI) Act, 1993.

The DRT was established for expeditious adjudication and recovery of debts due to banks and financial institutions in order to reduce the non- performing assets of the Banks and Financial Institutions.

Prior to the introduction of DRT, petitions had to be filed separately for adjudication of cases and execution proceedings in different courts depending upon their jurisdiction.

DRT acts as a single judicial forum for adjudication of cases as well as execution of the decrees passed for recovery of debts due to banks and financial institutions under RDDBFI Act and Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act).

Answer 1 (c)

Real Estate Regulatory Authority (Regulatory Authority)

According to section 20 of Real Estate (Regulation and Development) Act, 2016 (the Act), the appropriate Government shall establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under the Act.

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

Apart from the day to day implementation of the Act and the Rules and Regulations made thereunder the immediate responsibility of Regulatory Authority are:

1. Registration and regulation of the real estate project and real estate agent;
2. Extension of registration of the real estate project and its revocation;
3. Renewal of registration of the real estate agent and its revocation;
4. Fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent.
4. As per section 34, the Regulatory Authority is responsible to maintain a website of records for public viewing of -
 - All project registered with the Authority including details of projects as specified in the Act and the rules and regulations;
 - details of promoters who are defaulters with photographs of promoters;
 - details of projects in case of revocation of registration or where any project penalized under the Act;
 - details of agents registered under the Act including his photograph and also of those agents whose registration has been rejected or revoked.
5. As per section 71 of the Act, Regulatory Authority is required to appoint one or more 'adjudicating officer' in consultation with appropriate Government.
6. As per section 32 of the Act, the Regulatory Authority is also required to make recommendations on various matters for the growth and promotion of a healthy, transparent, efficient and competitive real estate sector.

Real Estate Appellate Tribunal (Appellate Authority)

According to section 43 of the Act, the appropriate Government shall establish an Appellate Tribunal to be known as the Real Estate Appellate Tribunal.

The appellate authority is a quasi-judicial body, which is empowered to hear appeals from the orders/decisions/ directions of the Regulatory Authority or the Adjudicating Officer, as the case may be. The form and manner and the fees payable towards filing the appeal and the manner for hearing and disposing the appeal are to be provided by Rules to be made by the appropriate Government.

Answer 1 (d)

Ingredients of an agency contract

The Contract of Agency is governed by chapter X (sections 182 to 238) of the Indian Contract Act, 1872.

The basic ingredients of agency contracts are as follows:

1. Authority should be given either expressly or impliedly to bind his principal.
2. While the principal should not be a minor, an agent could be a minor.
3. Consideration is not necessary.
4. For the acts of the agent, the principal is liable unless the principal has exceeded his authority.
5. The authority of an agent extends to the doing of all that is necessary and collateral to the doing of the main act.
6. The obligations under the Contract of Agency are not assignable unless:
 - I) The nature of the business necessitates such assignment.
 - II) Customs or usage of trade in the locality with regard to the business permit such assignment.
 - III) Such assignment is expressly permitted by the Contract of Agency.

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

Question 2

- (a) *'Every company is required to observe Secretarial Standard-1 (SS-1)'. Comment and illustrate the class of companies which are exempted to observe SS-1.*
- (b) *Explain Click-Wrap agreement.*
- (c) *Elucidate the fidelity guarantee.*
- (d) *Write a note on National Company Law Tribunal.*

(4 marks each)

OR (Alternative question to Q. No. 2)

Question 2A

- (i) *Write a note on the Fowler's five rules of drafting.*
- (ii) *Discuss the capacity to make a Will.*
- (iii) *Describe the Quorum as per section 103 of the Companies Act, 2013.*
- (iv) *Write a note on nomination of successor.*

(4 marks each)

Answer 2(a)

In terms of Section 118(10) of the Companies Act 2013(the Act), every company shall observe Secretarial Standards with respect to Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government. Secretarial Standard – I (SS-I) has been issued by the Institute of Company Secretaries of India for Board Meetings. The revised SS-I is effective from 1st October, 2017.

The following class of companies are exempted to observe SS-1:

1. In case of Section 8 company - the section shall not apply as a whole except that minutes may be recorded within thirty days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation - Notification dated 5th June, 2015.
2. Section 118(10) of the Companies Act, 2013 does not apply in case of Specified IFSC Public and Private Company by virtue of Notification(s) Dated 4th January, 2017.
3. Secretarial Standard 1 is not applicable in case of One Person Company (OPC) in which there is only one Director on its Board.

Applicability of SS-1 to Meetings of the Committees

SS-1 is also applicable to the Meetings of Committee(s) of the Board constituted in compliance with the requirements of the Companies Act, 2013. The Act provides for the constitution of mandatory committees of the Board based on the certain thresholds, which includes:

- Audit Committee
- Nomination and Remuneration Committee
- Corporate Social Responsibility (CSR) Committee
- Stakeholders Relationship Committee

In case any other committee of the Board is constituted voluntarily or pursuant to any other statute or regulations etc. the company may comply with SS-1 with respect to meetings of such committee(s) as a good governance practice.

Answer 2(b)**Click Wrap Agreement**

Click Wrap Agreements are the agreements which generally are come across while surfing internet such as “I AGREE” to the terms or “I DISAGREE” to the above conditions. A click-wrap agreement is mostly found as part of the installation process of software packages. It is also called a “click through” agreement or click-wrap license.

Types of Clip wrap agreements are given below:

- a) Type and Click where the user must type “I accept” or other specified words in an on screen box and then click a “Submit” or similar button. This displays

acceptance of the terms of the contract. A user cannot proceed to download or view the target information without following these steps.

- b) Icon clicking where the user must click on an “OK” or “I agree” button on a dialog box or pop-up window. A user indicates rejection by clicking “cancel” or closing the window. Upon rejection, the user can no longer use or purchase the product or service.

Answer 2(c)

Fidelity Guarantee

A surety’s liability for the faithful discharge by another of his duties depends in each case on the exact terms of that guarantee. The surety is not discharged from the liability for the principal debtor’s default because the default would not have happened if the creditor had used all the powers of superintending the performance of the debtor’s duty which he could have exercised, because the employer of the servant whose due performance of work is guaranteed does not contract with the surety that he will use the utmost diligence in checking the servant’s work.

If the employer of a servant whose fidelity has been guaranteed continues to employ him even after a proved act of dishonesty without notice to the guarantor the surety is discharged. That is a basic principle implicit in the very nature of a fidelity guarantee. The guarantor in such a case guarantees the fidelity and ensures the loss against the risk of infidelity and not the fact of infidelity. If the employer wants to continue a dishonest servant after his dishonesty has been proved, then he must give the guarantor notice of the fact of infidelity so that the guarantor may get an opportunity to say whether he would continue his guarantee or not for a man whose infidelity has been proved.

Answer 2(d)

National Company Law Tribunal (NCLT)

NCLT is a quasi-judicial body exercising equitable jurisdiction which was earlier being exercised by the High Court or the Central Government. It has been established by the Central Government under Section 408 of the Companies Act, 2013 with effect from 1st June, 2016. The establishment of the NCLT consolidates the corporate jurisdiction of the following authorities:

1. Authority for Industrial and Financial Reconstruction
2. Company Law Board
3. Jurisdiction and powers relating to winding up, restructuring and other such provisions vested in the High Courts.
4. The Tribunal has powers to regulate its own procedures.

Any person aggrieved by an order of the NCLT may prefer an appeal to National Company Law Appellate Tribunal (NCLAT).

Answer 2A(i)

Fowler’s Five Rules of Drafting

According to Fowler, “Anyone who wishes to become a good writer should endeavor,

before he allows himself to be tempted by more showing qualities to be direct, simple, brief, vigorous and lucid.”

The Fowler’s five rules of drafting are given below:

- a. Prefer the familiar word to the far-fetched (familiar words are readily understood).
- b. Prefer the concrete word to the abstract (concrete words make meaning more clear and precise).
- c. Prefer the single word to the circumlocution (single word gives direct meaning avoiding adverb and adjectives).
- d. Prefer the short word to the long (short word is easily grasped)
- e. Prefer the Saxon word to the Roman (use of Roman words may create complications to convey proper sense to an ordinary person to understand).

Answer 2A(ii)

Capacity to make a Will

Section 59 of the Indian Succession Act, 1925 provides for the persons capable of making Wills. According to this section, every person of sound mind not being a minor may dispose of his property by Will.

Explanation 1: A married woman may dispose by Will of any property which she could alienate by her own act during her life.

Explanation 2: Even persons who are deaf or dumb or blind can make Will provided they are able to know what they do by it.

Explanation 3: Further a person who is ordinarily insane, may make his Will during the interval in which he is of sound mind.

Explanation 4: No person can make a Will while he is in a state of mind arising from intoxication or from illness or from any other cause such that he does not know what he is doing.

The testamentary capacity is recognized only in a sound disposing state of mind. Soundness of mind denotes the mental capacity of the testator as to what he is doing, his capability of understanding his extent of his property the person who is the object of his bounty and the persons who are thereby excluded. Testamentary disposition is personal, it cannot be delegated to any other person. A testator cannot confide to another the right to make a Will for him.

Answer 2A(iii)

Section 103 of the Companies Act, 2013 provides the provisions relating to quorum of general meetings. The quorum as provided by said section is as under:

a) in case of a public company:

1. Five members personally present if the number of members as on the date of meeting is not more than one thousand.

2. Fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand.
 3. Thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.
- b) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

However, the company may by Article of Associations provide for a quorum larger than prescribed above for both type of companies.

- c) Quorum in case of adjourned meeting: If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting stands adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine, or the meeting, if called by requisitionists under section 100 of the Companies Act, 2013, stands cancelled. And if quorum is not present within half-an-hour from the time appointed for holding adjourned meeting, the members present shall be the quorum.

Answer 2A(iv)

Nomination of successor

A nominee is a person that is appointed to receive an asset or investment in the event of one's death. A nominee may not necessary be a legal heir or a relative. Many instances arise, wherein an individual nominates a nominee, like while purchasing an Insurance Policy or Shares or while purchasing a fixed deposit in bank.

It is not uncommon in partnership agreements to find a clause as to nomination of a successor who has the right to be declared and admitted as partner in the event of death or retirement of a partner.

It was held by the Supreme Court in *Commissioner of Income Tax v. Govindram Sugar Mills*, AIR 1966 SC 24, that the nomination is not effective in case of partnership firm consisting of two partners only as it stands dissolved on the death of a partner; nevertheless, in view of the rights and obligations of a person to be nominated as under section 31 of the Indian Partnership Act, 1932 the same principle in case of agreement between two persons is applicable in case of partnership between two partners.

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

Question 3

- (a) *Draft a specimen of deed of assignment of a registered trademark.*
- (b) *Draft a deed of extending period of partnership. Assume facts, if required.*
- (c) *Draft a notice of suit under section 80, Code of Civil Procedure, 1908, to Collector of District. Assume facts, if required.*
- (d) *Draft a specimen form for settlement of a family business.*

(4 marks each)

OR (Alternative question to Q. No. 3)

Question 3A

In light of Judicial Pronouncements, if available, explain the following :

- (i) Order VII Rule 1 of Code of Civil Procedure, 1908.
- (ii) Arrangement as per section 230 of the Companies Act, 2013.
- (iii) Appeal to Commissioner under the Income Tax Act, 1961.
- (iv) Revision under section 115 of the Code of Civil Procedure, 1908.

(4 marks each)

Answer 3(a)

A Specimen of Deed of Assignment of a Registered Trade Mark

THIS DEED OF ASSIGNMENT made between AB, son of.....resident of.....(hereinafter called the "assignor") of the one part
and

CD son of.....resident of.....(hereinafter called the "assignee") of the other part.

WHEREAS the said AB is the owner of a Trade Mark Number..... duly registered in the Register of Trade Mark maintained by the Trade Marks Registration Office at.....

AND WHEREAS the said AB has made actual and bona fide use of the said Trade Mark in India in relation to the toiletry goods manufactured by him at his factory in.....

NOW THIS DEED OF ASSIGNMENT WITNESSES that in pursuance of the said agreement and in consideration of the said sum of Rs paid by the said CD to AB, the receipt whereof the said AB hereby admits/acknowledges and confirms, he the assignor AB do hereby grant, transfer and assign upon the terms hereinafter mentioned, the exclusive use and all benefits of the aforesaid Trade Mark in relation to the goods of toiletry manufactured by him at his factory at.....

AND the said assignor hereby covenants with the assignee that he will not infringe nor use a mark identical with the Trade Mark hereby assigned nor use another Trade Mark nearly resembling it as to be likely to deceive cause confusion, in the course of trade, in relation to the goods in respect of which it is registered and in a manner as to render the use of this Trade Mark likely to be taken either as being a use of the said Trade Mark or import a reference to the assignor.

AND the assignor further covenants that he, the assignor shall, at the cost of CD or any person claiming through him, do or cause to be done any other act, deed or thing as may be required for more perfectly assuring the aforesaid assignment.

IN WITNESS WHEREOF the parties aforesaid have set their respective hands in the presence of the witnesses hereunder.

Witness:

Assignor

Witness:

Assignee

Answer 3(b)**Deed extending Period of Partnership**

THIS DEED OF AGREEMENT is made at on the day of.....
2022

BETWEEN

AB, CD and EF

WHEREAS A.B, CD and EF are the existing partners in the firm titled as carrying on its business at by virtue of deed of partnership dated executed between them.

AND NOW THIS AGREEMENT WITNESSES as follows:

That each of the said A.B., C.D. and E.F. do hereby agree with the others of them, jointly and severally, in the manner following, that is to say;

That the said A.B., C.D. and E.F. will remain and continue partners together in the said trade or firm business of for the further term of years to be counted from the day of 2022, the day on which the original deed of partnership shall expire, upon such and the same terms and conditions, and with, under and subject to such and the same covenants, provisions and agreements as are expressed and contained in the said original deed of partnership dated to which this agreement is appended, and to which the said partners hereto, their respective legal representatives would have been subject or liable, if the said deed of partnership and the partnership thereby created, and the several covenants, declarations, provisions and agreements therein mentioned and contained had been made or entered into for the term of ten years instead of the term of five years.

IN WITNESS whereof the said A.B, C.D. and E.F. have hereto at by way of a supplementary deed executed these presents on the day and the year first above mentioned and appended the same to the original deed of partnership.

WITNESSES:

Partner 1.....

Partner 2.....

Partner 3.....

Answer 3(c)**Notice to the Collector of a District**

Notice under section 80 of Civil Procedure Code, 1908

Registered Post with A/D

Dated.....2022

To

The Collector of the District of.....

P.O.....

Dt.....

Sir,

Under instructions from my client Sri.....son of

.....by caste, by occupation
 residing at.....P.O..... P.
 S..... Dt....., I give you this notice under Section
 80 of Civil Procedure Code, 1908 and state that my aforesaid client intends to sue the
 Government of (name the State) on expiry of two months, after service of
 this notice, on the cause of action and for reliefs appearing herein below:

1. Cause of action (give in brief/acts giving rise to cause of action)
2. Reliefs claimed (give here reliefs which the plaintiff would sue for).

Yours faithfully,

Answer 3(d)

Specimen Form of Deed for Settlement of Family Business

This Deed of Family Arrangement is executed at On this
 2022.

between

AB S/o MN aged.....years, occupation.....
 R/O..... (hereinafter called as the first party)

and

CD S/o XM aged..... years, occupation and R/o.....
 (hereinafter called as the second party)

WHEREAS

1. The first party has started and carried out the business and undertaking described in Schedule "A" by own initiative and efforts with his own capital and funds.
2. The second party, who is son of the pre-deceased son of the first party and residing with him under the care and parentage of the first party and assisting him in conduct of the aforesaid business for which he was being paid share in profit. The second party thus having contributed his labour and skill for development of the business rendered valuable services for the same and rendered himself entitled be an equal share in the said business. It has been settled and decided to distribute the business amongst the parties so also the properties. The first party shall hold the share in business and properties described in Schedule "B" and the second party shall hold the share in business and properties described in Schedule "C".
3. The movable and immovable properties, which is also described in Schedule "A" have been acquired by the first party out of the funds of the said business in his name and for his use and benefits.

NOW THIS DEED WITNESSETH AS FOLLOWS

1. The second party shall hold, own and possess as full and absolute owner of the business and properties described in Schedule "C" without any demand or claim by the first party any account whatsoever for which, he has expressly granted, conveyed, transferred and assigned by the first party.

2. The business and properties have been distributed amongst the parties to this deed. It is hereby decided and declared that the first party hereinafter shall hold, own and possess as full and absolute owner of the business and properties described in Schedule 'B' and the second party shall not interfere in the same and he has relinquished his rights in the said part of business and properties described in Schedule "B".

IN WITNESS WHEREOF the parties to this DEED have put and subscribed their respective hands in presence of witnesses on this day of in the year..... at

Witness 1

Signatures

Witness 2

First Party

Second Party

Schedule "A"

Schedule "B"

Schedule "C"

Answer 3A(i)

Order VII Rule 1 of Code of Civil Procedure, 1908

According to Order VII, Rule 1, the plaint shall contain the following particulars:

- (a) the name of the Court in which the suit is brought;
- (b) the name, description and place of residence of the plaintiff;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the Court has jurisdiction;
- (g) the relief which the plaintiff claims;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed, or relinquished; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

Sh. Suresh Kumar Anand v. Sh. Sudhish C. Anand, Delhi District Court (2018)

In this case, the plaintiff had filed a lawsuit seeking a mandatory injunction, damages, and *mesne* profits. The absence of a documented licensing deed was acknowledged by

the court while discussing court costs. The plaintiff, the court said, had not complied with the specifics of Order 7 Rule 1 Civil Procedure Code. The market value of the subject property, which is a relevant fact, should have been disclosed.

Answer 3A(ii)

Arrangement as per section 230 of the Companies Act, 2013

Section 230 of the Companies Act, 2013 provides that when a compromise or arrangement (the word compromise implies the existence of some dispute, but the word arrangement is of wider application) is proposed between a company and

- (a) its creditors or any class of them; or
- (b) its members or any class of them,

then the Tribunal may, on the application of the company, or any creditor or member, or, if the company is being wound up, the liquidator, order a meeting to be called of the creditors or class of creditors, or of the members or class of members, as the case may be to be called, to be called, held and conducted in such manner as the Tribunal directs.

The compromise or scheme of arrangement will then be binding upon:

- (a) all the creditors or class of creditors;
- (b) the members or class of members;
- (c) the company; and
- (d) in the case of a company being wound up, upon the liquidator and contributories.

Provided that:

- (1) it is approved by a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members as the case may be, present and voting in person or by proxy or by Postal Ballot; and
- (2) it is sanctioned by the Tribunal.

The Tribunal may dispense with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, having at least ninety per cent. value, agree and confirm, by way of affidavit, to the scheme of compromise or arrangement.

In *Arun Kumar Jagatramka vs. Jindal Steel And Power Ltd and Anr*, Supreme Court (2021), the court found that the prohibition placed by the Parliament in Section 29A and Section 35(1)(f) of the Insolvency and Bankruptcy Code(IBC) must also attach itself to a scheme of compromise or arrangement under Section 230 of the Companies Act, 2013, when the company is undergoing liquidation under the auspices of the IBC. As such, Regulation 2B of the Liquidation Process Regulations, specifically the proviso to Regulation 2B(1), is also constitutionally valid.

Answer 3A(iii)

Appeal to Commissioner under Income-tax Act, 1961

Section 246A (1) of the Income-tax Act, 1961(the Act) provides that any assessee or any deductor or any collector aggrieved by any order of an Income-tax Officer, as prescribed in the section may appeal to the Commissioner (Appeals) against such order.

Every appeal under the Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day.

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

In *M/s. Fibroflex (India) Pvt. Ltd. vs. The Dy. Commissioner of Income Tax (ITAT)(2019)*, being aggrieved by the Assessment Order under Income Tax-Act, 1961, an appeal was filed before the Ld. Commissioner of Income Tax(Appeals) who vide impugned order dismissed the appeal. The assessee company raised further appeal before Income Tax Appellate Tribunal (ITAT).

Answer 3A (iv)

Revision under section 115 of the Code of Civil Procedure, 1908

The High Court can call for the record of the cases which have been decided by any Court subordinate to such High Court and in which no appeal lies for revision or if such subordinate Court appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order under section 115 of Civil Procedure Code, 1908.

However, the High Court should not, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.

The High Court should not vary or reverse any decree or order against which an appeal lies against to the High Court or any other subordinate court.

A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

The Supreme Court has observed in *Major S.S. Khanna v. F.J. Dhillon, A.I.R. 1964 S.C. 497*, that the exercise of jurisdiction under Section 115, C.P.C., is discretionary and that the court is not bound to interfere merely because the conditions in clauses (a), (b) and (c) of Section 115 are satisfied. The fact that another remedy is available to an aggrieved party by way of any appeal from the ultimate judgment or decree, is one of the relevant considerations for refusing to exercise discretion under Section 115, C.P.C.

Question 4

Distinguish between the following :

- (a) *Article 32 and Article 226 of the Constitution of India.*
- (b) *Revocation and Extinction of Trust.*
- (c) *Denial and Dilatory Pleas in written statement.*
- (d) *Advices on law and advices on evidence.*

(4 marks each)

Answer 4(a)**Article 32 and Article 226 of the Constitution**

Article 32 and Article 226 both deal with the constitutional remedies. However, the differences between the two are as follows:

<i>Basis of difference</i>	<i>Article 32</i>	<i>Article 226</i>
Right	Article 32 is a Fundamental Right.	Article 226 is a Constitutional Right.
Suspension	Article 32 can be suspended if an emergency has been declared by the President.	Article 226 cannot be suspended even at the time of emergency.
Scope	Article 32 has a narrow scope as it is applicable only in case of violation of a fundamental right.	Article 226 has a broader scope as it is applicable not only in the case of violation of a fundamental right but also of a legal right.
Jurisdiction	Article 32 empowers the Supreme Court to issue writ all over India. Therefore, the Supreme Court has broader territorial jurisdiction.	Article 226 empowers the High Court to issue a writ in its own local jurisdiction only. Therefore, High Courts have narrower territorial jurisdiction as compared to the Supreme Court.
Discretion	Since, Article 32 is a fundamental right, the same cannot be refused by the Supreme Court.	Article 226 confers Discretionary power to the High Court which means it is at the discretion of the High Court to issue a writ or not.

Answer 4(b)**Revocation and Extinction of Trusts**

According to section 78 of Indian Trusts Act, 1882(the Act), a trust created by Will may be revoked at the pleasure of the testator. A trust otherwise created can be revoked only:

- (a) where all the beneficiaries are competent to contract—by their consent;
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

If the trust property is to be applied for the author's own benefit the trust can be

revoked. A power of revocation may with advantage always be reserved in the deed. The declaration of trust for creating provident fund, pension fund, superannuation fund, gratuity fund etc. should be irrevocable. If they are otherwise the recognition under the Income Tax Act, 1961 will not be available to such trusts and in consequence the payment made to such funds will not be allowed as deduction in the hands of the authors of the trusts in their income tax assessments.

According to section 77 of the Act, a trust is extinguished:

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

Answer 4(c)

Denials and Dilatory Pleas in written statement

Denials

A defendant is said to take the defence of denial when he totally and categorically, denies the allegations contained in the plaint. It is also called 'traverse'. Admissions and denials of the material facts alleged in the plaint should be given in the opening paragraphs of the body of the written statement. It may be emphasized that bare denials are in themselves valid defences to the claim made in the plaint.

Rules as to denials:

- a. Denials must be specific,
- b. Denials must not be evasive.

Dilatory pleas

Pleas which merely delay the trial of a suit on merits have been characterized as 'dilatory pleas'. They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

Answer 4(d)

Advice of Law

A professional appearing before a Courts/Tribunals is required to have an art of advocacy. Technical and legal knowledge about the area in which professionals are acting is essential. Sometimes the client would want to know how the law will apply to a given situation. Without in-depth knowledge of law and legal research one cannot give an opinion to the satisfaction of the client. The proper way is to start with the facts of case by taking minute details from the concerned client and thereafter apply the law that covers the situation. A professional should bear in mind that he has to convey to the client about exact legal position as existing in context of the relief sought by him in as much as to give correct picture of judicial view to the problem posed by the client.

Advice on Evidence

Advice on evidence refers to the written opinion of a counsel identifying the issues raised in a civil or criminal case and advising counsel's instructing solicitor in relation to the evidence to be called at trial. In order to give advice properly, evidence should be collected at the earliest possible stage. For instance, witness statements, documentary material, plans, objects, photographs and any other items of real evidence.

A professional should further bear in mind that he has to give advice on evidence to his client as to his matter in the Courts/Tribunals. Such professional must demonstrate an understanding of the purpose and techniques of examination, cross examination and re-examination to adduce, rebut and clarify evidence of the concerned witness before such Court/Tribunal.

Question 5

(a) *Two company ABC Ltd. and XYZ Ltd. both are incorporated under Companies Act, 2013 with their authorized Share capital. MOA of ABC Ltd. company contains a provision that company shall have power to sell or transfer or otherwise dispose of whole or any part of the business and accept consideration and MOA of XYZ Ltd. contain a provision that the company may acquire by purchase or otherwise business and undertaking in part or whole of any business entity. Write an agreement between ABC Ltd. and XYZ Ltd. companies for amalgamation by sale of ABC Ltd. to the XYZ Ltd.*

(b) *Draft a deed of Hire Purchase Agreement. Assume facts, if required.*

(8 marks each)

Answer 5(a)**Agreement between two Companies to Amalgamate by Sale of one to the other**

This AGREEMENT is made on this ___ day of _____ 20___ at _____.

between

ABC Ltd. a company incorporated under the Companies Act, 2013 and having its Registered Office at Delhi (hereinafter referred to as the Vendor", which expression shall, unless repugnant to the context or contrary to the meaning thereof, include its successors or assigns)to the one part

and

XYZ Ltd, a company incorporated under the Companies Act,2013 and having its Registered Office at New Delhi (hereinafter referred to as "the company, which term shall unless repugnant to the context or contrary to the meaning thereof, include its successors or assigns) of the other part.

WHEREAS the vendor was incorporated in the year _____ with an authorised share capital of Rs 10 lakhs divided into one lakh Equity Shares of Rs. 10 (ten) each and its Memorandum of Association contains a provision that the company shall have the power to sell or transfer or otherwise dispose of the whole or any part of the

business and undertaking of the vendor company and to accept in consideration, cash or shares or debentures or debenture stock or other securities of any other company and to distribute among the members in specie or otherwise any surplus assets remaining in the winding-up of the vendor company.

AND WHEREAS the company was incorporated under the Companies Act, 2013 in the year _____ with an authorised share capital of Rs. 50 (fifty) lakhs divided into five lakh Equity Shares of Rs ten each and its Memorandum of Association contains a provision that the company may acquire by purchase or otherwise the business and undertaking, in part or whole of any business entity having any of the purposes of objects same or similar to those of the company.

AND WHEREAS the Articles of Association of the company also provide that the company is empowered to increase its share capital.

IT IS HEREBY AGREED AS FOLLOWS:

1. The vendor shall sell and the company shall purchase the whole of the business undertaking, assets and property of the vendor, benefits of all securities which shall include cheques and bills given to the vendor from time to time in consideration or payment thereof, benefits of subsisting contracts, and debts due to the vendor relating to the business of the vendor as a running concern from the day of _____. The said purchase shall not include the uncalled capital of the vendor up to the aforesaid date for the aforesaid purchase the vendor shall continue to carry on the business for the benefit of the company.
2. From the aforesaid date of the aforesaid purchase the company shall be liable for all the debts and liabilities of the vendor and shall be liable to perform all its engagements. The vendor shall be indemnified by the company against all claims and demands. The company shall defend all actions and proceedings against the vendor who shall also be indemnified in respect of such actions and proceedings.
3. The company shall pay to the vendor Rs _____ as consideration for the aforesaid purchase and out of the aforesaid consideration Rs. _____ shall be paid in cash and the balance of Rs. _____ shall be paid to the vendor by allotment of twenty thousand Equity Shares of Rs. ten each in the capital of the company credited as fully paid-up shares. For the allotment of the aforesaid shares the vendor has conveyed its acceptance, vide its letter No _____ dated _____.
4. The company shall create and issue five lakh Equity Share of Rs. 10 each to increase its shares capital as aforesaid and for the same purpose the company shall pass a resolution in accordance with the Articles of Association of the company and in accordance with the provisions of the Companies Act, 2013.
5. For the purpose of Stamp Duty, the value of the immoveable properties of the vendor shall be fixed for Rs _____ and the goodwill benefits of contracts and securities, debts, stock, fittings and fixture and all other properties of the vendor shall be valued at Rs _____.
6. The title deeds to all the immoveable and other properties of the vendor and an abstract of all the properties of the vendor, the sale of which is hereby agreed

shall be handed over to the company within thirty days from this day _____ of _____. The company shall accept the same titles sufficient in all respects.

7. On the ____ day of _____ the vendor shall be paid Rs. _____ in cash and shall be delivered the day of certificates showing that the company shall have allotted twenty thousand Equity Shares of Rs. 10 each fully paid- up of the share capital of the company.
8. Thereupon, the purchase shall be deemed to have been completed and the vendor shall execute necessary documents and do all things and give assurance as may be necessary and reasonable for the vesting of all the properties, the subject matter of the aforesaid purchase by the company

IN WITNESS WHEREOF the parties hereto have set their hands and seals.

Signatures and seals of the parties and witnesses.

Answer 5(b)

HIRE-PURCHASE AGREEMENT

This AGREEMENT made and executed on this _____ (date)
at _____.

BETWEEN

AB etc. _____ (hereinafter called "the owner") of the one part.

AND

CD etc. _____ (hereinafter called "the Hirer") of the other Part.

WHEREAS it is agreed as follows:

1. The owner will let and the hirer will take on hire the pump set fully described in the schedule hereto annexed for a term of ____ month from the date hereof at a rent of Rs. _____ (Rupees _____) to be paid by instalments in the manner herein-under stated subject nevertheless the termination clause hereunder contained.
2. The hirer has already paid to the owner the sum of Rs. _____ (Rupees _____) being the first month's rent and the hirer shall continue to pay as instalment of such rent on the ____ day of each succeeding month during the said term, the next payment to be made on the _____ day of _____.
3. The hirer shall until and unless all instalments or rents are paid keep and maintain the said pumping set in good order and condition and preserve it against loss or injury by theft etc. and make good all damages accidental or otherwise and allow the owner, his agent or servants to inspect the same whenever demanded.
4. In the event of the goods damaged or destroyed beyond repairs or replacement or lost by fire, theft or in other cause, the hirer shall nevertheless remain liable for and pay the owner of the remaining instalments due on the goods.

5. The hirer shall not, without the owner's previous written consent, remove or permit removal of the said pump set from the above address of the hirer. The hirer shall not, until and unless he becomes the full owner, sell, assign, pledge or otherwise transfer the pump set or subject the pump set or hire suffer any decree or order of any court whereby the pump set may be attached or charged or otherwise ceased or taken in execution nor commit any act or insolvency nor enter into any scheme or composition with his creditors.
6. If the hirer fails and or neglects to carry out any of the terms of this agreement the owner may without prejudice to his right to recover any areas of rent and damages for breach of this agreement terminate the hiring and retake possession of the said pump set, where the same shall be in the possession of the hirer or of any other person and for that purpose the hirer hereby gives the owner, his agents or servants all facilities to enter in or upon any premises occupied by the hirer, to search for, seize and retake possession of the said pump set without being liable in any way for any action for trespass or otherwise or at all.
7. Notwithstanding anything herein before contained, the hirer may terminate this agreement at any time by surrender and return of the said pump set to the owner but nevertheless he shall remain liable for the balance of interest still to be paid.
8. The hirer may, become the absolute owner of the said pump set hereby hired by paying the owner all areas or rent, if any, and all rents which would become due on this agreement during the said term without any discount or subject to a discount of Rs. _____ on all payments anticipated.
9. The hirer shall keep the aforesaid pump set insured against fire, theft etc. in the name of the owner or in their joint names and regularly and punctually pay each premium as and when the same shall become due.
10. Any time, concession or indulgence granted or shown on the part of the owner will not prejudice his rights under this agreement.

IN WITNESS WHEREOF the parties hereto put their signature in the deed.

Signature of the owner

Signature of the Hirer

Witnesses:

1. _____

2. _____

Question 6

- (a) *What do you understand by the term 'further charge' ? Draft a deed of further charge. Assume facts, if required.* (2+6 marks)
- (b) *Draft a special resolution of delisting of Securities. Assume facts, if required.* (4 marks)
- (c) *Comment on the expression 'THE HAVE AND TO HOLD' as one of the components of a deed.* (4 marks)

Answer 6(a)**Further Charge**

Sometimes, the mortgagee advances further sums of money to the mortgagor on the same security and on the same condition. The term used for this charge is called Further Charge and the deed executed to secure the advance of further sums of money is called deed of further charge. The deed so executed would make a reference to the first mortgage and would also set out the new loan(s), terms of its/their repayment and would make the principal and interest further charged on the same security.

Deed of Further Charge

This Deed of Further Charge is made on this ____ day of ____

Between

X, s/o _____, r/o _____ (hereinafter called "the borrower" which expression shall also, where the context so admits, include persons entitled to redeem the security) of the one part

And

Y s/o _____, r/o _____ (hereinafter called "the mortgagee) of the other part.

WHEREAS by a mortgage deed dated _____ the property mentioned therein and described in the Schedule attached hereto was mortgaged by the borrower with the mortgagee and the sum of Rs. _____ remains to the mortgagee on the security of the said mortgage but all interest for the same has been paid up to the date of this deed.

AND WHEREAS the mortgagee has agreed to advance to the borrower the further sum of Rs. _____ upon terms and conditions and secured in the manner hereinafter appearing.

NOW THIS DEED WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Rs _____ now paid by the mortgagee to the borrower the receipt whereof the borrower hereby acknowledges:

1. The borrower hereby covenants with the mortgagee to pay to the mortgagee on the _____ day of _____ next the sum of _____ principal amount with interest at the rate of _____ per cent per annum and if the said moneys are not paid on the aforesaid date to pay interest at the said rate until payment.
2. The borrower as beneficial owner hereby declares that all and singular the property mortgaged under the aforesaid deed dated _____ and more particularly described in the schedule attached hereto shall be security and stand charged with the payment to the mortgagee of the sum of Rs. _____ the present advance with interest at the rate of _____ per cent per annum, from the date of execution of these presents as well as the sum of Rs _____ due on the recited mortgage together with interest thereon and shall not be redeemable until on payment to the mortgage deed dated _____ and the present deed.
3. It is further agreed and declared that the provisions contained in the mortgage deed dated _____ shall operate and take effect in like manner for securing

payment or the money hereby secured as if the same had formed part of the money secured by the said recited mortgage.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year herein above mentioned.

Witnesses:

1. **MORTGAGOR**
2. **MORTGAGEE**

Answer 6(b)

Special Resolution of Delisting of Securities

Proposed by: Mr.....

Seconded by: Mr.....

The following Resolution having been proposed and seconded by the aforementioned two Members was put to vote as a Special Resolution:

“**RESOLVED** that, subject to the provisions Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, Securities Contracts (Regulation) Act, 1956, and the Securities and Exchange of Board of India Act, 1992, and the rules framed thereunder and other applicable laws, rules and regulations and guidelines and subject to such other approvals, permissions and sanctions as may be necessary and subject to such conditions as may be prescribed by the Securities and Exchange Board of India and Stock Exchanges while granting such approvals, permissions and sanctions, which may be agreed to by the Board of Directors of the Company, which expression shall be deemed to include any Committee of the Board for the time being, exercising the powers conferred by the Board, the consent of the Company be and is hereby accorded to the Board to voluntarily delist the equity shares of the Company from.....(name of stock exchanges).”

“**RESOLVED FURTHER** that the Board be and is hereby authorised to do all acts, deeds and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above Resolution.”

Answer 6(c)

Habendum clause starts with the words “THE HAVE AND TO HOLD”. *Habendum* is a part of deed which states the interest, the purchaser is to take in the property. The *habendum* clause can define how long the interest granted will extend. Formerly in England if there was a gratuitous transfer, the transferee was not deemed to be the owner of the beneficial estate in the property, the equitable estate wherein remained with the transferor as a resulting trust for him. It was therefore, necessary to indicate in the deed that it was being transferred for the use of the transferee if it was intended to confer an equitable estate in him. It was for that reason that the *habendum* commenced with the words: “to have or to hold or to the use of”.

In the modern deeds, however, the expression “to have and” are omitted. The *habendum* limits the estate mentioned in the parcels. The transferee is mentioned again in the

habendum for whose use the estate is conveyed. Whatever precedes the *habendum* is called the premises. The parcels or the description of the property usually again included in the premises. If the property conveyed is encumbered, reference thereto should be made in the *habendum*. If the parties to transfer enter into covenants, they should be entered after the *habendum*.

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