

CAPITAL MARKET & SECURITIES LAWS

GROUP 2 PAPER 5

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

- (a) Maxgrow Ltd. (a listed company) is manufacturing the solar PV modules in India. It is a cash rich company with cash reserve of ₹ 500 crore. It declared a dividend of ₹ 20 per share (face value ₹ 10 each). Before the record date, many mutual fund houses, HNIs and Institutional investors shown interest in the shares of Maxgrow Ltd. through block deal. Ranjan, a shareholder did not receive the dividend declared by the company after the expiry of prescribed period.

Since last two months, there is heavy fluctuation in the price of the shares of Maxgrow Ltd. and with very thin trading volume. The stock exchange based on its surveillance system, took stringent action in the interest of the investors.

Technet Ltd, subsidiary of Maxgrow Ltd. is in the business of data analytics since last two years. It is providing the services to the fortune 500 companies across the world. The management wishes to list its securities with the stock exchange, by floating an IPO.

After analyzing the case study, answer the following (with reasons) :

- (i) Is block deal window also open for individual investors ?
- (ii) What are the timings of executing transaction through block deal window ?
- (iii) What first course of action is available to the shareholder for default of payment of dividend by the company ?
- (iv) What types of preventive surveillance restrictions can be imposed by the stock exchange (name any four) ?
- (v) Is it possible to list shares for a two year old company in the stock exchange ?

(2 marks each)

- (b) Centre for Youth Ltd. (CYL) is a section 8 company and operating since last 20 years. Its prime area of activities is to promote education and employability amongst unserved population. Currently the major donations come through advertisement in social media. As the company started providing education towards financial literacy, it needs more funds to cater the growing demand. The management is of the view that as CYL is a not-for-profit entity, it can't raise funds through open market for fulfilling its objects. You being a SEBI law consultant, advise the management on the below aspects for raising of funds through Social Stock Exchange (SSE) (with reasons) :

- (i) What are the provisions for section 8 company to tap the public fund under SEBI regulations ?
- (ii) Will it make any difference if CYL is a charitable trust ?
- (iii) What type of instrument is allowable for CYL for fund raising ?

- (iv) What will be your answer, if 40% target population is general public ?
- (v) If CYL was debarred by Ministry of Home Affairs for carrying out its activities, can it still raise funds through SSE ?

(2 marks each)

Answer 1(a)

- (i) The block deal is also open for individual investors subject to the minimum order size for execution of trades in the Block deal window shall be Rs. 10 Crore.
- (ii) Morning Block Deal Window: This window shall operate between 08:45 AM to 09:00 AM.
Afternoon Block Deal Window: This window shall operate between 02:05 PM to 2:20 PM.
- (iii) It is mandatory for investors to first take up their grievances for redressal with the entity concerned, through their designated persons/officials who handle issues relating to compliance and redressal of investor grievances. In case, the entity concerned fails to redress the complaint within the timeline, the investor may then file their complaint in SCORES. Investors who wish to lodge a Complaint on SCORES (complainant) are required to register themselves with SCORES portal.
- (iv) The types of Preventive Surveillance restrictions that can be imposed by the Stock Exchange are:
- (a) Stringent On boarding norms for Trading Members - Stringent net worth, back ground, viability etc. checks while on boarding Trading Members.
 - (b) Index circuit filters - It brings coordinated trading halt in all equity and equity derivative markets at 3 stages of the index movement, either way viz., at 10%, 15% and 20% based on previous day closing index value.
 - (c) Trade Execution Range - Orders are matched and trades take place only if the trade price is within the reference price and execution range.
 - (d) Order Value Limitation - Maximum Order Value limit allowed per order.
 - (e) Cancel on logout - All outstanding orders are cancelled, if the enabled user logs out.
 - (f) Kill switch - All outstanding orders of that trading member are cancelled if trading member executes kill switch.
 - (g) Risk reduction mode - Limits beyond which orders level risk management shall be initiated instead of trade level.
 - (h) Compulsory close out - Incoming order, if it results in member crossing the margins available with the exchange, such order will be partially or fully cancelled, as the case may be, and further disallow the trading member to create fresh positions.
 - (i) Capital adequacy check - Refers to monitoring of trading member's performance and track record, stringent margin requirements, position limits based on capital, online monitoring of member positions and automatic disablement from trading when limits are breached.
 - (j) Fixed Price Band/Dynamic Price band - Limits applied within which securities shall move; so that volatility is curbed orderliness is brought about. For non-derivative securities price band is 5%, 10% & 20%. For Derivative products an operating range of 10% is set and subsequently flexed based on market conditions.

- (k) Trade for Trade Settlement - The settlement of scrip's available in this segment is done on a trade for trade basis and no netting off is allowed.
- (l) Periodic call auction - Shifting the security form continuous to call auction method.
- (m) Rumour Verification - Any unannounced news about listed companies is tracked on online basis and letter seeking clarification is sent to the companies and the reply received is disseminated.
- (v) In the given case, Technet Ltd. is in business of data analytics since last two years and wishes to list its securities with the stock exchange, by floating an IPO. An issuer not satisfying the condition stipulated in regulation 6(1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, shall be eligible to make an initial public offer only if the issue is made through the book-building process and the issuer undertakes to allot at least seventy five per cent. of the net offer to qualified institutional buyers and to refund the full subscription money if it fails to do so.

Therefore, Technet Ltd. opt for the route as available under Regulation 6(2) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 for making an initial public offer and listing thereof.

Answer 1(b)

- (i) According to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, Section 8 companies are included in the definition of "Not for Profit Organization" and a Not for Profit Organisation can raise the funds from public through Social Stock Exchange (SSE). [Regulation 292A (e) and Regulation 292G of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018].
- (ii) No, the answer will not change, as the Charitable trusts are also included in the definition of Not for Profit Organisation. [Regulation 292A (e) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018].
- (iii) A Not for Profit Organization may raise funds on a Social Stock Exchange through:
- (i) issuance of Zero Coupon Zero Principal Instruments to institutional investors and/or non-institutional investors;
 - (ii) donations through Mutual Fund schemes as specified by SEBI;
 - (iii) any other means as specified by SEBI from time to time. [Regulation 292G of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018]

Therefore, CYL is allowed for raising fund through the above-mentioned instruments.

- (iv) The Social Enterprise shall have at least 67% of its activities, qualifying as eligible activities to the target population, to be established through:
- members of the target population to whom the eligible activities have been provided constitute at least 67% of the immediately preceding 3-year average of the total customer base and/or total number of beneficiaries.

In the given situation, if 40% target population is general public and unserved population, then CYL is not be identified as Social Enterprise and thus, not eligible for fund raising through SSE. [Regulation 292E(2)(c) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018]

- (v) A Social Enterprise shall not be eligible to register or raise fund, if the Social Enterprise or any of its promoters or directors or trustees has been debarred from carrying out its activities or

raising funds by the Ministry of Home Affairs. In the given case, CYL was debarred by Ministry of Home Affairs, thus, it cannot register or raise fund through SSE. [Regulation 292H(e)]

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

Question 2

(a) As a company secretary, you are required to advise on the following issues :

- (i) Can a foreign bank, operating in India, be registered as a depository participant ?
- (ii) Manoj Soni, a lawyer by profession, has a Demat account with a scheduled commercial bank but he wants to open another account with another depository participant. Can he do so ?
- (iii) Manmohan Reddy holds shares of XYZ Pvt. Ltd. in Demat Form. Advise how he would get the right issue shares ?
- (iv) Are debt instruments viz; debentures and commercial papers available for Demat at the Depository ?

(1+1+1+2=5 marks)

(b) One of the investors wants to invest in the growing real estate market. The entry and exit from the physical real estate is not cost effective and illiquid. Is there any way to invest in real estate like other securities ? State briefly.

(5 marks)

(c) Mohan purchased a 3 month call option for 100 shares in PQR Ltd. at a premium of ₹ 30 per share, with an exercise price of ₹ 550. He also purchased a 3 month put option for 100 shares of the same company at a premium of ₹ 10 per share with an exercise price of ₹ 500. Calculate the profit or loss that Mohan would make assuming that the market price falls to ₹ 400 at the end of 3 months.

(5 marks)

(d) The IFSCA (Issuance and Listing of Securities) Regulations, 2021 allowed a company incorporated in a foreign jurisdiction to list its securities in India. In this context, state the type of listing and eligibility criterion.

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

(i) Write short note on an investment advisor. Explain in brief the general obligations and responsibilities of investment advisors.

(5 marks)

(ii) What are the key differences between WPI and CPI ?

(5 marks)

(iii) The rising FED rate will certainly impact the fund flow to rest of the world. Elucidate the statement in the Indian context.

(5 marks)

- (iv) Registrars and Share transfer Agents (RTA) ease the burden of a listed entity on day-to-day resolution of matters pertaining to the securities. State in brief, the pre and post issue activities performed by an RTA.

(5 marks)

Answer 2 (a)

- (i) Yes, a foreign bank operating in India, with the approval of the Reserve Bank of India can be registered as a depository participant.
- (ii) Yes, Manoj Soni has a choice to open another Demat account with any depository participant.
- (iii) The concerned company obtains the details of beneficiary holders and their holdings from the depository participant (NSDL or CDSL) as on the record date. The concerned company then issue Right Entitlement (RE) as entitlement to Mr. Manmohan Reddy. The number of shares against those REs will be credited to his Demat account by the company / its RTA.
- (iv) All types of equity/ debt instruments viz. equity shares, preference Shares, partly paid shares, bonds, debentures, commercial papers, certificates of deposit, government securities (G-SEC) etc. irrespective of whether these instruments are listed / unlisted / privately placed can be dematerialized with depository, if they have been admitted with the depository.

Answer 2(b)

A Real Estate Investment Trust ("REIT") is a collective investment scheme that owns, operates or finances income producing real estate. REITs provide all investors the chance to own valuable real estate, present the opportunity to access dividend-based income and total returns, and help communities grow, thrive, and revitalize.

REITs allow anyone to invest in portfolios of real estate assets the same way they invest in other industries through the purchase of individual company stock or through a mutual fund or exchange traded fund (ETF). The stockholders of a REIT earn a share of the income produced through real estate investment without buying any finance property. Benefits of REITs include:

- **Less Capital Intensive:** Direct investment in real estate property is very capital intensive. But each shares of REITs will be comparatively more affordable (it will not require large capital outflows).
- **Suitable for small Investors:** Investing through REITs will eliminate dealing with builders, thereby avoiding potential exposure to big builders.
- **Transparency:** REITs stocks are listed in stock market, hence details will be available on public domain.
- **Assured Dividends:** REITs generates income in form of dividend. REITs dividend payment is relatively assured as most of their income is in the form of rental (lease) income.
- **Tax Free:** Dividend earned by the investors of REIT will be tax free.
- **Fast Capital Appreciation:** Capital appreciation can be phenomenal.
- **Easy to buy:** Investment in REITs is easier than investment in Real Estate properties.

REITs are similar to mutual funds and shares and they provide income by way of dividend to its shareholders and capital appreciation as REITs stocks are listed on stock exchanges.

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Answer 2(c)

Since the market price at the end of 3 months falls to ₹ 400 which is below the exercise price i.e. ₹ 550 under the call option, the call option will not be exercised. Only put option becomes viable.

The gain will be:	₹
Gain per share (₹500 – ₹400)	100
Total gain per 100 shares @ ₹ 100 per share	10,000
Cost or premium paid (₹ 30 x 100) + (₹ 10 x 100)	4,000
Net gain	6,000

Answer 2(d)

The IFSCA (Issuance and Listing of Securities) Regulations, 2021 enables the following types of listing:

- (i) an initial public offer of specified securities by an unlisted issuer;
- (ii) a follow-on public offer of specified securities by a listed issuer;
- (iii) Listing of specified securities by a start-up company or a SME;
- (iv) Secondary listing of specified securities;
- (v) An initial public offer of specified securities by a Special Purpose Acquisition Companies (SPAC);
- (vi) Listing of depository receipts;
- (vii) Listing of debt securities;
- (viii) Listing of ESG debt securities; and
- (ix) issuance and/or listing of any other securities as may be specified by the Authority from time to time.

Further, the following entities would be eligible for listing of securities on the recognised stock exchanges in IFSC:

- (i) A company incorporated in an IFSC;
- (ii) A company incorporated in India; and
- (iii) A company incorporated in a foreign jurisdiction.

The following entities shall also be eligible in respect of listing of debt securities on a recognised stock exchange, -

- (a) any supranational, multilateral or statutory organisation/ institution/agency provided such organization/institution/agency is permitted to issue securities as per its constitution. Provided that the entity is registered or headquartered in India, IFSC or a Foreign Jurisdiction;
- (b) any municipality or any statutory body or board or corporation, authority, trust or agency established or notified by any Central or State Act or any special purpose vehicle notified by the State Government or Central Government including for the purpose of raising fund by the issuer to develop infrastructure or SMART city; and
- (c) An entity whose securities are irrevocably guaranteed by a Sovereign (India or a Foreign Jurisdiction).

An issuer shall be eligible to list its securities under the IFSCA (Issuance and Listing of Securities) Regulations, 2021 in IFSC only if, -

- (a) the issuer is duly incorporated or established according to the relevant laws of its place of incorporation or establishment;
- (b) the issuer is operating in conformity with its constitution; and
- (c) the listing of securities in IFSC is in accordance with the applicable laws of the jurisdiction of incorporation.

An issuer shall not be eligible to list securities under these regulations if the issuer or any of its promoters, promoter group, controlling shareholders or directors or selling shareholders is –

- (a) debarred from accessing the capital market; or
- (b) a wilful defaulter; or
- (c) a fugitive economic offender.

Listing of specified securities through IPO

An issuer shall be eligible to make an initial public offer only if:

- (a) the issuer has an average pre-tax profit, based on consolidated audited accounts, of at least USD one million during the preceding three financial years; or
- (b) the issuer has an operating revenue of at least USD 20 million in the preceding financial year; or
- (c) any other eligibility criteria that may be prescribed by IFSCA.

Listing of Start-up and Small and Medium Sized Enterprise (SME) Companies

The start-up fulfilling the following criteria shall be eligible to list on the recognised stock exchanges, with or without making a public offer, in IFSC:

- (a) The offer document of the company should be filed within a period of ten years from the date of incorporation/ registration;
- (b) The turnover of the company for any of the financial years since incorporation should not have exceeded USD 20 million.
- (c) The company is working towards innovation, development or improvement of products or processes or services, or it is a scalable business model with a high potential of employment generation or wealth creation.

A small and medium enterprise company shall be eligible to list its specified securities on a recognised stock exchange, with or without making a public offer, if the annual turnover of the company for any of the financial years since incorporation/ registration should not have exceeded USD fifty million.

Listing of Special Purpose Acquisition Companies (SPAC)

A SPAC shall be eligible to raise capital through IPO of specified securities on the recognised stock exchanges in IFSC, only if:

- (a) The primary objective of the issuer is to effect a merger or amalgamation or acquisition of shares or assets of a company having business operations ("business acquisition");
- (b) The issuer does not have any operating business.

Listing of Debt Securities

The following categories of debt securities shall be eligible for listing on recognised stock exchanges in IFSC:

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- (a) Debt securities issued by issuers incorporated in IFSC;
- (b) Debt securities issued by issuers incorporated in India or foreign jurisdiction in any currency other than INR;
- (c) Masala Bonds;
- (d) Any other debt securities as permitted by relevant authority from time to time.

OR (Alternate question to Q. No. 2)

Answer 2A(i)

Investment Adviser

The SEBI (Investment Advisers) Regulations, 2013 defines that the Investment Adviser means any person, who for consideration, is engaged in the business of providing investment advice to clients or other persons or group of persons and includes any person who holds out himself as an investment adviser, by whatever name called.

General Obligations and Responsibilities:

1. An investment adviser shall act in a fiduciary capacity towards its clients and shall disclose all conflicts of interests as and when they arise.
2. An investment adviser shall not receive any consideration by way of remuneration or compensation or in any other form from any person other than the client being advised, in respect of the underlying products or securities for which advice is provided.
3. An investment adviser shall maintain an arms-length relationship between its activities as an investment adviser and other activities.
4. An investment adviser which is also engaged in activities other than investment advisory services shall ensure that its investment advisory services are clearly segregated from all its other activities, in the manner as prescribed.
5. An investment adviser shall ensure that in case of any conflict of interest of the investment advisory activities with other activities, such conflict of interest shall be disclosed to the client.
6. An investment adviser shall not divulge any confidential information about its client, which has come to its knowledge, without taking prior permission of its clients, except where such disclosures are required to be made in compliance with any law for the time being in force.
7. An investment advisor shall not enter into transactions on its own account which is contrary to its advice given to clients for a period of fifteen days from the day of such advice.
8. An investment advisor shall follow Know Your Client procedure as specified by the SEBI from time to time.
9. An investment adviser shall abide by Code of Conduct.
10. An investment adviser shall not act on its own account, knowingly to sell securities or investment products to or purchase securities or investment product from a client.
11. In case of change in control of the investment adviser, prior approval from the SEBI shall be taken.
12. Investment advisers shall furnish to the SEBI information and reports as may be specified by the SEBI from time to time.

13. It shall be the responsibility of the investment adviser to ensure compliance with the certification and qualification requirements.

Answer 2A(ii)

Key differences between Wholesale Price Index (WPI) & Consumer Price Index (CPI)

- Primary use of WPI is to have inflationary trend in the economy as a whole. However, CPI is used for adjusting income and expenditure streams for changes in the cost of living.
- WPI is based on wholesale prices for primary articles, administered prices for fuel items and ex-factory prices for manufactured products. On the other hand, CPI is based on retail prices, which include all distribution costs and taxes.
- Prices for WPI are collected on voluntary basis while price data for CPI are collected by investigators by visiting markets.
- WPI covers all goods including intermediate goods transacted in the economy while CPI covers only consumer goods and consumer services.
- WPI weights primarily based on national accounts and enterprise survey data and CPI weights are derived from consumer expenditure survey data.

Answer 2A(iii)

The Federal Funds Rate is the interest rate at which the top US banks borrow overnight money from common reserves. All American banks are required to park a portion of their deposits with the Federal Reserve in cash, as a statutory requirement.

The Fed Fund Rate gives the direction in which US interest rates should be heading at any given point of time. If the Fed is increasing the interest rates, lending rates for companies and retail borrowers will go up and vice versa. In India, hike in repo rate may not impact the countries outside India. On the other hand, US interest rates matter a lot to global capital flows.

Some of the world's richest institutions and investors have their base in USA. They constantly compare Fed rates with interest rates across the world to make their allocation decisions.

In the globalised world, markets are connected. An increase in Fed rates will be negative in general for the US stock market and if it leads to another round of sell-offs, it will also have ripple effects on the Indian market.

Any changes in the Fed Fund Rates impact the domestic borrowing market to a large extent. For instance, if the Fed rates go up, it will make the RBI hesitant in cutting rates at that time. The reason is that if RBI cut rates it will lead to heavy pullout of foreign investors from the Indian bond market.

Answer 2A(iv)

Registrars and Share transfer Agent means the person appointed by a body corporate or any person or group of persons to carry on the various activities as prescribed under the SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993.

Pre-issue Activities:

- Sending instructions to Banks for reporting of collection figures and collection of applications.
- Providing practical inputs to the Lead Manager and Printers regarding the design of the Bid cum-Application form.
- Facilitate and establish information flow system between clients, Banks and Managers to the

issue.

- Liaisoning with Regulatory Authorities such as SEBI & Stock Exchanges.

Post Issue Activities:

- Data capturing & validation,
- Reconciliation,
- Provide Allotment Alternatives in consultation with Client/ Merchant Banker and Stock Exchanges,
- Facilitating Listing,
- Uploading of data to the Depositories for crediting of securities electronically,
- Dispatch of Refund orders/ Share Certificates /Credit Advise,
- Periodic Report submission to Regulatory Authorities,
- Reconciliation of Refund payments,
- Attending to post issue Investor queries,
- Web-based investor enquiry system for allotment / refund details.

PART-II

Question 3

- (a) PBR Ltd. is a toy manufacturing listed company with its head office in Jaipur, Rajasthan. PBR Ltd. wishes to issue Further Public Offer (FPO). It has changed its name in the last one year immediately preceding the date of filing the documents for FPO. Being a Company law consultant, advise the management for eligibility for issue of FPO and lock-in period requirements for promoters' holding, which is in excess of minimum promoters' contribution.

(5 marks)

- (b) Sanaya Ltd. (a listed company) wants to implement Sweat Equity shares scheme for its employees. The company is also willing to issue shares under the scheme to one its whole-time director 'Jeevan'. Jeevan holds 21% of the outstanding equity share of the company. Whether the company can issue Sweat Equity shares to Jeevan? What type of information to be disclosed to the stock exchange after issue of Sweat Equity shares?

(5 marks)

- (c) Neeraj, an experienced technocrat, worked as an Executive director of an unlisted company. One of the leading listed companies (top 10), offered him Chief Executive Officer's post, at a higher pay scale. Neeraj knows that there is numerous SEBI compliance applicable for a listed company. Being a company secretary in practice, advise Neeraj about SEBI regulations on following :

- (i) Requirement of appointment of women director.
- (ii) Meeting & Quorum of the Board Meeting.
- (iii) Composition of an Audit Committee.

(1+2+2=5 marks)

Answer 3(a)**Eligibility Requirements for further public offer (FPO)**

Regulation 103 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 stipulates that an issuer shall be eligible to make a further public offer, if it has not changed its name in the last one year period immediately preceding the date of filing the relevant offer document. However, if an issuer has changed its name in the last one year period immediately preceding the date of filing the relevant offer document, such an issuer shall make further public offer if at least 50% of the revenue for the preceding one full year has been earned by it from the activity indicated by its new name.

Further provided that an issuer not satisfying the condition stipulated above, shall make a further public offer only if the issue is made through the book building process and the issuer undertakes to allot at least 75% of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

Lock-in of specified securities held by the promoters in excess of minimum promoters' contribution

Regulation 115 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 prescribed that Promoters' holding in excess of minimum promoters' contribution shall be locked in for a period of 6 months. However, lock in period shall be 1 year in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure.

Therefore, PBR Ltd. shall ensure compliance with the above to issue Further Public Offer (FPO).

Answer 3(b)

As per Regulation 29 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, the term 'employee' in relation to issue of sweat equity shares means,

- (i) an employee of the company working in India or abroad; or
- (ii) a director of the company whether a whole-time director or not.

Further, Regulation 30 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 states that a company whose equity shares are listed on a recognised stock exchange may issue sweat equity shares in accordance with Section 54 of the Companies Act, 2013 and these regulations to its employees for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

In light of the above-mentioned provisions, Sweat Equity Shares can be issued to any director, whether whole-time or not and there is no threshold for holding any equity shares of the company. Hence, Jeevan, who is a whole-time director and who holds 21% of the outstanding equity shares of Sanaya Ltd, is eligible for Sweat Equity Shares of Sanaya Ltd.

According to the Regulation 41 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, the company, within seven days of the issue of sweat equity shares, sends a statement to the recognised stock exchange, disclosing:

- (i) number of sweat equity shares issued;
- (ii) price at which the sweat equity shares are issued;
- (iii) total amount received towards sweat equity shares;
- (iv) details of the persons to whom sweat equity shares have been issued; and
- (v) the consequent changes in the capital structure and the shareholding pattern before and after the issue of sweat equity shares.

Answer 3(c)

- (i) **Requirement of Appointment of Woman Director:** The Board of Directors shall have an optimum combination of executive and non-executive directors with at least one woman director. The Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020. [Regulation 17(1)(a) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]
- (ii) **Meetings & Quorum of the Board Meeting:** The Board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings. The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director. [Regulation 17(2) & 17(2A) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]
- (iii) **Composition of an Audit Committee:** The audit committee shall comprise minimum three directors as members. At least Two-third of the members of audit committee shall be independent directors. In case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors. All members of audit committee shall be financial literate and at least one member shall have accounting or related financial management expertise. The chairperson of the audit committee shall be an independent director. [Regulation 18 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015]

Accordingly, Neeraj is advised.

Question 4

- (a) A large mutual fund asset management company holding a portfolio of ₹ 2,000 crore. It has launched a new Multi Cap Fund and wishes to engage bollywood celebrity to popularize this scheme. Is it permissible under SEBI regulations ? Will it make any difference, if the company intends to disseminate the awareness in general about the mutual fund industry ?
(5 marks)
- (b) Following persons desires to change their status from promoters to public i.e. re-classification of promoters shareholders to public shareholders. With reference to SEBI regulations, advise whether they are eligible for reclassification ?
- (i) Raman is acting as a Company Secretary
 - (ii) Naina defaulted repayment of loans and declared as wilful defaulter as per RBI guidelines
 - (iii) Mayank is holding 15% of total voting rights.
 - (iv) The trading of equity shares of the company suspended by the stock exchange.
 - (v) Minal acting as a Chief Financial Officer.
- (5 marks)
- (c) The share price of a listed industrial paint manufacturing company is continuously falling for the last one month, due to rising price of the crude oil, which is the prime raw material for the company's products. The management feels that the product situation will improve in near future. The CEO of the company advised to buy-back its shares, as he considers this as

a right time to do so. Advise the management about the approval requirement from Board/ shareholders and opening of escrow account for funding of buy-back offer.

(5 marks)

Answer 4(a)

The Advertisement Code as specified under Sixth Schedule of the SEBI (Mutual Funds) Regulations, 1996, states that celebrities shall not form part of the advertisement.

In view of above, the engagement of celebrity for a particular scheme like Multi Cap Fund is not permissible.

In case the asset management company desires to disseminate the awareness in general about the mutual fund industry, then it is allowed subject the conditions explained hereunder:

SEBI vide its Circular No. CIR/IMD/DF/23/2017 dated 15/03/2017 reviewed advertisement guidelines for mutual funds. In this respect, it has been decided by SEBI to permit celebrity endorsements at industry level, for the purpose of increasing awareness of Mutual Funds as a financial product category. However, such celebrity endorsements of Mutual Funds at industry level, shall be subject to the following conditions:

- i. Celebrity endorsement shall be allowed only at industry level, for the purpose of increasing awareness of Mutual Funds as a financial product category. Such celebrity endorsements should not promote a scheme of a particular Mutual Fund or be used as a branding exercise of a Mutual Fund house / AMC.
- ii. Expenses towards such celebrity endorsements for increasing awareness of Mutual Funds shall be limited to the amounts that are aggregated by Mutual Funds at industry level for the purpose of conducting investor education and awareness initiatives, in terms of clause F of SEBI circular dated September 13, 2012.
- iii. Prior approval of SEBI shall be required for issuance of any endorsement of Mutual Funds as a financial product, which features a celebrity for the purpose of increasing awareness of Mutual Funds.

Answer 4(b)

- (i) As per regulation 31A(3)(b)(v) of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015, the promoters seeking re-classification and persons related to the promoters seeking re-classification shall not act as key managerial personnel in the listed entity. Raman is acting as Company Secretary of the listed entity. Therefore, Raman is a key managerial person of the listed entity. As promoter is acting as a key managerial person in the listed entity, therefore he is not eligible to apply for re- classification as public shareholder.
- (ii) As per regulation 31A(3)(b)(vi) of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015, the promoters seeking re-classification and persons related to the promoters seeking re-classification shall not be a 'wilful defaulter' as per the Reserve Bank of India Guidelines. Naina, being a promoter, is declared as wilful defaulter as per RBI guidelines. In this case, Naina is not eligible to apply for re-classification as public shareholder.
- (iii) As per regulation 31A(3)(b)(i) of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015, the promoters seeking re-classification and persons related to the promoters seeking re-classification shall not together, hold more than ten percent of the total voting rights in the listed entity. Mayank is holding 15% of total voting rights in the listed entity. As Mayank, being a promoter, holds more than ten percent of the total voting rights in the listed entity, hence he is not eligible for re-classification as public shareholder.

- (iv) As per Regulation 31A(3)(c)(ii) of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015, the listed entity shall not have trading in its shares suspended by the stock exchanges. As trading of equity shares of the company is suspended by the stock exchange, hence reclassification will not be allowed.
- (v) As per regulation 31A(3)(b)(v) of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015, the promoters seeking re-classification and persons related to the promoters seeking re-classification shall not act as key managerial personnel in the listed entity. Minal is acting as Chief Finance Officer of the listed entity. Therefore, Minal is a key managerial person of the listed entity. As promoter is acting as a key managerial person in the listed entity, and therefore not eligible to apply for re- classification.

Answer 4(c)

As per Regulation 5 of the SEBI (Buy-Back of Securities) Regulations, 2018, the company shall not authorise any buy-back unless a special resolution has been passed at a general meeting of the company authorising the buy-back. However, special resolution is not required where the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount and such buy-back has been authorised by the board of directors by means of a resolution passed at its meeting.

A company is required to deposit in an escrow account such sum as specified under the SEBI (Buy-Back of Securities) Regulations, 2018.

In case company buy-back its shares through Tender Offer:

Regulation 9 of the SEBI (Buy-Back of Securities) Regulations, 2018, stipulates that the company shall, within two working days of the public announcement, as and by way of security for performance of its obligations under the regulations, deposit in an escrow account such sum as specified below.

- (i) if the consideration payable does not exceed Rupees 100 crores; 25 per cent of the consideration payable;
- (ii) if the consideration payable exceeds Rupees 100 crores; 25 per cent upto Rupees 100 crores and 10 per cent thereafter.

In case company buy-back from open market through stock exchange:

Regulation 20 of the SEBI (Buy-Back of Securities) Regulations, 2018, stipulates that the company shall, within two working days of the public announcement, create an escrow account towards security for performance of its obligations under these regulations, and deposit in escrow account 25 per cent of the amount earmarked for the buy-back as specified in the resolution of the board of directors or the special resolution, as the case may be.

The escrow account as referred above shall consist of (subject to appropriate margin):

- (i) Cash including bank deposits deposited with any scheduled commercial bank, or
- (ii) Bank guarantee issued in favour of the merchant banker by any scheduled commercial bank, or
- (iii) Deposit of frequently traded and freely transferable equity shares or other freely transferable securities, or
- (iv) Government securities, or
- (v) Units of mutual funds invested in gilt funds and overnight schemes, or
- (vi) A combination of above.

Question 5

(a) Harish Ltd. and Monish Ltd. are planning to float an IPO in March 2025 worth ₹ 600 crore and 500 crore respectively. Harish Ltd. is a pharmaceutical company and incorporated five years ago and is satisfying the conditions of regulation 6(1) of the SEBI (ICDR) Regulations 2018. Monish Ltd. is a start-up, engaged in the business of Organic farming technology and is operational since last two years. Many private equity players have already invested in the company and planning to sell their holding during the IPO. Calculate, the maximum permissible allotment to an anchor investor by both companies (assuming face value of ₹ 10 in each case).

(5 marks)

(b) Nirav attained the age of 18 years recently. He understands the concept of compounded return, thus started investing in a Systematic Investment Plan (SIP) from his monthly pocket money for an amount of ₹ 5,000 per month at the beginning of every month. The NAV of the scheme at the beginning of each month is given as below :

Month 1 : ₹ 10, Month 2 : ₹ 10.50, Month 3 : ₹ 10.80, Month 4 : ₹ 11.00,

Month 5 : ₹ 11.30

The NAV at the end of the 5th month is ₹ 12.10

What will be the value of holding of Nirav the end of 5th month under this SIP plan ?

(5 marks)

(c) Miraj Ltd. ('Target Company') is a listed company. The existing holding of promoters' group in Miraj Ltd. is 45%. One of the promoters' groups wants to transfer 2% shares to another promoters' group.

Miraj Ltd sought your expert opinion on the requirement of open offer and applicability of exemption under SEBI (SAST), Regulations, 2011 for making compulsory open offer.

(5 marks)

Answer 5(a)

Regulation 32 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, prescribes that the companies, who complies the requirement of regulation 6(1), the portion available for allocation shall be not more than 50% for QIBs, not less than 35% for retail individual investors and not less than 15% for non-institutional investors. Companies that do not meet the regulation 6(1) requirements, the portion available for allocation shall be not less than 75% to QIBs, not more than 15% to non-institutional investors and not more than 10% to retail individual investors. In an issue made through the book building process, the issuer may allocate up to sixty per cent. of the portion available for allocation to qualified institutional buyers to anchor investors.

In case of Harish Ltd. which is satisfying the conditions of Regulation 6(1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, the maximum number of shares to be issued to anchor investors are:

Issue size = ₹ 600 crore

Shares = ₹ 600 / ₹ 10 = 60 crore

Reservation for QIB = 60 crore * 50% = 30 crore

Allocation to anchor investor (out of QIB) = 30 crore * 60% = 18 crore

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In case of Monish Ltd., who is not satisfying the requirements of Regulation 6(1) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, the maximum number of shares to be issued to anchor investors are:

Issue size = ₹ 500 crore

Shares = ₹500/₹10 = 50 crore

Reservation for QIB = 50 crore * 75% = 37.5 crore

Allocation to anchor investor (out of QIB) = 37.5 crore * 60% = 22.5 crore

Answer 5(b)

Calculation of total number of units with Nirav at the end of 5th Month:

Month (1)	Amount Invested (₹) (2)	NAV (₹) (3)	No. of Units (2/3)
1	5,000	10	500
2	5,000	10.50	476.19
3	5,000	10.80	462.96
4	5,000	11.00	454.55
5	5,000	11.30	442.48
Total			2336.18

Present value of holding = No of units x closing NAV
 = 2,336.18 x ₹12.10
 = ₹ 28,267.78

Answer 5(c)

Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 prescribed that no acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 inter alia provides for automatic exemptions from the applicability of making Open Offer to the shareholders of the Target Company in respect of acquisition pursuant to inter se transfer of shares amongst persons named as promoters in the shareholding pattern filed by the target company in terms of the listing regulations or as the case may be, the listing agreement or these regulations for not less than three years prior to the proposed acquisition.

It may be noted that exemption provided under Regulation 10 applies only in case of obligation to make open offer as provided under Regulations 3 and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, subject to fulfillment of conditions as mentioned therein. In the

given problem matter, an inter-se transfer of 2% shares among promoter group being proposed. The current promoters' holding in Miraj Ltd. is 45%. Thus, Regulation 3(2) would be triggered only in case of acquisition of more than 5% shares within the financial year. However, in the given case of Miraj Ltd., the proposed transaction is for 2% shares, which is within the limit of 5% shares in the financial year. Thus, the proposed transaction would not trigger the requirement of making open offer as provided under Regulations 3 and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and therefore question of applicability of exemption as provided under Regulation 10 would not arise.

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

Question 6

- (a) Exotica venture capital fund (leading foreign fund house) had invested in a startup company & qualified as promoter. The company is willing to come up with Initial Public Offer. Exotica fund is thinking of selling its entire shareholding just after the listing of shares. Advise the Exotica fund by referring SEBI regulations for lock-in period of pre-issue shareholding. What will be your answer, if the majority of the IPO proceeds is used for capital expenditure ?
- (b) Rajesh, is an ace investors in the primary capital market. Due to rising response of High net-worth individual investors in the IPO market, the non-institutional quota generally subscribed multifold, thus very few chances remain to get allotment in the non-institutional category. State by quoting the SEBI provisions, the application sizes under the non-institutional category and how and when he gets more chances for shares allotment.
- (c) The concept of "Green debt security" has been introduced in SEBI regulations; narrate any five purposes for which money raised through green debt security can be utilized.

(5 marks each)

OR (Alternate question to Q. No. 6)

Question 6A

Write short notes on the following :

- (i) Composition of Risk Management Committee
- (ii) Quarterly disclosures by a Collective Investment Management Company
- (iii) Distinguish between Regular and Direct plan of a mutual fund scheme
- (iv) Enterprise Value
- (v) Fraud under SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

(3 marks each)

Answer 6(a)

Regulation 16 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 states that the minimum promoters' contribution including contribution made by alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India referred to in proviso to sub-regulation (1) of regulation 14, shall be locked-in for a period of eighteen months from the date of allotment in the initial public offer. Provided that in case the

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majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be three years from the date of allotment in the initial public offer.

Further provided that, promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of six months from the date of allotment in the initial public offer. In case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be one year from the date of allotment in the initial public offer.

Therefore, Exotica venture capital fund's pre-issue shareholding will be locked-in as mentioned above to the extent of minimum contribution or excess contribution, hence it cannot sell its shareholding just after the listing of shares.

Answer 6(b)

Allocation in the net offer [Regulation 32(3A) and 129 (3A) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018]

In an issue made through book building process, the allocation in the non-institutional investors' category shall be as follows:

- (a) $1/3^{\text{rd}}$ of the portion available to non-institutional investors shall be reserved for applicants with application size of more than Rs. 2 lakh and up to Rs. 10 lakh;
- (b) $2/3^{\text{rd}}$ of the portion available to non-institutional investors shall be reserved for applicants with application size of more than Rs. 10 lakh.

Provided that the unsubscribed portion in either of the sub-categories specified in clauses (a) or (b) may be allocated to applicants in the other sub-category of non-institutional investors.

In view of above, if Rajesh, applied with application size of more than Rs. 10 lakh, the reserved portion will be $2/3^{\text{rd}}$, hence there will be high chance to get the shares allotted under the IPO.

Answer 6(c)

"Green debt security" is defined under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 which means a debt security issued for raising funds subject to the conditions as may be specified by the SEBI from time to time, to be utilised for project(s) and/ or asset(s) falling under any of the following categories:

- (i) renewable and sustainable energy including wind, bioenergy, other sources of energy which use clean technology,
- (ii) clean transportation including mass/public transportation,
- (iii) climate change adaptation including efforts to make infrastructure more resilient to impacts of climate change and information support systems such as climate observation and early warning systems,
- (iv) energy efficiency including efficient and green buildings,
- (v) sustainable waste management including recycling, waste to energy, efficient disposal of wastage,
- (vi) sustainable land use including sustainable forestry and agriculture, afforestation,
- (vii) biodiversity conservation,
- (viii) pollution prevention and control (including reduction of air emissions, greenhouse gas control,

soil remediation, waste prevention, waste reduction, waste recycling and energy efficient or emission efficient waste to energy) and sectors mentioned under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change,

- (ix) circular economy adapted products, production technologies and processes (such as the design and introduction of reusable, recyclable and refurbished materials, components and products, circular tools and services) and/or eco efficient products
- (x) blue bonds which comprise of funds raised for sustainable water management including clean water and water recycling, and sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping,
- (xi) yellow bonds which comprise of funds raised for solar energy generation and the upstream industries and downstream industries associated with it,
- (xii) transition bonds which comprise of funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions, and
Explanation: Intended Nationally Determined Contributions (INDCs) refer to the climate targets determined by India under the Paris Agreement at the Conference of Parties 21 in 2015, and at the Conference of Parties 26 in 2021, as revised from time to time.
- (xiii) any other category, as may be specified by SEBI from time to time.

OR (Alternate question to Q. No. 6)

Answer 6A(i)

Composition of Risk Management Committee [Regulation 21 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

- The Risk Management Committee shall have minimum three members with majority of them being members of the board of directors, including at least one independent director.
- In case of a listed entity having outstanding SR equity shares at least two thirds of the Risk Management Committee shall comprise independent directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.

Answer 6A (ii)

Quarterly disclosures

Regulation 49 of the SEBI (Collective Investment Schemes) Regulations, 1999 specify the provisions related to quarterly disclosures by a Collective Investment Management Company. It is prescribed that a Collective Investment Management Company, on behalf of the collective investment scheme shall before the expiry of one month from the close of each quarter that is 31st March, 30th June, 30th September and 31st December publish its unaudited financial results in one daily newspaper having nationwide circulation and, in a newspaper, published in the language of the region where the Head Office of the Collective Investment Management Company is situated.

However, the quarterly unaudited report shall contain details as specified in the SEBI (Collective Investment Schemes) Regulations, 1999 and such other details as specified in the regulations and as are necessary for the purpose of providing a true and fair view of the operations of the collective investment scheme.

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Answer 6A(iii)

The distinguish between Regular and Direct Plan of a mutual fund scheme is given below:

S. No.	Regular Plan	Direct Plan
1.	Sold through a distributor	Sold directly by the Asset Management Company (AMC)
2.	Higher Expense Ratio (Due to commissions paid to distributor)	Lower Expense Ratio (No commission paid to distributor)
3.	Potentially lower returns to the investor (Due to higher expenses)	Potentially higher returns (Due to lower expenses)

Answer 6A (iv)**Enterprise Value**

Regulation 2(1)(h) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 defines the term Enterprise Value which means the value calculated as market capitalization of a company plus debt, minority interest and preferred shares, minus total cash and cash equivalents.

Enterprise Value= Market capitalization+ Debt+ Minority Interest + Preferred Shares - Total Cash and Cash Equivalents

Answer 6A (v)**Fraud**

As per regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, Fraud includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include –

- a) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
- b) a suggestion as to a fact which is not true by one who does not believe it to be true;
- c) an active concealment of a fact by a person having knowledge or belief of the fact;
- d) a promise made without any intention of performing it;
- e) a representation made in a reckless and careless manner whether it be true or false;
- f) any such act or omission as any other law specifically declares to be fraudulent;
- g) deceptive behaviour by a person depriving another of informed consent or full participation;
- h) a false statement made without reasonable ground for believing it to be true;
- i) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to –

- (a) the economic policy of the government
- (b) the economic situation of the country
- (c) trends in the securities market or
- (d) any other matter of a like nature

whether such comments are made in public or in private.

Lecture Kart

Lecture Kart

ECONOMIC, COMMERCIAL AND INTELLECTUAL PROPERTY LAWS

GROUP 2 PAPER 6

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART- I

Question 1

"Shardha Heights," a duly registered welfare society, took the proactive step of filing an application with the District Consumer Disputes Redressal Commission. The application was on behalf of 12 allottees who had encountered significant issues with Shobha Ltd. a real estate developer. These allottees alleged that despite booking units with Shobha Ltd. on various dates and making substantial payments towards the purchase, they had yet to receive possession of their properties.

However, the District Commission took a decisive stance, rejecting the complaint lodged by Shardha Heights. Their decision rested on the assertion that Shardha Heights lacked the necessary legal standing, or locus standi, to file such a complaint. 'The Commission reasoned that Shardha Heights did not qualify as either a 'Consumer' or a 'Recognised' consumer association' under the applicable regulations. In light of this setback, Shardha Heights is now seeking to appeal against the District Commission's ruling.

Considering the above statements, answer the following questions :

- (i) Define Recognised Consumer Association as per Consumer Protection Act, 2019 ?
(2 marks)
- (ii) Whether Shardha Heights is a 'Recognised Consumer Association' as per Consumer Protection Act, 2019 ? Explain.
(2 marks)
- (iii) What is the Manner of filing Complaint to District Consumer Disputes Redressal Commission under Section 35 of the Consumer Protection Act, 2019 ?
(3 marks)
- (iv) Can complaint be filed before Consumer Commission online ? Explain.
(2 marks)
- (v) To whom an Appeal can be filed by Shardha Heights against the order of District Consumer Disputes Redressal Commission and what is limitation period for doing so ?
(2 marks)
- (vi) What are the restrictions on filing an appeal against the order of District Consumer Disputes Redressal Commission ?
(2 marks)

(vii) State the constitution of the District Consumer Disputes Redressal Commission.

(2 marks)

Answer 1(i)

“Recognised Consumer Association” means any voluntary consumer association registered under any law for the time being in force. (Explanation to section 35(1) of the Consumer Protection Act, 2019)

Answer 1(ii)

Yes, Shardha Heights, being a duly registered welfare society, is a “Recognised Consumer Association as per Consumer Protection Act, 2019.

In the case of *Sobha Hibiscus Condominium vs. MW Sosha Developer's Ltd.* judgement dated February 2020, Hon'ble Supreme Court observed that in essence voluntary consumer association will be a body formed by group of persons coming together, of their own will and without any pressure or influence from anyone and without being mandated by any other provisions of law.

Answer 1(iii)

Section 35 Consumer Protection Act 2019 provides that provides that a complaint, in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District commission by

(a) the consumer: -

- (vii) to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided; or
- (viii) who alleges unfair trade practice in respect of such goods or service.

(b) any recognised consumer association, whether the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service is provided or agreed to be provided, or who alleges unfair trade practice in respect of such goods or service, is a member of such association or not,

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Commission, on behalf of or for the benefit of, all consumers so interested; or

(d) The Central Government, the Central Authority or the State Government, as the case may be.

It may be noted that the complaint may be filed electronically in such manner as may be prescribed. Every complaint filed under Section 35, sub-section (1) shall be accompanied with such fee and payable in such manner, including electronic form, as may be prescribed.

Answer 1(iv)

Yes, the complaint be filed before Consumer Commission online in the prescribed manner at <http://edaakhil.nic.in/>.

A complaint:

- Should be in writing
- Can be filed in a regular way (offline)
- Can be filed online – <http://edaakhil.nic.in/>

Answer 1(v)

According to Section 41 of the Consumer Protection Act, 2019 any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed. It may be noted that the State Commission may entertain an appeal after the expiry of the said period of forty-five days, if it is satisfied that there was sufficient cause for not filing it within that period.

Shradha Heights may appeal to the State Commission.

Answer 1(vi)

There are certain restrictions on filling an appeal against the order of District Consumer Disputes Redressal Commission, unless the person fulfils the following conditions namely-

- No appeal by a person, who is required to pay any amount in terms of an order of the District Commission, shall be entertained by the State Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.
- No appeal shall lie from any order passed under sub-section (1) of section 81 by the District Commission pursuant to a settlement by mediation under section 80.

Answer 1(vii)

Section 28 of the Consumer Protection Act, 2019 empowers the State Government to establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State. State Government may also, if it deems fit, establish more than one District Commission in a district. Each District Consumer Disputes Redressal Commission shall consist of -

- (a) a President; and
- (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government.

Question 2

- (a) ABC Bearing Limited along with other four companies, who are the key Competitors in the market decided among themselves to revise the prices to be quoted to Original Equipment Manufacturers (OEMs). Discuss whether this act amounts to Cartelisation under the Competition Act, 2002 ?
- (b) Vinesh is a person resident outside India. He wishes to acquire the Immovable property in India for carrying on a permitted activity. Explain whether Vinesh can do so under Section 6(5) of the Foreign Exchange and Management Act, 1999 ?
- (c) Mukesh is a manufacturer of 'Jaggry Powder' and brings this product into the market in the pre-packaged form but the Retail price and Quantity has not been mentioned on the Packet. Is it an offence under the Legal Metrology Act, 2009 ? If yes, what are the penalties for this offence ?

Will your answer be different if Mukesh mentions the wrong quantity on pre-packaged 'Jaggry Powder' ?

(5 marks each)

Answer 2(a)

According to Section 2(c) of the Competition Act, 2002, "Cartel" includes an association of

producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

The nature of a cartel is to raise price above competitive levels, resulting in injury to consumers and to the economy. For the consumers, cartelisation results in higher prices, poor quality and less or no choice for goods or/and services.

An international cartel is said to exist, when not all of the enterprises in a cartel are based in the same country or when the cartel affects markets of more than one country.

In the Competition Act, cartels meant exclusively for exports have been excluded from the provisions relating to anti- competitive agreements. This is because such cartels do not adversely affect markets in India and are hence outside the purview of the Competition Act. If there is effective competition in the market, cartels would find it difficult to be formed and sustained.

Competition Commission of India in the matter of *ABC Bearing Ltd., dated June 05, 2020* held that where key Competitors in bearings market discussed amongst themselves to decide on revision of prices to be quoted to Original Equipment Manufacturers (OEMs), thereby their independence is compromised, facilitating them to quote price revisions to OEMs different than what they would have quoted independently, will amount to Cartel as defined under Section 2(c) of the Competition Act, 2002.

Competition Commission of India in the case of *All India Tyre Dealers Federation Vs. Tyre Manufacturers* observed that no explicit agreement is required in order to prove cartelisation, it may be proved even through the intention or conduct of parties.

So, in the light of the above case, this Act of ABC Bearing Limited amounts to Cartelisation.

Answer 2(b)

According to Section 6(5) of the Foreign Exchange and Management Act, 1999, a person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.

A Branch or office or any other place of business in India, other than a Liaison office, established by a person resident outside India, may acquire immovable property in India which is necessary for or incidental to the activity carried on in India by such branch or office.

Such a person is required to file with the Reserve bank a declaration in the form IPI (as given in the Master direction on Reporting), not later than 90 days from the date of such acquisition. The immovable property so acquired can be mortgaged to an Authorised Dealer as a security for any borrowing.

In the given case, Mr. Vinesh can do so and he has to file above compliance.

Answer 2(c)

Yes, it is an offence under the Legal Metrology Act, 2009.

Section 18(1) of the Legal Metrology Act, 2009 specifies that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.

Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such

form and manner as may be prescribed.

Under Section 36 of the Legal Metrology Act, 2009, whoever manufactures, packs imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

Whoever manufactures or packs or imports or causes to be manufactured or packed or imported, any pre-packaged commodity, with error in net quantity as may be prescribed shall be punished with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees and for the second and subsequent offence, with fine which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

No, answer will not be different if Mukesh mentions the wrong quantity on Pre-Packaged 'Jaggy Powder'.

Question 3

- (a) Rajeev booked a Flat in a housing scheme named 'Alpha Tower' Launched by Alpha Pvt. Ltd. by paying the booking amount and executing the 'Buyer's Agreement'. As per the Buyer's Agreement', Flat was to be delivered with 3 years of the Agreement but the promoters of the Company failed to deliver the Flat even after 5 years. Rajeev wants to withdraw from the project and wants the refund of amount paid. Discuss as per the provisions of Real Estate Regulation and Development Law whether Rajeev can withdraw from the Project ?

What is the remedy available to Rajeev, if he does not wish to withdraw from the project ?

- (b) XYZ Ltd. has been granted approval by the Board of Approval for foreign collaborations and foreign direct investments (including investments by a person resident outside India) in the Special Economic Zone for its development, operation and maintenance. XYZ Ltd. has persistently defaulted in complying with the directions of the Board. What action can be taken by the Board of Approval against XYZ Ltd. under Section 10 of the Special Economic Zones Act, 2005 ?
- (c) Gama is resident in India and citizen of India. He is going to receive the foreign contribution from US. Explain the foreign contribution and conditions under which he can receive such foreign contribution under Foreign Contribution (Regulation) Act, 2010 ?

(5 marks each)

Answer 3(a)

Section 18(1) of the Real Estate Regulation and Development Act, 2016 provides that if the promoter fails to complete or is unable to give possession of an apartment, plot or building -

- in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, or
- due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in

respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

In the light of above provision Rajeev can withdraw from the Project. If he does not wish to withdraw from the project, he shall be paid Interest for every month of delay, till the possession is handed over to him. He shall also be compensated for any loss caused to him as stated above.

Answer 3(b)

Section 10 of the Special Economic Zones Act, 2005 empowers the Board of Approval to suspend the letter of approval granted to the Developer (XYZ Ltd. in this case) for a whole or part of his area established as Special Economic Zone for a period not exceeding one year and appoint an Administrator to discharge the functions of the developer in accordance with the terms and conditions of the letter of approval and manage the Special Economic Zone accordingly. The suspension may be ordered by the Board, if in its opinion following circumstances exist:

- The developer is unable to discharge the function for performing the duties imposed on him.
- The developer has persistently defaulted in complying with the directions of the Board.
- The developer has violated the terms and conditions of the letter of approval.
- The financial position of the developer is such that he is unable to fully and efficiently discharge the duties and obligations imposed on him by the letter of approval and
- the circumstances exist which render it necessary for it in public interest so to do, the Board may, on application, or with the consent of the Developer, or otherwise, for reasons to be recorded in writing, suspend the letter of approval, granted to the Developer for a whole or part of his area established as Special Economic Zone, for a period not exceeding one year and appoint an Administrator to discharge the functions of the Developer in accordance with the terms and conditions of the letter of approval and manage the Special Economic Zone accordingly.

Consequent upon appointment of an Administrator, the management of the Special Economic Zone of the Developer shall vest in the Administrator.

However, no letter of approval can be suspended unless the Board has given to the Developer not less than three months' notice, in writing, stating the grounds on which it proposes to suspend the letter of approval, and has considered any cause shown by the Developer within the period of that notice, against the proposed suspension. It has been further provided that the Board may, instead of suspending the letter of approval, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose.

Section 10(4) makes any further terms or conditions so imposed binding upon the Developer. These

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terms and conditions have the force and effect as if they were contained in the letter of approval. Where the Board has given notice for suspension of letter of approval the Developer may, after prior approval of the Board, transfer his letter of approval to any person who is found eligible by the Board for grant of such approval.

Answer 3(c)

According to Section 2(1)(h) the Foreign Contribution (Regulation) Act, 2010, Foreign Contribution means the donation, delivery or transfer made by any foreign source-

- (a) Of any article, not being an article given to a person as a gift for his personal use, if market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf.
- (b) Of any currency, whether Indian or Foreign currency.
- (c) Of any security as defined u/s 2 (h) of the Securities Contracts (Regulations) Act, 1956 and includes any foreign security as defined u/s 2(o) of FEMA, 1999.

Conditions to receive Foreign Contribution:

Any person can receive foreign contribution subject to the following conditions:

- It must have a definite cultural, economic, educational, religious or social programme
- It must obtain the FCRA registration/prior permission from the Central Government.
- It must not be prohibited under section 3 of FCRA, 2010.

It may be noted that "Person" includes-

- i) An individual;
- ii) A Hindu undivided family;
- iii) An association;
- iv) A company registered under section 25/8 of the companies Act [Section 2(1)(m)]

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

Question 4

- (a) Discuss the power of survey by director under law relating to Fugitive Economic Offenders Act, 2018 ?
- (b) What is the meaning of "Deemed Exports" for the purpose of Foreign Trade Policy (FTP) and Goods and Service Tax (GST). What are the benefits for Deemed Exports ?
- (c) What is meant by "Regulated Entities" (REs) under the Prevention of Money-Laundering Act, 2002 ?

(5 marks each)

OR (Alternate question to Q. No. 4)

Question 4A

- (i) What is meant by Overseas Direct Investment (ODI) and Overseas Portfolio Investment OPI under Overseas Direct Investment ?
- (ii) How is the Management of properties confiscated under the Law relating to Benami Transactions and Prohibition ?

(iii) What are the conditions for foreign investment in Limited Liability Partnerships (LLPs) ?

(5 marks each)

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

Answer 4(a)

According to Fugitive Economic Offenders Act, 2018 where a director or any other officer authorised by the Director, on the basis of material in his possession, has reason to believe (the reason for such belief to be recorded in writing), that an individual may be fugitive economic offender, he may enter any place:

- i) within the limit of the area assigned to him, or
- ii) in respect of which he is authorised for the purposes of this section, by such other authority, who is assigned the area within which such place is situated.

Where the director or any officer authorised by the Director, on the basis of material in his possession, has reason to believe (the reason for such belief to be recorded in writing), that an individual may be fugitive economic offender and it is necessary to enter any place, he may request any proprietor, employee or any other person who may be present at that time, to-

- a) afford him the necessary facility to inspect such records as he may require and which may be available at such place:
- b) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein: and
- c) Furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings.

The Director, or any other officer acting under this section may:

- i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom:
- ii) make any inventory of any property checked or verified by him; and
- iii) record the statement of any person at the property which may be useful for or relevant to, any proceeding

Answer 4(b)

Deemed Exports for the purposed of foreign Trade Policy (FTP) and Good and Services Tax (GST) are given below:

- "Deemed Exports" for the purpose of this FTP refer to those transactions in which goods supplied do not leave country, and payment for such supplies is received either in Indian rupees or in free foreign exchange. Supply of goods as specified in Foreign Trade Policy shall be regarded as "Deemed Exports" provided goods are manufactured in India.
- "Deemed Exports" for the purpose of Goods and Service Tax would include only the supplies notified under Section 147 of the CGST/SGST Act, 2017 on the recommendations of the GST Council. The benefits of GST and conditions applicable for such benefits would be as specified by the GST Council and as per relevant rules and notification.

Benefits for Deemed Exports are as follow:

Deemed exports shall be eligible for any/all of following benefits, in respect of manufacture and

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supply of goods, qualifying as deemed exports, subject to terms and conditions as given in Hand Book & Procedure and ANF-7A:

- (a) Advance Authorisation/Advance Authorisation for annual requirement/ DFIA.
- (b) Deemed Export Drawback for BCD (Basic Custom Duty).
- (c) Refund of terminal excise duty for excisable goods.

Answer 4(c)

The "Regulated Entities" (REs) under the protection of Money-Laundering Act, 2002 means:

- a) all Scheduled Commercial Banks (SCBs), Regional Rural Banks (RRBs)/ Local Area Banks (LABs)/ All Primary (Urban) Co-operative Banks (UCBs)/ State and Central Co-operative Banks (StCBs/CCBs) and any other entity which has been licenced under Section 22 of Banking Regulation Act, 1949, which as a group shall be referred as 'banks'.
- b) All India Financial Institutions (AIFIs).
- c) All Non-Banking Finance Companies (NBFCs), Miscellaneous Non- Banking Companies (MNBCs) and Residuary Non-Banking Companies (RNBCs).
- d) All Payment System Providers (PSPs), System Participants (SPs) and Prepaid Payment Instrument Issuers (PPI Issuers).
- e) All authorised persons (APs) including those who are agents of Money Transfer Service Scheme (MTSS), regulated by the Regulator.

OR (Alternate question to Q. No.4)

Answer 4A(i)

According to Foreign Exchange Management (Overseas Investment) Rules, 2022, Overseas Direct Investment (ODI) means:

- (a) Acquisition of any unlisted equity capital or subscription as a part of the Memorandum of Association of a foreign entity, or
- (b) Investment in 10% or more of the paid-up equity capital of a listed foreign entity, or
- (c) Investment with control where investment is less than 10% of the paid- up equity capital of a listed foreign entity.

Overseas Portfolio Investment (OPI) means investment, other than ODI, in foreign securities, but not in any unlisted debt instruments or any security issued by a person resident in India who is not in an International a Financial Service Centre (IFSC).

Provided that OPI by a person resident in India in the equity capital of a listed entity, even after its delisting shall continue to be treated as OPI until any further investment is made in the entity. Debt instruments are:

- i) Government bonds:
- ii) corporate bonds:
- iii) all tranches of securitisation structure which are not equity tranche:
- iv) borrowings by firms through loans, and
- v) depository receipts whose underlying securities are debt securities.

Answer 4A(ii)

Section 28 of the Benami Transactions (Prohibition) Act, 1988 relates to management of properties confiscated under this Act. Sub-section (1) of this section provides that the Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation under sub-section (1) of section 27 has been made, in such manner and subject to such conditions, as may be prescribed.

Sub-section (2) of this section provides that the Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.

Sub-section (3) of this section provides that the Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under subsection (2) of section 27 in such manner and subject to such conditions as may be prescribed.

Answer 4A(iii)

Foreign Investment in Limited Liability Partnerships (LLPs) is permitted subject to the following conditions:

- i) Foreign Investment is permitted under the automatic route in Limited Liability Partnership (LLPs) operating in sectors activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions.
- ii) An Indian company or an LLP having foreign investment, is also permitted to make downstream investment in another company or LLP in sectors in which 100% FDI is allowed under the automatic route and there are no FDI-linked performance conditions. Conversion of an LLP having foreign investment and operating in sectors/activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into a company is permitted under automatic route. Similarly, conversion of a company having foreign investment and operating in sectors/ activities where 100% FDI is allowed through the automatic route and there are no FDI-linked performance conditions, into an LLP is permitted under automatic route.
- iii) Foreign Investment in LLP is subject to the compliance of the conditions of LLP Act, 2008.

PART-II**Question 5**

- (a) India Tea Board owns the famous Geographical Indication "Darjeeling" and the logo of the woman holding the tea leaves, as well as the trademark "Darjeeling" under the Trademarks Act, regarding "tea".

ITC, Limited has used the "Darjeeling Lounge" as the name of its top lounge at its Kolkata hotel, ITC Sonar.

Tea Board of India filed a Lawsuit against ITC Ltd. that by using the word "Darjeeling" in one of its hotel resorts in Kolkata which is a breach of its landmark as well as well as a certificate mark as tea Board is the registered owner of the "Darjeeling" sign.

Tea Board of India moved an interlocutory application for temporary injunction for restraining the ITC Ltd. from using or conducting or making business at the hotel by the name "Darjeeling Lounge". Application stated that usage of the word "Darjeeling" in the name and logo by defendants is passing off or attempting to pass off its business or services so

as to discredit the fame of Darjeeling tea as a geographical indication and/or to mislead persons.

In light of the above, answer the following questions in the light of the Geographical Indications of Goods (Registration and Protection) Act, 1999 :

(i) Is the contention of the India Tea Board, that ITC Ltd. is engaging in Passing-off, correct ? Explain.

(ii) How a Geographical Indication is different from Trade Mark ?

(2 marks)

(iii) Can the Tea Board of India file a complaint against 'X' for selling tea varieties at the Railway station under the name 'Darjeeling Tea Stall' ?

(2 marks)

(iv) What if ITC Limited has been operating and using the 'Darjeeling Lounge' long before the enactment of the Act ?

(v) What is punishment for applying false Geographical Indications ?

(2 marks)

(b) In the case of Bishwanath Prasad Radhey Shyam Vs. Hindustan Metal Industries, (1979) 2 SCC 511, it was held by the Hon'ble Supreme Court of India that the object of Patent law is to encourage scientific research, new technology and industrial progress. A limited-time grant of the only right to own, use, or sell a patented method or product encourages the development of new commercially useful inventions. The disclosure of the invention to the Patent Office, which becomes public domain after a predetermined duration of the monopoly, is the cost of the monopoly grant. In Raj Prakash Vs. Mangat Ram Choudhary AIR 1978 Delhi 1, it was held that inventive creation, as is notable, is to discover something or find something not found or found by anybody previously. It isn't essential that the invention ought to be anything confounded. The fundamental thing is that the creator was first to embrace it. The main issue in this manner, is that each basic creation is asserted, as in the form of novelty or new character, it will be considered as an invention and the cases & specifications must be perused in that light.

Section 2(1) (ja) of the Patent Act, 1970 defines the term inventive step as to mean a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both that makes the invention not obvious to a person skilled in the art. Section 6 of the Act provides that who can make an application for a patent for an invention.

Consider the above statements, answer the questions :

(i) What are the criteria for patenting the invention ?

(ii) Are mathematical or business methods, computer programs per se, or algorithms patentable ? Explain.

(iii) What can be Patented ?

(iv) State any two advantages of patent.

(v) Ramchand invented a medicine and was about to apply for a patent. However, he passed away before applying. Can his legal representative apply for the patent ?

(2 marks each)

Answer 5(a)(i)

The word "Darjeeling" -as precious to tea as it may be as champagne to sparkling wines of that province in France - cannot be exclusively claimed by the plaintiff by virtue of its registration as a geographical indication or as a certification trade mark. Even for a case of passing-off, the use of "Darjeeling" by a person other than the plaintiff can be complained of if the word or the geographical indication has any nexus with the product with which it is exclusively associated upon the registration. It is not necessary to consider whether a "Darjeeling Tea Stall" selling only hot cups of tea can entitle the plaintiff to carry a complaint in respect thereof or a "Darjeeling Tea House" selling all varieties of packaged tea can be said to be in derogation of the plaintiff's rights. The defendant's "Darjeeling Lounge" is an exclusive area within the confines of its hotel which is accessible only to its high-end customers. The lounge is a place where such customers and accompanying visitors may frequent, and even sip Darjeeling tea or any other beverage or drink, but there is scarcely any likelihood of deception or confusion in the lounge being named "Darjeeling" for the plaintiff to be granted to any order that it seeks. In light of above the contention of India Tea Board that the ITC Ltd. is using Passing-off, is not correct.

Answer 5(a)(ii)

Different between Geographical Indication and trade mark are as follow:

- A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.
- Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

Answer 5(a)(iii)

It is not necessary to consider whether a "Darjeeling Tea Stall" selling only hot cups of tea can entitle the plaintiff to carry a complaint in respect thereof or a "Darjeeling Tea House" selling all varieties of packaged tea can be said to be in derogation of the plaintiff's rights. The defendant's "Darjeeling Lounge" is an exclusive area within the confines of its hotel which is accessible only to its high-end customers. The lounge is a place where such customers and accompanying visitors may frequent, and even sip Darjeeling tea or any other beverage or drink, but there is scarcely any likelihood of deception or confusion in the lounge being named "Darjeeling" for the plaintiff to be granted to any order that it seeks.

So "Darjeeling Tea Stall" can sell all/multiple tea varieties and it cannot be said to be in the derogation of the plaintiff's rights.

Answer 5(a)(iv)

ITC Limited running and using the "Darjeeling Lounge" before the enactment of Geographical Indications of Goods (Registration and Protection) Act, 1999, as to the case of dilution, the name "Darjeeling" has been extensively used in many trading and commercial circles for decades before the GI Act was enacted. In a case of dilution by blurring, it is the uniqueness of a mark which is protected even in a case where there is no likelihood of confusion. But the word "Darjeeling" has been and continues to be so widely used as a business name or for like purpose for so long that the plaintiff's recent plea would, prima facie, not entitle them to enjoy the kind of exclusivity that they asserts/claim.

Answer 5(a)(v)

According to Section 39 of the Geographical Indication of Goods (Registration and Protection)

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Act, 1999, any person who apply false Geographical Indications shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees. It is also provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees.

Answer 5(b)(i)

An invention relating either to a product or process is patentable subject matter if it meets the following criteria-

- It should be novel.
- It should have inventive step or it must be non-obvious.
- It should be capable of Industrial application.

It should not attract the provisions of section 3 and 4 of the Patents Act. 1970.

Answer 5(b)(ii)

Section 3 of the Patent Act 1970 provides a list in which certain inventions are not patentable. Mathematical or business methods, computer programs per se, or algorithms is not considered an invention as per Section 3(k) of the Act and thus, not patentable.

Answer 5(b)(iii)

An invention relating either to a product or process that is new, involving inventive step and capable of industrial application can be patented. However, it must not fall into the categories of inventions that are non- patentable under sections 3 and 4 of the Act.

Answer 5(b)(iv)

Advantages of Patents are as given below:

- Patentee have the complete rights to restrict outsider from making, operating, providing accessibility to be bought, providing or putting in the product generated by him, without his consent. He has absolute prerogative to utilize his invention and his rights that are very much ensured under the Act.
- The patentee has a privilege to file the suit for encroachment of his patent and can ask for remedies like. Injunction, compensation and a settlement of profit against the individual who encroached his patent.
- Patentee can commercially exploit or pitch his creation to any skilled individual and concede permit to him to abuse his item and in this way the patentee can likewise wins benefit along these lines.
- The holder of the exclusive permit can also avail the rights given to the patentee and can bring a suit if there should arise an occurrence of any encroachment of Patent.
- A patentee gets the privilege to make changes in or alterations of an invention depicted or uncovered in the total determination of the primary innovation and get the particular right of a patent by the substantial change or patent as a matter of addition certain adjustment.

Answer 5(b)(v)

Section 6(1) (c) of the Patents Act,1970 provides that an application for a patent for an invention

may be made by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

Therefore, legal representative of Ramchand can apply for the patent.

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

Question 6

(a) Amit, an Indian Resident, wants to make an application outside India for the grant of a patent for an invention. Explain whether he can apply outside India as provisions of the Patents Act, 1970? What will be your answer if the invention is relevant for defence purpose?

(5 marks)

(b) Priya wants to start the trading of incense sticks (agarbattis, dhoops) and perfumeries as M/s Priya Perfumery. She made an application to the Registrar of Trade Marks to register a trade mark by name "RAMAYAN". State with reasons whether she will succeed in registering such a Trade Mark under the Trade Marks Act, 1999?

(5 marks)

(c) Francis is a famous lyricist in India & world-wide. Sona, another lyricist copied a very catching phrase from his song, there is likely to be infringement even if the phrase is very short. Mention the commonly known acts which are termed as infringement of copyright. Also discuss the penalties for infringement.

(5 marks)

(d) What are the absolute grounds for refusal of Registration of trade mark under Section 9(l) of the Trade Mark Act, 1999?

(5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

- (i) What is the duration of the registration of a design? Can it be extended? How can the Registration of a Design be cancelled?
- (ii) What is meant by Trade Mark under the Intellectual Property Rights?
- (iii) "Section 9 of the Geographical Indications of Goods (Registration and Protection Act, 1999 prohibits registration of certain geographical indications." Discuss.
- (iv) "The Registrar of Copyrights shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908". Elaborate the statement in context with the Copyright Act, 1957.

(5 marks each)

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

Answer 6(a)

Section 39 of the Patents Act, 1970 provides that no person resident in India shall, except under the authority of a written permit sought in the manner prescribed and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless—

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- (a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and
- (b) either no direction has been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

The Controller shall dispose of every such application within such period as may be prescribed:

It may be noted that if the invention is relevant for defence purpose or atomic energy, the Controller shall not grant permit without the prior consent of the Central Government.

Section 39 (3) of the Patent Act clarifies that the provisions of section 39 shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.

In this case, yes, Amit can apply outside India subject to above conditions.

Answer 6(b)

No, Priya will not succeed in registering such a Trade Mark under the Trade Marks Act, 1999.

According to Section 9(2) of the Trade Marks Act, 1999 the following trademark shall not be registered:

1. If the trademark tends to deceive the public or cause any confusion,
2. In any instance if the trademark hurts any religious sentiment of any demographic section of Indian citizens,
3. It comprises or contains scandalous or obscene matter,
4. Its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

In the case of *Amritpal Singh vs. Lal Babu Priyadarshi 2005 (30) PTC 94*, Intellectual Property Appellate Board (IPAB) the word RAMAYAN was refused registration on the grounds that: Firstly, it was not capable of distinguishing the goods of the applicant and secondly, that it was likely to hurt religious sentiments of a class of society.

Answer 6(c)

The following are some of the commonly known acts involving infringement of copyright:

- Making infringing copies for sale or hire or selling or letting them for hire,
- Permitting any place for the performance of works in public where such performance constitutes infringement of copyright,
- Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright,
- Public exhibition of infringing copies by way of trade, and
- Importation of infringing copies into India.

Section 63 deals with offences of infringement of copyright or other rights conferred by the Copyright Act, 1957. This section states that any person who knowingly infringes or abates the infringement of the copyright in a work or any other right conferred under the Act (except for resale share right in original copies), liable to imprisonment for a minimum period of six months which may extend to three years and with minimum fine of fifty thousand rupees which may extend up to rupees two lakh. However, the Court has been empowered to impose a sentence less than six months or a fine less than fifty thousand, if the infringement had not been made for gain in the course of trade or

business. In such situations, the section requires the courts to mention adequate and special reason in the judgement.

Answer 6(d)

Section 9(1) of the Trade Mark Act 1999 containing provisions relating to absolute grounds for refusal for registration prohibit the registration of those trademarks,

- (a) which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person;
- (b) which consist exclusively of marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origin or the time of production of the goods or rendering of the service or other characteristics of the goods or service;
- (c) which consist exclusively of marks or indications which have become customary in the current language or in the bona fide and established practices of the trade, shall not be registered.

It may be noted that a trade mark shall not be refused registration if before the date of application for registration it has acquired a distinctive character as a result of the use made of it or is a well-known trade mark.

OR (Alternate question to Q. No.6)

Answer 6A(i)

Duration of the registration of a design

The duration of the registration of a design is initially ten years from the date of registration, but in cases where claim to priority has been allowed the duration is ten years from the priority date. This initial period of registration may be extended by further period of 5 years on an application made to the Controller before the expiry of the said initial period of ten years.

Cancellation of Registration

According to Section 19 of the Design Act 2000, the registration of a design may be cancelled at any time after the registration of design on a petition for cancellation in prescribed form with fee to the Controller of Designs on the following grounds:

- That the design has been previously registered in India; or
- That it has been published in India or elsewhere prior to date of registration, or
- The design is not new or original; or
- Design is not registrable; or
- It is not a design under Clause (d) of Section 2.

Answer 6A(ii)

The term trade mark has been defined under Section 2(1) (zb) of the Trade Marks Act, 1999 as to mean a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours; and–

- (i) in relation to Chapter XII (other than section 107), a registered trade mark or a mark used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right as proprietor to use the mark; and

- (ii) in relation to other provisions of this Act, a mark used or proposed to be used in relation to goods or services for the purpose of indicating or so as to indicate a connection in the course of trade between the goods or services, as the case may be, and some person having the right, either as proprietor or by way of permitted user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark or collective mark.

A trademark acts as an effective form of advertising for the goods and their quality since it denotes the relationship between the merchant and the items during the course of commerce. The goal of trademark law is to give businesses the ability to acquire an exclusive right to use, share, or assign a mark by registering their mark. Similar to this, service marks set one company's services apart from those of other companies. Various combinations of words, letters, numbers, symbols, drawings, images, and even sounds can be used as a trademark. These are typically registered for seven years, but by reapplying they can be renewed indefinitely. It guarantees the owner of the mark the sole right to use it to distinguish products or services, or to grant another person permission to use it in exchange for payment. Because of the nature and quality of the goods or service, which are denoted by its distinctive trademark, it aids consumers in recognising and purchasing it.

Answer 6A(iii)

Section 9 of the Geographical Indications of Goods (Registration and Protection) Act, 1999 prohibits registration of certain geographical indications. They are as follows: -

- (a) the use of which would be likely to deceive or cause confusion, or
- (b) the use of which would be contrary to any law for the time being in force, or
- (c) which comprises or contains scandalous or obscene matter, or
- (d) which comprises or contains any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India, or
- (e) which would otherwise be disentitled to protection in a court, or
- (f) which are determined to be generic names or indications of goods and are therefore, not or ceased to be protected in their country of origin, or which have fallen into disuse in that country, or
- (g) which, although literally true as to the territory, region or locality in which the goods originate, but falsely represent to the persons that the goods originate in another territory, region or locality, as the case may be,

shall not be registered as a geographical indication.

Answer 6 A(iv)

As per Section 74 of the Copyright Act, 1957, the Registrar of Copyrights shall have the powers of a civil court when trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning any public record or copy thereof from any court or office;
- (f) any other matter which may be prescribed.

TAX LAWS AND PRACTICE

GROUP 2 PAPER 7

Time allowed : 3 hours

Maximum marks : 100

NOTE : (i) Answer All Questions.

(ii) All the references to sections in Part I of the Question Paper relate to the Income tax Act, 1961 and the relevant Assessment Year 2045-25 unless stated otherwise.

PART-I

Question 1

Bajrang (Age 50 years) a resident is engaged in the business of textile at Chennai. His wife Usha is employed in ABC Ltd as Accounts Officer. She furnishes you the following details for the year ended 31st March, 2024 :

Particulars	Amount (₹)
Basic salary - per month	1,20,000
Dearness allowance (50% eligible for retirement benefits) - per month	60,000
Lunch allowance - per month	10,000
Medical allowance - per month	5,000
Children education allowance (₹2,000 per child for 2 children) - per month	4,000
Health club membership fee provided similarly to all staff by ABC Ltd. paid for whole year	20,000
House Rent Allowance - per month	30,000
Actual rent paid by her to Bajrang (husband) in Chennai - per month	40,000
Contribution to public provident fund ₹1 lakh in her account and ₹40,000 each in the name of two minor children	1,80,000
Bank FD interest	50,000
Savings bank account interest	15,000

Bajrang furnishes you the following details of income for the year ended 31st March, 2024 :

Particulars	Amount (₹)
Turnover from retail trade of garments (He does not maintain books of account for this business, whole of the sale money is received in cash only)	1,20,00,000
Rent from vacant site at Chennai	96,000
Rent from house property at Chennai let out to wife Usha	4,80,000
Arrear salary received from Ex-employer	1,50,000

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Gift received from relatives on the occasion of birthday	55,000
Gift of motor car from a friend outside India - cost of motor car	5,10,000
Eligible amount of brought forward business loss relating to wholesale trade of the assessment year 2022-23. This business was discontinued w.e.f. 01-04-2023.	3,00,000
Sold a vacant land (whose value for stamp duty purposes is ₹15 lakh) on 04-03-2024	14,00,000
The vacant land was acquired by his late father on 01-09-2010 for ₹2 lakh. Bajrang inherited the land on 05-06-2022 as per father's Will.	
Deposited in capital gain bond of REC Ltd. u/s 54 EC on 10-05-2024	9,00,000
Cost inflation index for F.Y. 2010-11 = 167; F.Y. 2022-23 = 331; F.Y. 2023-24 = 348	

Based on the facts of the above information, answer each of the following cases separately :

- (a) Compute the taxable capital gain in the hands of Bajrang for the assessment year 2024-25.
(3 marks)
- (b) Compute the taxable HRA in the hands of Usha for the assessment year 2024-25, on the assumption that she has not opted the scheme of section 115 BAC.
(2 marks)
- (c) Compute the total income of Bajrang for the assessment year 2024-25, on the assumption that he has not opted the scheme of section 115 BAC.
(5 marks)
- (d) Compute the total income of Usha for the assessment year 2024-25, on the assumption that she has not opted the scheme of section 115 BAC.
(5 marks)

Answer 1(a)

Computation of Taxable Capital Gain in the hands of Mr. Bajrang for the AY 2024-25

Particulars	Amount (Rs.)
Actual Sale Consideration	14,00,000
Value of vacant land for stamp duty purposes	15,00,000
Since the difference between sale consideration and value of stamp duty purposes is less than 10% of the actual sale consideration, therefore, actual sale consideration is to be considered	14,00,000
Less: Indexed Cost of Acquisition (Rs. 200000 * 348/167)	(4,16,766)
Long Term Capital Gains	9,83,234
Less: Exemption u/s 54EC [Deposited in CG bond pf REC Ltd.]	(9,00,000)
Taxable Long Term Capital Gains	83,234

Answer 1(b)**Computation of Taxable HRA in the hands of Mrs. Usha for the AY 2024-25**

Particulars	Amount (Rs.)	Amount (Rs.)
HRA Received (Rs. 30,000 x 12)		3,60,000
Less: Exempt u/s 10(13A)		
a) 50% of salary since the accommodation is at Chennai salary = Rs. 14,40,000 + 3,60,000 = Rs. 18,00,000	9,00,000	
b) Rent paid minus 10% of salary Rent paid 40,000 x 12 = Rs. 4,80,000 – Rs. 1,80,000 [10% of Rs. (14.40 lakhs + 3.6 lakhs)]	3,00,000	
c) Actual HRA received Rs. 30,000 * 12	3,60,000	
Least of (a), (b) or (c) is deductible		(3,00,000)
Taxable HRA		60,000

Answer 1(c)**Computation of total income of Mr. Bajrang for the AY 2024-25**

Particulars	Amount	Amount
Income from Salary		
Arrear salary from Ex-employer	1,50,000	
Less: Standard deduction	(50,000)	
Taxable Income from Salary		1,00,000
Income from House Property		
Rent from house property at Chennai	4,80,000	
Less: Statutory Deduction u/s 24 @ 30%	(1,44,000)	
Taxable Income from House Property		3,36,000
Income from Business		
Income from wholesale trade of garments u/s 44AD @ 8% of Rs. 120 lakhs	9,60,000	
Less: Brought forward loss for AY 2022-23	(3,00,000)	
Taxable Income from Business & Profession		6,60,000
Capital Gains: As computed above		83,234

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Income from Other Sources		
Rent from vacant site at Chennai	96,000	
Gift received from relatives on the occasion of birthday [exempt]	Nil	
Gift of motor car from a friend residing outside India. Motor Car is not a 'property' as per clause (d) of Explanation to section 56(2)(x). Hence not taxable.	Nil	
Taxable Income from Other Sources		96,000
Gross Total Income / Total Income		12,75,234

Answer 1(d)**Computation of Total Income of Mrs. Usha for the AY 2024-25**

Particulars		Amount
Income from Salary		
Basic Salary (Rs. 1,20,000 * 12 month)		14,40,000
Dearness Allowance (Rs. 60,000 * 12 month)		7,20,000
Lunch allowance 10,000 per month fully taxable		1,20,000
Medical allowance 5,000 per month fully taxable		60,000
Children education allowance (2,000 x 2 x 12)	48,000	
Less: Education allowance deductible (Rs. 100 per month x 12 x 2 child)	(2400)	45,600
Health Club membership fee provided similarly to all staff by employer is exempted		Nil
House rent allowance (taxable calculated as above)		60,000
Gross Salary		24,45,600
Less: Standard Deduction		(50,000)
Taxable Income from Salary		23,95,600
Income from Other Sources		
Bank FD Interest	50,000	
Saving bank account interest	15,000	
Taxable Income from Other Sources		65,000

Gross Total Income		24,60,600
Less: Deduction under Chapter VI-A		
Under section 80C in respect of contribution to PPF 1,80,000 (Rs. 1,00,000 + 40,000 + 40,000) but restricted to 1,50,000	1,50,000	
Under section 80TTA in respect of saving bank interest	10,000	(1,60,000)
Total Income		23,00,600

Question 2

- (a) Sanjay has a house consisting of two identical units. One unit is self-occupied and the other is let out for a monthly rent of ₹30,000 throughout the financial year 2023-24. Municipal tax paid during the year for the total house property amounts to ₹70,000 (which was paid by cash ₹30,000 and through online banking ₹40,000). The house property was constructed out of housing loan taken from SBI on 1st July, 2020 for ₹30 lakh @ 8% interest. The construction of property was completed on 30th March, 2022 and whole of the loan amount was still outstanding at that day. Interest on housing loan for the financial year 2023-24 was due but not paid.

Compute Income from house property of Sanjay for the assessment year 2024-25, assuming he has not opted to pay tax under section 115 BAC.

(5 marks)

- (b) Giriraj had purchased a residential site at Kanpur on 12th March, 2019 for ₹22 lakh. On 26th May, 2022, this asset was converted by him into stock-in-trade. On this date, the stamp duty valuation was ₹28 lakh. This asset was sold by him on 25th June, 2023 for ₹34 lakh to an outsider at arm's length price. The stamp duty valuation as on this date was ₹40 lakh. Brokerage at 2% on sales value was paid.

What are the incomes chargeable to tax for Giriraj in respect of these transactions and what will be the assessment year(s) in which they will be chargeable to tax ?

The cost inflation indices for the various years are as under :

Financial Year	CII	Financial Year	CII
2018-19	280	2022-23	331
2019-20	289	2023-24	348

(5 marks)

- (c) Following details are provided for 2 (two) individuals Umesh and Suresh for the previous year 2023-24 :

Name	Umesh	Suresh
Age	50	62
Residential status	Resident	Non-resident

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Cross receipt	72,00,000	60,00,000
Through Cash receipt	47,00,000	27,00,000
Through banking channel	25,00,000	33,00,000
Nature of activity	Retail Trade	Plying of 3 heavy goods carriages with capacity of 15 tonnes each
Brought forward loss	Long-term capital loss '1,00,000 relating to assessment year 2021-22.	'90,000 relating to discontinued business loss of assessment year 2020-21.

Compute total income of Umesh and Suresh for the assessment year 2024-25 by applying the relevant presumptive provisions under section 44AD and 44AE, assuming none opted to pay tax under section 115 BAC.

(5 marks)

Answer 2(a)

Computation of Income from House Property of Mr. Sanjay		
Particulars	Self-occupied	Let out
Gross annual value	Nil	3,60,000
Less: Municipal tax paid	Nil	(35,000)
Net Annual Value	Nil	3,25,000
Less: Deduction u/s 24		
(i) Statutory deduction @ 30% of NAV	Nil	(97,500)
(ii) Interest on Loan: Capital Interest: Pre-construction period interest (from 01.07.2021 till 31.03.2021) $(30,00,000 * 8\% * 9/12) = 180000$. Allowable in 5 equal instalments $(180000/5)$	(18,000)	(18,000)
(b) Revenue Interest: Current period Interest (Allowed on due basis) $(30,00,000 * 8\%)$	(1,20,000)	(1,20,000)
Income from house property	(1,38,000)	89,500
Net Loss from house property	(48,500)	

Answer 2(b)

Capital gains on conversion of capital asset into stock-in-trade:

Where a capital asset is converted into stock-in-trade, the capital gain arising on such conversion will have to be computed. However, the same will be chargeable to tax only in the year in which such converted asset is sold in the business.

In the given situation, the capital gain, though arising in the PY 2022-23, will be taxable only in the AY 2024-25 i.e. 2023-24, being the year in which the plot is actually sold by the assessee, as per section 45(2) of the Income tax Act, 1961.

Computation of Income chargeable to tax of Giriraj in the AY 2024-25

Particulars	Amount
Income from Capital Gain:	
Sales Consideration (FMV on date of conversion is deemed as Consideration, since in the question, FMV is not given, Stamp duty value as on date of conversion is taken as Consideration)	28,00,000
Less: Cost of Acquisition (Original purchase price i.e. 22,00,000)	
Indexed cost of acquisition (Rs. 22,00,000 x 331/280)	(26,00,714)
Long-term capital gain	1,99,286
Income from Business & Profession:	
Sales consideration form Business (Stamp duty valuation)	40,00,000
Less: Brokerage on sale (2% of Rs. 34,00,000)	(68,000)
Net Sale Consideration	39,32,000
Less: Cost of Acquisition (as taken while computing capital gains)	(28,00,000)
Income from PGBP	11,32,000

Answer 2(c)

Computation of Total Income

Particulars	Section 44AD	Section 44AE
Name	Umesh	Suresh
Nature of activity	Retail trade	Plying of heavy goods vehicle
Presumptive income @ 6% on 25,00,000	1,50,000	
Presumptive income @ 8% on 47,00,000	3,76,000	
Presumptive income for 3 heavy goods vehicles of 15 tonnes each @ Rs. 1,000 per tonne per month per vehicle. (15* Rs. 1000 * 3 *12)	-	5,40,000
Income as per presumptive taxation	5,26,000	5,40,000

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Less: Set off of loss brought forward	Not allowed to set-off long term capital loss	(90,000)
Total Income	5,26,000	450,000

Question 3

- (a) Laxmi (age 68) is a resident and retired pensioner of State Government. Her Income details for the financial year 2023-24 are as under :

S. No.	Particulars	Amount (₹)
(i)	Pension from State Government	6,80,000
(ii)	Family pension (her husband died 3 years ago)	1,20,000
(iii)	Dividend from Indian companies	90,000
(iv)	Interest on moneys borrowed for investment in shares of Indian companies referred in (iii) above.	35,000
(v)	Consultant fee for portfolio investments in shares of Indian companies, which fetched dividend income	10,000
(vi)	Agricultural income from land located outside India	60,000

Compute Total Income of Laxmi for the assessment year 2024-25, on the assumption that she has opted the scheme of section 115 BAC.

(5 marks)

- (b) M/s WE & Co., is a proprietorship firm engaged in manufacture of an engineering product, at Chennai. On 12th January, 2023, it had purchased a new machinery for ₹10,00,000, which was immediately put to use.

During the previous year 2023-24, it purchased the following assets for business purposes, from Indian sellers :

Date of purchase	Type of asset	Amount (₹)	New or Second hand
23rd May, 2023	Machinery	12,20,000	New
14th June, 2023	Motor car	12,80,000	New
12th January, 2024	Machinery	18,00,000	Second hand

The opening WDV of the block of plant and machinery, as on 1st April, 2023 was ₹32,00,000 (include the machinery purchase on 12th January, 2023).

Compute the total depreciation allowable as per the provisions of section 32 for the assessment year 2024-25. All the assets were put to use immediately after purchase. Normal rate of depreciation for all these assets may be taken as 15%. The firm has not opted the scheme of section 115 BAC.

(5 marks)

(c) Ramesh working in ABC Pvt. Ltd draws the following amount by way of salary for the previous year ended 31st March, 2024 :

- (i) Basic salary ₹1,25,000 per month.
- (ii) Commission on sales @ 2% on sale made by him, Commission amount ₹40,000 (per annum).
- (iii) Employer's contribution to Recognized Provident Fund (RPF) ₹3,00,000.
- (iv) Employer's contribution to National Pension Scheme (NPS) ₹1,00,000.
- (v) Employer's contribution to Superannuation Fund ₹2,00,000.
- (vi) The company has given him a housing loan of ₹15,00,000 on 1st June, 2023 on which it charges interest @ 6% per annum. The entire loan is still outstanding.

(Assume the interest charged by SBI for same kind of home loan is 9.5% p.a.)

Compute the Income chargeable to tax under the head of Salary for the assessment year 2024-25 on the assumption that Ramesh has not opted for section 115 BAC.

(5 marks)

Answer 3(a)

Computation of Total Income of Ms. Laxmi for AY 2024-25

Particulars	Amount (Rs.)	Amount (Rs.)
Income from Salary		
Pension from State Government	6,80,000	
Less: Standard deduction (allowed under New Scheme)	(50,000)	
		6,30,000
Income from Other Sources:		
Family pension (her husband died 3 years ago)	1,20,000	
Less: Deduction u/s 57(iia) (allowed under New Scheme)	(15,000)	
		1,05,000
Dividend from Indian companies	90,000	
Less: Interest on moneys borrowed for investment in shares of Indian companies referred above but limited to 20% of dividend income	(18,000)	
Consultant fee for portfolio investment in shares fetching dividend income - not eligible for deduction	Nil	
		72,000
Agricultural income from land located outside India taxable		60,000
Total Income		8,67,000

Answer 3(b)**Computation of Normal depreciation**

Opening WDV	Used for > 180 days	Rate of Dep.	Used for < 180 days	Rate of Dep.	Normal Depreciation
32,00,000		15%			4,80,000
	25,00,000	15%			3,75,000
			18,00,000	7.5%	1,35,000
Total Normal Depreciation					9,90,000

Computation of Additional Depreciation

Date of purchase	Type of asset	Amount (Rs.)	Rate of Additional Depreciation	Additional Depreciation
12.01.2023	Machinery (New) Note 1	10,00,000	10%	1,00,000
23.05.2023	Machinery (New)	12,20,000	20%	2,44,000
14.06.2023	Motor Car (Not eligible)	12,80,000		Nil
12.01.2024	Machinery (Second hand - not eligible for additional depreciation)	18,00,000		Nil
Total Additional Depreciation				3,44,000
Total Depreciation allowable u/s 32 (Normal depreciation + additional Depreciation)				13,34,000

Note 1 - In the AY 2023-24, additional depreciation on this asset was allowed only at 10%. balance 10% can be claimed in the current assessment year 2024-25.

Answer 3(c)**Computation of Income from Salary of Mr. Ramesh for the Assessment Year 2024-25**

Particulars	Amount	Amount
Basic salary (1,25,000 x 12)		15,00,000
Commission on sales		40,000
Employer's contribution to recognized provident fund	3,00,000	

Less: Exempt @ 12% of Salary and commission (15,40,000 x 12%) (Note 1)	(1,84,800)	1,15,200
Employer's contribution to National Pension Fund		1,00,000
Employer's contribution to Superannuation Fund As per sec 17(2)(vii) of the Income tax Act, 1961, Employer contribution to Recognised Provident Fund + Approved Superannuation fund + Notified Pension scheme in excess of 7.5 lakhs per annum is deemed as perquisite. Since total of all three does not exceed 7.5 lakh, no perquisites is deemed u/s 17(2)(vii) of the Act.		-
Interest free Loan Facility (15,00,000 x 9.5% x 10/12)	1,18,750	
Less: Interest recovered from employee (15,00,000 x 6% x 10/12)	(75,000)	43,750
Gross salary		17,98,950
Less: Standard deduction u/s 16 (ia)		(50,000)
Income chargeable under the head 'Salary'		17,48,950

Note 1: It is assumed that commission is not fixed at 40,000 per annum but based on 2% of turnover. If sales commission is assumed as fixed 40,000 p.a., then it will not be included while calculating limit of 12% of salary for the purpose of computing exempt value of Employer's contribution to recognized provident fund.

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

Question 4

- (a) What are the provisions for clubbing of income of a minor child under section 64(1A) of Income Tax Act, 1961 ? Mention the cases where income of minor child is taxable in the hands of minor himself.
- (5 marks)
- (b) Explain the provisions relating to advance payment of income-tax and its due date under Income Tax Act, 1961 .
- (5 marks)
- (c) State the person by whom the Return of income to be furnished under section 139 of the Income Tax Act, 1961 has to be signed, in the case of the following persons, as per section 140 :
- (i) When an individual is unable to verify due to ill health;
 - (ii) In case of HUF, when the karta is unable to verify;
 - (iii) Scientific research association;
 - (iv) Limited liability partnership;
 - (v) Political party.

(5 marks)

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

(i) Following is the Profit and Loss account of Vinod for the year ended 31st March, 2024 :

Particulars	Amount (₹)	Particulars	Amount (₹)
To Administrative expenses	1,50,000	By Gross profit	11,50,000
To Income-tax	45,000	By Agricultural income	70,000
To Depreciation	60,000	By PPF interest	80,000
To Interest paid to non-resident	30,000		
To Provision for bad debts	3,10,000		
To Life insurance premium (self)	30,000		
To Net profit	6,75,000		
	13,00,000		13,00,000

Other Information :

- (1) Depreciation allowable as per section 32 is ₹52,000.
- (2) No tax was deducted on interest paid to non-resident.
- (3) Amount of ₹ 25,000 due to MSME relating to purchase of goods in December, 2023 was outstanding as on 31st March 2024. It is pending beyond the time period under MSMED Act, 2006.

Compute the Total Income of Vinod for the assessment year 2024-25, on the assumption that he has not opted for section 115 BAC.

(5 marks)

(ii) Briefly state the applicability of TDS provision and the effective rate of TDS in the following cases :

- (a) Rent paid for business premises by a partnership firm to individual X resident in India ₹3,60,000.
- (b) Call Centre charges paid by a company in Mumbai to another company located in Bengaluru ₹60,000.
- (c) Carton boxes manufactured by ALT & Co, Sivakasi with logo of MN Co Ltd and amount paid ₹5 lakh is inclusive of materials.
- (d) Purchase agent commission paid to Lal of Delhi ₹70,000 by AMC Pvt. Ltd, Goa.
- (e) Directors sitting fees ₹20,000 each paid to 5 directors by Rama Pvt. Ltd, Chennai.

(5 marks)

(iii) Mrs. Tina is an Indian citizen and holder of Indian passport. For the past 7 years, she has been living in Dubai, where there is no personal income-tax. During the previous year 2023-24, she

migrated back to India on 1st Jan., 2024. In immediate four earlier years, she has stayed in India for 56 days.

During the previous year 2023-24, she has earned gross salary income of ₹9,00,000 in Dubai. After she returned to India her friends gave her a grand reception and presented her cash gifts of ₹21,00,000.

You are required to determine the residential status of Mrs. Tina and her total income for the AY 2024-25.

(5 marks)

Answer 4(a)

The Income of minor child is to be clubbed in the hands of either of his parents. Such income shall be clubbed in the hands of that parents whose total income (excluding the income of the minor) is higher. If the marriage of his parents does not subsist, the income shall be clubbed in the hands of that parent who maintains the minor child during the previous year.

Where the income of a minor child has been clubbed in the total income of a parent, such parent shall be entitled to an exemption to the extent of such income or 1500 whichever is less, in respect of each minor child whose income is so included.

The following income of minor child shall be taxable in the hands of minor child only and not to be clubbed in the hands of parents:

- Any income of a minor child suffering any disability specified u/s 80U.
- Income on account of manual work done by the minor child.
- Income on account of any activity involving application of skill, talent or specialized knowledge and experience

Answer 4(b)

As per section 208 of Income Tax Act, 1961, Advance Tax, shall be payable during a financial year, only when the amount of such tax during that year is 10,000 or more. In order to reduce the compliance burden on senior citizen who does not have income chargeable under the head of profits and gains from business or profession are not required to pay advance tax.

Due Dates for Payment of Advance Tax	
Due date of instalment	Amount Payable
On or before the 15th June	Not less than 15% of such advance tax.
On or before the 15th September	Not less than 45% of such advance tax, as reduced by the amount, if any paid in the earlier instalment.
On or before the 15th December	Not less than 75% of such advance tax, as reduced by the amount or amounts, if any paid in the earlier instalment or instalments.
On or before the 15th March	100 % of such advance tax, as reduced by the amount or amounts, if any paid in the earlier instalment or instalments.

Note: A person covered u/s 44AD or 44ADA of the Income tax Act, 1961, is required to pay 100% advance tax upto 15th March of the Financial Year.

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Answer 4(c)**Verification of Return of Income ₹ROI'**

S. No.	Type of person	To be verified by
(i)	When an individual is unable to verify due to ill health	By any person duly authorized by the individual in this behalf.
(ii)	In the case an HUF, when the karta is unable to verify	By any other adult member of the family.
(iii)	Scientific research association	Any member of the association or the Principal Officer thereof.
(iv)	Limited liability partnership	Designated partner
(v)	Political party	by the chief executive officer of such party (whether such chief executive officer is known as secretary or by any other designation)

OR (Alternative question to Q. No. 4)**Answer 4A(i)****Computation of Total Income of Vinod for the AY 2024-25**

Particulars	Amount
Income from Business & Profession	
Net profit as per Profit & Loss Account	6,75,000
Add: disallowed Expenses	
Income tax	45,000
Depreciation	60,000
Interest paid to non-resident without TDS disallowed @ 100%	30,000
Provision for bad debts	3,10,000
Life insurance premium (self)	30,000
Amount outstanding to MSME disallowed under section 43B(h)	25,000
	11,75,000
Less: Income not taxable under this head:	
Agricultural Income (exempt)	(70,000)
PPF interest credited to P & L account (exempt)	(80,000)
	10,25,000

Less: Allowed Depreciation u/s 32	(52,000)
Income from Business and Profession	9,73,000
Gross total income	9,73,000
Less: Deduction under section 80C (Life Insurance premium)	(30,000)
Total income	9,43,000

Note: Interest Paid to non-resident without deducting TDS is fully disallowed.

Answer 4A(ii)

TDS applicability and effective rate of TDS
(a) When a partnership firm has paid rent exceeding 2,40,000 for business premises during the previous year, such payment is liable for deduction of tax at source under section 194I @ 10%. The amount liable for tax deduction is 36,000. [Rs. 360000 x 10%]
(b) In respect of payment to a payee engaged in the business of operation of call centre, tax is deductible at source @ 2% under section 194J. In this case, the payment exceeds 30,000 and therefore tax is deductible @ 2%. The amount liable for tax deduction is 1,200. [Rs. 60000 x 2%]
(c) When packing material is manufactured as per the specification of the assessee and raw material is procured by job worker from other than from customer, it does not attract TDS. Therefore, no tax is deductible at source.
(d) Commission paid when exceeds 15,000 tax is deductible at source @ 5% of the total amount. In this case the amount of commission is 70,000 for which the tax deductible at source would be 3,500. [Rs. 70000 x 5%]
(e) Director sitting fee is liable for TDS under section 194J@ 10%. There is no threshold limit for non-deduction of tax at source. The tax deductible is 2,000 each in respect of the payment made to each director by way of sitting fee.

Answer 4A(iii)

Determination of residential status of Mrs. Tina for the AY 2024 - 25

According to section 6(1), in order to be treated as a resident of India in the PY 2023-24, Mrs. Tina should satisfy either of the following two conditions:

1. Her stay in India should be for a period of 182 days or more in the PY 2023-24; or
2. Her stay in India should be for a period of 60 days or more in the PY 2023-24 and for a period of 365 days or more in the four immediately preceding previous years.

Mrs. Tina's stay in India in the PY 2023-24 was 91 days only (i.e., 31 days + 29 days + 31 days). Her stay in India in the four immediately preceding previous years was 56 days.

Consequently, she does not satisfy either condition (1) or condition (2) for being treated as a resident.

Further, according to section 6(1A) of the Income tax Act, 1961, an individual who is a citizen of India would be deemed to be a resident of India if his total income, other than income from foreign

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sources, exceed Rs. 15 lakh during the relevant previous year and he is not liable to tax in any other country by reason of his domicile or residence or any other criteria of similar nature.

In the given problem, the friends of Mrs. Tina have presented her with cash gifts to the tune of Rs. 21,00,000, which is to be treated as Income from other sources. Hence, her Indian income exceeds 15 lakhs.

Since Mrs. Tina is a citizen of India who is not liable to pay income-tax in Dubai and her total income, other than income from foreign sources, exceed 15 lakhs, she would be deemed resident in India under section 6(1A) of the Act for AY 2024-25. A deemed resident is, by default, a resident but not ordinarily resident.

In case of a resident but not ordinarily resident, income accrues or arises, deemed to accrue or arise and received or deemed to be received in India, is taxable. In addition, Income which accrues or arises outside India would also be taxable if it is derived from a business controlled in or a profession set up in India.

The Finance Act, 2020, w.e.f. Assessment Year 2021-22 has amended the above exception to provide that the period of 60 days as mentioned in (2) above shall be substituted with 120 days, if an Indian citizen or a person of Indian origin whose Total Income, other than Income from Foreign Sources, exceeds ₹ 15 lakh during the previous year.

The Finance Act, 2020 has also introduced new Section 6(1A) which is applicable from Assessment Year 2021-22. It provides that an Indian citizen earning Total Income in excess of ₹ 15 lakh (other than income from foreign sources) shall be deemed to be Resident in India if he / she is not liable to pay tax in any country.

Computation of total income of Mrs. Tina for AY 2024-25

Particulars	Amount
Salary earned in Dubai (Does not form part of total income, since it accrues or arises outside India)	Nil
Income from other sources (Cash gifts received from friends)	21,00,000
Total Income	21,00,000

PART-II

Question 5

Majumdar Industries is a partnership firm located in Jaipur. It is presently engaged in manufacture of machinery parts. Industries has given the following information relating to input tax credit for the month of December, 2023.

Particulars	GST Amount (₹)
Purchase of raw material received in two equal instalments viz. the first one in December, 2023 and the second instalment in January, 2024	5,50,000
Purchase of consumables delivered directly to the job workers. Only invoice was received by the firm.	1,50,000
Purchase of bus (seating capacity 18) for transport of employees from residence to factory and back.	8,40,000

Input tax credit in respect of general insurance for motor cars of the firm used by Chief Engineers and Supervisors for official work.	12,000
Payment made to ABC Caterers for providing breakfast and lunch to the workers as voluntary staff welfare measure.	60,000

Now it is proposing to add trade in textile goods in addition to such manufacturing activity in Kota (Rajasthan) w.e.f. 1st April, 2024. Also, it proposes to open its machinery parts manufacturing activity in places such as Udaipur, Jodhpur and Bikaner (all places located within the State of Rajasthan). The management wants to obtain separate GST registration for the said multiple places of business. As regards trade in textile goods, it would be on pan India basis and it has appointed you as GST consultant.

From June, 2024 Majumdar Industries is further planning to send the raw materials and semi-finished goods to job workers across Rajasthan for scaling up its production quantity of machinery parts. For the purpose of manufacture of the goods it would also send moulds and dies, jigs and other tools to the job workers for getting the product manufactured as per specifications and to achieve uniformity in production.

As a GST Consultant, you are required to give the following answers with reference to GST Law :

- (a) Determine the eligible input tax credit available to Majumdar Industries for the month of December, 2023 by giving brief explanations for treatment of various items.

(5 marks)

- (b) State the time limit for return of semi-finished goods sent to job workers including moulds and dies given to them. When would such movement be treated as supply of goods ?

(5 marks)

- (c) State the conditions to be satisfied by Majumdar Industries seeking separate registration for different places of business within the same State.

(5 marks)

- (d) When should the E-way bill be generated ? Mention the salient features of e-way bills.

(5 marks)

Answer 5(a)

Computation of eligible input tax credit for Majumdar Industries for the Month of December, 2023

Particulars	Amount
Purchase of raw materials received in instalments: Input tax credit shall be allowed only when the last instalment has been received. In the given case, last instalment was received in January, 2024 hence input tax credit shall be allowed in the month of January, 2024.	Nil
Purchase of consumables which were delivered directly to job workers is eligible for input tax credit though only invoice was received by Majumdar Industries.	1,50,000
Purchase of bus (seating capacity 18) for transport of employees from residence to factory and back is eligible for input tax credit.	8,40,000

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Input tax credit in respect of general insurance taken on motor cars of the firm used by Chief Engineers and Supervisors for official purposes not eligible for input tax credit.	Nil
Payment made to ABC Caterers for providing breakfast and lunch to the workers as voluntary labour welfare measure is not eligible for input tax credit.	Nil
Total input tax credit for the month of December, 2023	9,90,000

Answer 5(b)

Time limit for return of semi-finished goods sent to job worker
The inputs by way of semi-finished goods sent to the job worker should be brought back to the premises of the principal or alternatively supplied by the principal directly from the job workers premises within the time period as given below:
Within one year in the case of inputs;
And within 3 years in the case of capital goods.
Moulds and dies, jigs and fixtures or tools sent out to a job worker are not to be treated as capital goods and therefore need not be brought back within 3 years' time referred above.
If the goods are not sold or brought back within the stipulated time as mentioned above, the activity between the principal and the job worker would be treated as 'supply' from the date of original dispatch of goods by the principal and accordingly tax is payable thereon by the principal.
Job work includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

Answer 5(c)

Separate registration for multiple places of business within a State
Any person having multiple places of business within a State or a Union Territory requiring separate registration for any such place of business under section 25(2) shall be granted separate registration in respect of each place of business subject to the following conditions, viz.
(i) Such person has more than one place of business as defined in section 2(85);
(ii) Such person shall not be allowed to pay tax under section 10 (composition levy) for any of his places of business if he is paying tax under section 9 for any other place of business.
(iii) All separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.
For the purpose of (ii) above, it is clarified that where any place of business of a registered person has been granted a separate registration it becomes ineligible to pay tax under section 10 for all other registered places of business.

A registered person opting to obtain separate registration for a place of business shall submit a separate application in Form GST REG 01 in respect of each such place of business.

The provisions of rule 9 and rule 10 relating to the verification and the grant of registration shall, *mutatis mutandis*, apply to an application submitted under this rule.

Answer 5(d)

Under Rule 138 of the CGST Rules, 2017, an e-way bill is required to be generated for the transportation of goods where the consignment value is Rs. 50,000 or more in relation to-

- (a) supply i.e. supply to customer;
- (b) other than supply i.e. movement of goods for job work, repairs, etc;
- (c) due to inward supply from unregistered persons (any procurement made from any unregistered persons).
- (d) Where the goods are sent for job work located in a different state or Union Territory, e-waybill is required to be generated without any value threshold.

Salient features of e-way bill:

- (i) For the purpose of calculating the threshold of Rs. 50,000, the value shall be such as shown on the tax invoice / bill of supply / delivery challan, as the case may be, including the value of taxes but excluding the value of goods which are exempted from payment of tax, where the invoice is issued in respect of both exempt and taxable goods.
- (ii) The limit of Rs. 50,000 is not applicable where goods sent by principal in one State/UT to job worker in other State/UT or handicraft goods sent from one State/UT to another State/UT + by person exempted from registration u/s 24(i)(ii).
- (iii) E-way bill can be generated voluntarily even if the value of goods is less than Rs. 50,000.
- (iv) E-way bill has to be generated for each movement of goods whether it constitutes a taxable supply or an exempt supply or for reasons other than supply.
- (v) E-way bill is also required to be generated regardless of the mode of transportation i.e. Railways, air, vessel or road. However, it is not required where the goods are transported in a non-motorized conveyance.
- (vi) It is required even where the goods are transported through a transporter or by own conveyance.

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

Question 6

(a) Determine the time of supply under the GST provisions in the following situations :

- (i) X & Co., a registered supplier, rendered taxable service for ₹90,000 on 15-08-2023. Invoice was issued on 10-09-2023, 50% of Payment was received on 05-09-2023 and balance 50% received on 05-10-2023.
- (ii) Lalit purchased some goods covered under reverse charge mechanism. The goods received on 15-07-2023, date of invoice is 20-06-2023 and the payment is made on 25-07-2023. Sujata engineering services received advance of ₹50,000 from clients on 27-12-2023 for service to be rendered on 01-04-2024.

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- (iv) PQR Ltd entered into an arrangement with 'Fashion Mart' and bought vouchers on 15-03-2024. It distributed these vouchers with denomination of ₹5,000 each to every employee on 20-03-2024 and the vouchers were valid till 30-04-2024 for purchase of any garment of their choice. The employees used the vouchers before the said date i.e., 30-04-2024.
- (v) Manoj bought a voucher from Shoppers Paradise for ₹10,000 and gifted to Arun on 28-03-2024. The voucher was valid for purchase of any item in the shop but valid till 27-04-2024. Arun redeemed the vouchers at the nearby Shoppers Paradise on 20-04-2024.

(5 marks)

- (b) State which of the following supply of service is a taxable service or exempt service for the financial year 2023-24, with reference to the provisions of CGST Act, 2017.
- (i) ABC Pvt. Ltd sold a division engaged in manufacture of cement as a going concern to XYZ Pvt. Ltd for ₹50 lakh on slump sale basis.
- (ii) Moon Pvt. Ltd paid ₹50,000 to Pandit for conducting Diwali pooja in the factory premises.
- (iii) Ajay Enterprises paid ₹2,00,000 to Kongu Incubate for the services rendered by it. The total turnover of Kongu Incubate was ₹93 lakh during the financial year 2022-23 and the agreement between the parties was entered into on 01.08.2021.
- (iv) Mahesh & Co availed services of Rishi & Co for fumigation in its warehouse (where it has stored agricultural produce) and paid ₹3 lakh during the financial year 2023-24.
- (v) Larry Ltd engaged an artist for performance in folk art theatre performance on the occasion of its founder's day celebration and paid ₹1.85 lakh as consideration to the artist group by name 'Megha Theatres'.

(5 marks)

- (c) Determine the Value of Supply with reference to the provisions of the CGST Act, 2017 for the following independent cases :
- (i) State Government authorized a lottery where the face value per ticket was ₹640. The price notified in the official gazette was ₹450 per ticket.
- (ii) A money changer exchanged USD 10,000 sold by a customer @ ₹80 per USD. The RBI reference rate for USD was ₹78 for that day.
- (iii) An air travel agency charged ₹60,000 as basic fare and ₹3,000 as other charges and fee and ₹2,000 by way of taxes for domestic booking.
- (iv) X & Co supplied a mobile handset for ₹30,000 along with an exchange of an old handset. The price of new phone without exchange would be ₹35,000.
- (v) Y Ltd supplied goods to its agent who is also acting as agent for other suppliers. The goods of like kind and quality were subsequently supplied by agent at a price of ₹5,000 per unit on the day of supply. Another independent supplier supplied the same goods of quality and kind at a price of ₹4,600 per unit.

(5 marks)

- (d) Madhav Ltd imported a machinery from USA for which the payment was made in USD. The following details are furnished :

Particulars	Amount (USD)
Cost of machine at the factory of the exported country	50,000
Transport charges incurred by exporter from his factory to port for shipment	3,000
Handling charges paid for loading the machine in the ship	500
Designing charges for the machine paid in USA	9,500
Buying commission paid to the agent	22,500
Air freight charges from USA to port in India	8,000
Insurance charges could not be ascertained	
RBI Exchange rate as on date of bill of entry was 1 USD = '81	
CBIC Exchange rate notified as on date of bill of entry was 1 USD = '80	

Find out the assessable value of the imported goods under the Customs Act, 1962 for Madhav Ltd.

OR (Alternative question to Q. No. 6)

Question 6A.

- (i) (a) Abdut & Co is engaged in manufacture of plastic items supplied 10,000 units to Khan & Co. It gave usually 1% discount in respect of supplies upto 5,000 units and 2% discount for supplies above 5,000 units to 10,000 units. As a special case, it gave 4% discount to Khan & Co since the order was placed in one lot for 10,000 units. This discount was based on the agreement entered into between the parties and after completion of total supply of units. It was not shown in the invoice. Explain how the supplier and receiver i.e., Abdul & Co and Khan & Co respectively should deal with the discount with regard to supply.
- (3 marks)
- (b) Deepak supplied biscuits to Arnold & Co regularly. It supplied 10,000 packets @ ₹20 per packet in the month of June 2023. Due to financial crises Arnold & Co could not make payment to Deepak. Later, it was negotiated and the parties agreed the price @ ₹19 per packet. Arnold & Co make the payment accordingly on 10th September, 2023. Deepak issued a credit note on difference amount on same date. Assume the CST rate @ 18% determine the taxable value of supply of the transaction.
- (2 marks)
- (ii) Lamb & Co. commenced business in retail trade of electronic goods on 5th June, 2023. It applied for registration under regular scheme on the same day. The goods are liable for CGST @ 9% and SGST @ 9%. Its turnover for the year ended 31st March, 2024 was ₹72 lakh. It was decided that it would opt for composition levy for the financial year 2024-25. It has input tax credit balance available in electronic credit ledger on 31st March, 2024 was ₹30,000 in CGST and ₹18,000 in SGST. State the procedure and other requirements to be followed by Lamb & Co. for change over to composition scheme for financial year 2024-25.
- (5 marks)

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- (iii) B Homes Ltd., was planning to construct a ten storied building complex in Pune. It obtained permission from the Corporation for the same. Another firm J Constructions was constructing a six storied building in the adjacent area. Since the ten storied structure may affect the ventilation of its flats, J Construction approached B Homes Ltd. with a proposition of giving up construction of 4 floors, for which it agreed to pay one time compensation of ₹75 lakh. B Homes Ltd. accepted the offer and received the compensation.

Examine whether the aforesaid compensation will attract GST liability. If yes, compute the same, assuming that the applicable SGST and CGST is 9% each. Your answer should also contain the conditions to be complied with, if any.

(5 marks)

- (iv) State with reasons, whether the following statements are true or false, under Customs Act, 1962 :

- (a) Customs area include warehouse.
(b) Customs station does not include international courier terminal.

(5 marks)

Answer 6(a)

S. No.	Time of Supply ₹TOS'	Reason
(i)	05.09.2023 10.09.2023	For Payment of 50% i.e. Rs. 45,000 received on 05.09.2023 In this case Invoice is issued within 30 days from the date of providing service. Hence Time of supply is (a) Date of Invoice, or (b) date of receipt of payment; whichever is earlier. For Payment of 50% i.e. Rs. 45,000 received on 05.10.2023 In this case Invoice is issued within 30 days from the date of providing service. Hence Time of supply is (a) Date of Invoice, or (b) date of receipt of payment; whichever is earlier.
(ii)	15-07-2023 Date of goods received	Time of supply in case of Reverse Charge Mechanism 'RCM' is (a) date of receipt of goods; or (b) date of payment; or (c) the date immediately following 30 days from the date of issue of invoice whichever is earlier.
(iii)	27-12-2023	Time of supply for advance exceed 1000 is on the date when advance money is actually received.
(iv)	15-03-2024	Time of supply for voucher: When the supply is identifiable at the point of issue of vouchers, the Time of supply of voucher is the date of issue of voucher. When the supply is not identifiable at the point of issue of vouchers, the Time of supply of voucher is the date of Redemption of voucher. Note: Questions says voucher can be redeemed against the purchase of any garments but does not specify which garments and different garments may have different GST Rates. So, it is assumed that the purchase of garments is identifiable.

(v)	20-04-2024	In this case, the supply was not identifiable at the point of issue of vouchers as Arun can purchase anything from Shoppers Paradise. Therefore, the time of supply would be the date of redemption of voucher.
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Answer 6(b)**Determination of taxable or exempt supply**

S. No.	Particulars
(i)	As per Notification No. 12/2017 dated 28th June, 2017 services by way of transfer of division as a going concern, as a whole or independent part is exempt from GST.
(ii)	Service rendered by person by way of conducting any religious ceremony is exempted service as per Notification No. 12/2017.
(iii)	Services provided by incubate is exempt if: its total turnover had not exceeded 50 lakhs during preceding financial year; and a period of 3 years has not been elapsed from the date of entering in to an agreement as an incubate. In the present case, since the turnover of the incubate exceeds Rs. 50 lakhs in the previous financial year, it would not satisfy the first condition, it is not exempt from GST.
(iv)	Service by way of fumigation in a warehouse of agricultural produce is taxable under GST. Earlier it used to be exempt but after amendment in Notification No.12/2017, it has become a taxable service.
(v)	Services by an artist by way of a performance in folk or classical art forms of theatre is not liable for GST if the consideration is not more than Rs. 150000. In this case, the amount paid is more than the monetary limit of Rs. 1,50,000, hence it is not exempt from GST.

Answer 6(c)

S. No.	Determination of Value of Supply
(i)	As per section 15(3) and rule 31A, the value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or the price as notified in the official gazette by the organizing State whichever is higher. Therefore, the value of supply shall be $640 \times 100/128 = \text{Rs. } 500$ as it is higher than the price notified in the official gazette being Rs. 450.
(ii)	As per section 15(3) read with rule 32, the difference in the buying rate or the selling rate and RBI reference rate for that currency would be adopted for the total units of currency exchanged. In this case, $\text{Rs. } 80 - \text{Rs. } 78 = \text{Rs. } 2 \times \text{USD } 10,000 = \text{Rs. } 20,000$ shall be the value of supply of service on purchase of USD (foreign currency) for conversion into INR.

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(iii)	As per section 15(3) read with rule 32(3), the value of supply in relation to domestic booking shall be 5% of the basic fare. Therefore, the value of supply would be Rs. 60,000 x 5% = Rs. 3,000.
(iv)	As per section 15(3) read with rule 27, the value of supply of goods or services where the consideration is not wholly in money, the sum of total consideration in money and such further amount in its equivalent shall be the value of supply. In this case, the mobile handsets would have been sold for 35,000 if there was no exchange and therefore, that would be the value of supply when the new mobile handset is supplied for 30,000 along with an exchange of an old handset.
(v)	As per section 15(3) read with rule 29, the value of supply between principal and his agent shall be the open market value of the goods being supplied or 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer (not being related person) - at the option of the supplier.
	In this case 90% of the like kind and quality amounts to Rs. 4,500 (90% of Rs. 5,000) or the value of supply made by another independent supplier being Rs. 4,600 (being an open market value). The choice is open to the supplier regarding adoption of value of taxable supply. So as more beneficial for supplier is Rs. 4,500 will be treated as value of supply.

Answer 6(d)

Computation of Assessable Value under Custom Law

Particulars	Amount (USD)
Cost of machine at the factory of the exported country	50,000.00
Transport charges incurred by exporter from his factory to port for shipment	3,000.00
Handling charges paid for loading the machine in the ship	500.00
Design charges for the machine	9,500.00
FOB Value	63,000.00
Buying commission paid to the agent - not includible	-
Freight charges from foreign country to port in India	8,000.00
Insurance charges @ 1.125% of FOB (63,000 x 1.125%)	708.75
CIF value / assessable value in USD	71,708.75
Assessable value in Indian Currency (CBIC Exchange rate is taken on the date of bill of entry for Import duty purpose) (71,708.75 x Rs. 80)	Rs. 57,36,700

OR (Alternative Question to Q. No. 6)**Answer 6A(i)(a)**

Particulars
Discount offered by suppliers to customers shall be excluded to determine the value of supply. This discount can either be given in the tax invoice itself or at later date through credit notes provided it satisfies the conditions under section 15(3) CGST Act.
The conditions for providing discount after the supply has been affected are — <ol style="list-style-type: none"> i. such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and ii. input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
In the present case, Abdul & Co can offer discount through credit note as there is already an agreement entered between the parties towards such discount. Further, Khan & Co must reverse ITC while accounting the credit note towards the discount.

Answer 6A(i)(b)

Particulars
In this case, since the discount is being allowed after the supply is affected and there is no agreement between the parties for allowing such discount on or before the supply, the value shall be computed without considering the discount.
These discounts shall not be excluded while determining the value of supply. There is no impact on the availability or otherwise of ITC in the hands of the supplier.
Therefore, the value of taxable supply shall be Rs. 2,00,000. (10000 packets @ Rs. 20) [Ignoring the discount given subsequently amounting to 10,000].

Answer 6A(ii)

Procedure to be followed for change over to Composition Scheme:
In the present case, Lamb & Co. is already registered under GST in regular scheme. Now, from 1.4.2024 onwards, it wants to opt for composition scheme under section 10 of CGST Act. The procedure in this regard is as below. Lamb & Co. shall intimate electronically in form GST CMP 02 prior to the commencement of the financial year 2024-25.
The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, be determined in the following manner, namely, - <ol style="list-style-type: none"> a. for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;

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b. for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro rata basis, taking the useful life as five years.

On determination of credit liable to be reversed, it shall further furnish the statement in Form GST ITC 03 i.e. ITC reversal on stock within a period of 60 days from the date of commencement of the relevant financial year. [Rule 3(3)].

The credit if any remained in electronic credit ledger after such reversal shall lapse.

Having opted for section 10, the registered person shall not collect any tax from the appointed day but shall issue bill of supply for supplies made after the said day. [Proviso to rule 3(1)]

The intimation filed by Lamb & Co. shall be applicable shall be deemed to be an intimation in respect of all other places of business registered on the same PAN. [Rule 3(5)]

The option to pay tax under section 10 shall be effective from the beginning of the financial year i.e. w.e.f. 1.4.2024. Composite dealer not to collect tax & not claim Input Tax Credit [Section 10(4)]

Answer 6A(iii)

Particulars
<p>Taxability of compensation received:</p> <p>Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act has been specifically declared to be a supply of service vide para 5(e) of Schedule II of the CGST Act, 2017 if the same constitutes a supply as per the CGST Act, 2017.</p>
<p>In the given case, B Homes Ltd. has agreed to build only six floors, even though it is permitted to construct ten floors by the Corporation, for at one time compensation of Rs. 75 lakh. As a consequence, supply of service emerges.</p>
<p>The conditions to be fulfilled are:</p> <ol style="list-style-type: none"> i. There must be an expressed or implied agreement or contract must exist. ii. Consideration must flow in return to this contract/agreement.
<p>Assuming that the amount of Rs.75 lakhs is all inclusive, it has to be treated as inclusive of GST component; hence, GST will be $75,00,000 \times 18/118 = 11,44,068$ (CGST Rs. 5,72,034 and SGST Rs. 5,72,034)</p>

Answer 6A(iv)

Correctness of the given propositions
<p>(i) The given statement is true.</p> <p>The definition of customs area as provided under section 2(11) of the Customs Act, 1962 has been amended vide the Taxation Laws (Amendment) Act, 2017 to include within its ambit a warehouse also.</p> <p>As a logical corollary, the customs area is now defined to mean the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by customs authorities.</p>

(ii) This statement is false.

The Finance Act, 2017 has included international courier terminal and foreign post office within the scope of customs station as defined under section 2(13) of the Customs Act, 1962.

As per the amended section 2(13), a customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station.

Lecture Kart

Lecture Kart