STRATEGIC MANAGEMENT AND CORPORATE FINANCE

GROUP 2 PAPER 5

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART-I

Question 1

Case Study :

Supreme Group of Industries (SGI) has invested in diverse projects which impact the lives of people in many ways and create value by helping in overall and holistic development of communities across multiple geographies. Through its various initiatives, the group endeavours to play a pivotal role in serving communities and projects which address the basic societal requirements. SGI has been involved in various Social Responsibility initiatives over last many years. These efforts have substantially improved the standard of living of the people through health care, education, livelihood and community development initiatives, making their living experience dramatically better. These activities impacting the lives of marginalized communities are spread across the globe reaching regions beyond SGI's business locations. The key philosophy of all CSR initiatives of SGI is guided by three core commitments of Social Responsibility Initiatives :

(a) S – SCALE

(b) I – IMPACT

(c) S – SUSTAINABILITY

For the fiscal year 2025, SGI seeks to strategically consolidate the company's CSR initiatives to focus on discrete social problems, all aimed at enabling lives, living and livelihoods of marginalized communities. SGI has identified the following focus areas :

- Community Infrastructure & Environment
- Community Health care
- Education and Skills enhancement

With the endeavour to restructure its CSR initiatives, the Board of SGI in its recent board meeting, approved the following proposals :

(1) Formation of Corporate Social Responsibility & Governance (CSRG) committee to finalise the CSR policy in light of the Group's CSR plans for the fiscal year 2025.

(2) Appointment of a management consultant, to provide professional help to the CSRG committee on the factors influencing the proposed CSR initiatives of the group.

(3) Appointment of a practising company secretary, to advice on the role of board of directors with regards to the CSR related activities.

Mrs. Meena, an executive director, who was a qualified management graduate from a premier management institute, shared the emerging significance of corporate governance with the Board members during the board meeting. All the directors were eager to assess its applicability to the SGI group in light of the new CSR initiatives proposed by the Board. Mr. Pratyush, the company secretary who was present at the board meeting, also enlightened the board on the emerging concept of corporate governance. Board asked Mr. Pratyush to table in the next Board meeting

the objectives of corporate governance and the role of company secretary in light of corporate governance framework.

Next day morning, Mr Pratyush came to his office and briefed his team on the expectations of the board from the corporate secretarial team and asked them to compile a note for the board on the objectives of corporate governance and the role of company secretary in the corporate governance. To aid them with the preparation of the note, he recapitulated his team on the recent developments of corporate governance framework.

Based on the facts mentioned in the above case study :

(a) Assume yourself as a Chairperson of the CSRG committee and prepare a report addressed to the Board explaining the Meaning and Benefits of Corporate Social Responsibility. The report should also include a section on the factors influencing Board's CSR initiative based on the inputs received from the management consultant.

(5 marks)

(b) Assume yourself as the Practising Company Secretary appointed by the Board and provide a write-up to the Board on their role in CSR related activities of the company, in light of the recent case law pertaining to Board's compliance responsibility of implementing and reporting.

(5 marks)

(c) Assume yourself as a young qualified Company Secretary in the corporate secretarial team led by Mr. Pratyush and compile a note to the Board based on Mr. Pratyush's briefing on :

(i) Objectives of corporate governance.

(ii) Role of Company Secretary in the implementation of corporate governance framework in SGI group.

(5 marks each)

Answer 1(a)

Report to the Board of Directors of Supreme Group of Industries (SGI)

Meaning of Corporate Social Responsibility: As per rule 2(d) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Companies Act, 2013 in accordance with the provisions contained in these rules.

CSR is a concept whereby companies not only consider their profitability and growth, but also interests of society and the environment by taking responsibility for the impact of their activities on the society, environment and communities in which they operate. CSR aims to fulfil expectations that society has from business and it is viewed as a comprehensive set of social policies, practices and programs that are integrated throughout the business operations. The concept of CSR has evolved over the years and it is now used as a strategy and a business opportunity to earn stakeholders' goodwill.

Benefits of Corporate Social Responsibility: Business cannot exist in isolation; business cannot be oblivious to societal development. This has also been highlighted in Section 166(2) of the Companies Act, 2013.The social responsibility of business can be integrated into the business purpose so as to build a positive synergy between the two. Some of the points highlighting the benefits of CSR are depicted below:

- CSR creates a favourable public image, which attracts customers. Reputation or brand equity of the products of a company which understands and demonstrates its social

responsibilities is very high. Customers trust the products of such a company and are willing to pay a premium on its products. Organizations that perform well with regard to CSR can build reputation, while those that perform poorly can damage brand and company value when exposed. Brand equity, is founded on values such as trust, credibility, reliability, quality and consistency.

- CSR builds a positive image encouraging social involvement of employees-officially or even personally, which in turn develops a sense of loyalty towards the organization, helping in creating a dedicated workforce proud of its company.
- The company's social involvement may assist in discouraging excessive regulation or intervention from the Government or statutory bodies, and hence gives greater freedom and flexibility in decision-making.
- The internal activities of the organisation have an impact on the external environment, since the society is an inter-dependent system.
- A business organisation has a great deal of power and money, entrusted upon it by society and should be accompanied by an equal amount of responsibility. In other words, there should be a balance between authority and responsibility.
- The atmosphere of social responsiveness encourages co-operative attitude between groups of companies. One company can advise or solve social problems that other organizations could not solve.
- Companies can better address the grievances of their employees and create employment opportunities for the unemployed.
- Financial institutions are increasingly incorporating social and environmental criteria into their assessment of projects. When making decisions about where to place their money, investors are looking for indicators of effective CSR management.
- In a number of jurisdictions, governments have expedited approval processes for firms that have undertaken social and environmental activities beyond those required by regulation.

Factors influencing Board's CSR initiative

- Globalization – coupled with focus on cross-border trade, multinational enterprises and global supply chains – is increasingly raising CSR concerns related to human resource management practices, environmental protection, and health and safety, among other things.
- Governments and intergovernmental bodies, such as the United Nations, the Organisation for Economic Cooperation and Development (OECD) and the International Labour Organization (ILO) have developed compacts, declarations, guidelines, principles and other instruments that outline social norms for acceptable conduct.
- Advances in communications technology, such as the Internet, cellular phones and personal digital assistants, are making it easier to track corporate activities and disseminate information about them.
- Non-governmental organizations now regularly draw attention through their websites to business practices they view as problematic.
- Consumers and investors are showing increasing interest in supporting responsible business practices and environmental issues.
- Numerous serious and high-profile breaches of corporate ethics have contributed to elevated public mistrust of corporations and highlighted the need for improved corporate

governance, transparency, accountability and ethical standards. However, being ethical and socially responsible by making a positive contribution to society may not be same.

- Citizens in many countries are increasingly demanding that corporations should meet standards of social and environmental care, no matter where they operate, including their supply chain.
- There is increasing awareness of the limits of government legislative and regulatory initiatives to effectively capture all the issues that corporate social responsibility addresses.
- Businesses are recognizing that adopting an effective approach to CSR can reduce risk of business disruptions, open up new opportunities, and enhance brand and company reputation.
- Effective CSR will depend on the mind set of executives of the corporate who are taking up CSR initiatives.
- CSR also depends on the implementing agencies with regard to their seriousness, integrity, honesty and attitude.

Answer 1(b)

A brief write-up on the role of Board of Directors in CSR related activities of the company:

CSR is a Board-driven process. The responsibilities of the Board of a company which has a CSR mandate under the Companies Act, 2013, include the following:

- approve the CSR policy;
- disclose contents of such policy in its report and also place it on the company's website, if any;
- ensure that the activities included in the CSR policy are undertaken by the company;
- ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years;
- satisfy itself regarding the utilisation of the disbursed CSR funds; and
- if the company fails to spend at least two per cent of the average net profits of the company, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and transfer the unspent CSR amount as per provisions of sections 135(5) and 135(6) of the Companies Act, 2013.
- alter such annual action plan based on reasonable justification as per recommendation of CSR committee.

Apart from the above, the Board of Directors of the Company also has to take decisions on the following important matters related to CSR:

- Matters relating to monitoring of CSR projects – ongoing or otherwise
- Administrative Overheads
- Setting off excess amount
- Transfer of Capital Asset
- CSR Reporting
- Impact Assessment Report
- Disclosure on Website etc.

Corporate Social Responsibility – Board's Compliance Responsibility of Implementing and Reporting- Case Law:

In the matter of Chettinad Earth Movers (P.) Ltd. CA NO. 1096/CB/2018 NCLT Chennai, the Hon'ble court held that the Company and its Officers are in default have violated the provisions of Section 134(3)(o) read with Section 135 of the Companies Act, 2013, which is punishable under Section 134(8) of the Companies Act, 2013. The said offence is not intentional and it is not prejudicial to the interest of the shareholders or the creditors.

The provisions of Section 134(8) of the Companies Act, 2013, provide that the Company shall be punishable with fine which shall not be less than fifty thousand rupees but which extend to twenty-five lakh rupees, and every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both. [This provision was amended vide Notification dated 28th September, 2020 by the Companies (Amendment) Act, 2020.]

The applicant pleaded for taking a lenient view on the ground that it was the first offence, which has been confirmed by the concerned RoC. Therefore, the Application of the Company and its Officers in default is to be allowed and the offence is to be compounded in exercise of the powers conferred under section 441, by imposing a fine under section 134(8), to the tune of ₹ 1,50,000 i.e. ₹ 50,000 on each the Company, and its two Officers.

Answer 1(c)

A brief note to the Board by CS Pratyush

(i) **Objectives of corporate governance:**

Corporate Governance is aimed at creating an organization which is transparent in its operations vis-à-vis its stakeholders. It envisages an organization in which emphasis is laid on fulfilling the social responsibilities towards the stakeholders in addition to the earning of profits. The objectives of Corporate Governance are to ensure the following:

a) Properly constituted Board capable of taking independent and objective decisions.

b) Board is independent in terms of Non-Executive and Independent Directors.

c) Board adopts transparent procedures and practices.

d) Board has an effective machinery to serve the concerns of the Stakeholders.

e) Board to monitor the functioning of the Management Team.

f) Board remains in effective control of the affairs of the Company.

(ii) **Role of Company Secretary in the implementation of corporate governance framework in SGI group**

Company Secretary provides the impetus, direction and guidance for achieving world class corporate governance. They are primary source of advice on the conduct of business. A Company Secretary-

- acts as a vital link between the company and its Board of Directors, shareholders and other stakeholders and regulatory authorities;
- plays a key role in ensuring that the Board procedures are followed and regularly reviewed;
- provides the Board with guidance as to its duties, responsibilities and powers under various laws, rules and regulations;

- acts as a compliance officer as well as an in-house legal counsel to advise the Board and the functional departments of the company on various corporate, business, economic and tax laws;
- is an important member of the corporate management team and acts as conscience keeper of the company. The company secretary being an important human capital of the management of the business organization should put all the efforts to ensure that through his/her roles corporate governance prevails.

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

Question 2

(a) Kamakshi is the Marketing Manager at a software company. She is responsible for developing and implementing marketing strategies for the company's products. Kamakshi leads a team of marketing professionals and works closely with the product development and sales teams to ensure that the company's products are effectively promoted in the market. She also analyses market trends and customer feedback to refine the marketing strategies. Which level is she working at ? Discuss the roles and responsibilities of this level in organization.

(5 marks)

(b) You are a consultant advising a small manufacturing company embarking on a digital transformation journey. The company's leadership is concerned about managing the change effectively. Using the best practices for managing change in small and medium- sized businesses, outline a strategy to help the company navigate this transformation successfully.

(5 marks)

(c) Michael E. Porter has suggested three generic strategies.

Briefly explain :

(i) Basic objective to follow a generic strategy

(ii) Identify the type of strategy used in the following examples :

(I) Bell Computer has decided to rely exclusively on direct marketing.

(II) "Our basic strategy was to charge a price so low that microcomputer makers couldn't do the software internally for that cheaply."

(III) 'DNTV', a TV Channel has identified a profitable audience niche in the electronic media. It has further exploited that niche through the addition of new channels like 'DNTV' Profit and 'Image'.

(2+3=5 marks)

(d) What is meant by Six Sigma ? Briefly explain.

(5 marks)

OR (Alternative question to Q. No. 2)

Question 2A

(a) What is the rational behind Business Process Re-engineering (BPR) ? What steps would you recommend to implement BPR in an organization ?

(5 marks)

(b) Describe any three environmental changes that you expect to have major impact on the following industries :

(i) Retail Industry

(ii) Automobile Industry

(iii) Education Industry.

(2+2+1=5 marks)

(c) Aashna Kedia has been recently appointed as the head of a strategic business unit of a large multiproduct company. Advise Mrs. Kedia about the leadership role to be played by her in the execution of strategy.

(5 marks)

(d) What is the purpose of SWOT Analysis ? Why is it necessary to do a SWOT analysis before selecting a particular strategy for a business organization ?

(5 marks)

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

Answer 2(a)

Kamakshi operates at the functional level of management, specifically as the marketing manager at a software company. Functional managers like Kamakshi oversee specific departments or functions within an organisation, such as marketing, finance, or operations. Their primary responsibilities include implementing corporate strategies and policies within their area of expertise and ensuring that daily operations are conducted efficiently and effectively.

In Kamakshi's case, as a marketing manager, her role involves developing and executing marketing strategies for the company's products. This include leading a team of marketing professionals, collaborating with product development and sales teams, and analysing market trends and customer feedback to refine strategies. By working closely with these teams, Kamakshi ensures that the company's products are effectively promoted in the market and that marketing efforts align with overall business goals.

Functional strategy relates to a single functional operation and the activities involved therein. Decisions at this level within the organization are often described as tactical. Such decisions are guided and constrained by some overall strategic considerations. Functional strategy deals with relatively restricted plan providing objectives for specific function, allocation of resources among different operations within that functional area and coordination between them for optimal contribution to the achievement of the SBU and corporate-level objectives.

Functional managers like Kamakshi play a critical role in the organisation by bridging the gap between corporate strategy and daily operations. They are responsible for translating high-level strategic goals into actionable plans for their departments and ensuring that these plans are executed effectively. Additionally, they are often key decision-makers within their areas of responsibility, making strategic choices that impact on the company's success. Overall, Kamakshi's role as a marketing manager exemplifies the importance of functional managers in driving the success of their organisations.

Answer 2(b)

To help the small manufacturing company navigate its digital transformation successfully, it is recommended to adopt the following strategy:

(i) **Education and Communication:** If misinformation and lack of information create barriers to managing change, education and communication might be appropriate. It requires an atmosphere of mutual trust and confidence and respect between managers and employees.

(ii) **Participation:** Participation helps to give people in organizational change a feeling of importance. It creates the feelings among the employees that the decision is their own. They realise that the change process is a must. Those people who are directly affected by the change should be given opportunity to participate in that change before the final decisions are reached.

(iii) **Obtaining commitment:** Commitment to take part in changed programme can be obtained in private from each individual. However, getting a person to commit himself in private to a changed programme may yield fewer results than if he voluntarily and publicly gives his commitment to an idea of change.

(iv) **Leadership:** A transformational leader can use personal reasons for change without arousing resistance. An effective leader tries to change the psychological needs of his followers.

(v) **Training and Psychological Counselling:** Management can change the basic values of the people by training and psychological counseling. People should be educated to become familiar with change, its process, and working. They must be taught new skills, helped to change attitudes and indoctrinated in new relationships.

(vi) **Coercion or Edict:** Coercion or edict is the imposition of change or the issuing of directives about change. It is the explicit use of power. Coercion is the least successful style of managing change except in a state of crisis or confusion.

Answer 2(c)

According to Michael E. Porter, strategies allow organisations to gain competitive advantage to for long-time survival and growth, from three different bases: cost leadership, differentiation, and focus. These bases form different generic strategies as under:

- **The Cost leadership** strategy also involves the firm winning market share by appealing to cost-conscious or price-sensitive customers. This is achieved by having the lowest prices in the target market segment, or at least the lowest price to value ratio (price compared to what customers receive).
- **Differentiation** is appropriate where the target customer segment is not price-sensitive, the market is competitive or saturated, customers have very specific needs which are possibly under-served, and the firm has unique resources and capabilities which enable it to satisfy these needs in ways that are difficult to copy.
- The **focus** strategy is also known as 'niche' strategy. This is so because, companies adopting focus strategies focus on niche markets and, by get hold of the dynamics of such niche market and unique requirements of its customers

In the given examples, the generic strategies that are being followed are given below:

i. Differentiation: Bell Computer is differentiating on product delivery. Computer market is highly competitive and the products are very similar.

ii. Cost Leadership: Keeping the prices low so that microcomputer makers acquire the software rather than developing themselves is a case of cost leadership.

iii. Focus: DNTV has identified a profitable area (audience niche) and is focusing on it.

Answer 2(d)

Six Sigma is a disciplined, statistical-based, data-driven quality control program. It is a:

- **Business Strategy:** Using Six Sigma Methodology, a business can strategize its plan of action and drive revenue increase, cost reduction and process improvements in all parts of the organization.
- **Vision:** Six Sigma Methodology helps the Senior Management create a vision to provide defect free, positive environment to the organization.
- **Benchmark:** Six Sigma Methodology helps in improving process metrics. Once the improved process metrics achieve stability; we can use Six Sigma methodology again to improve the newly stabilized process metrics. For example: The Cycle Time of Pizza Delivery is improved from 60 minutes to 45 minutes in a Pizza Delivery process by using Six Sigma methodology. Once the Pizza Delivery process stabilizes at 45 minutes, we could carry out another Six Sigma project to improve its cycle time from 45 minutes to 30 minutes. Thus, it is a benchmark.
- **Goal:** Using Six Sigma methodology, organizations can keep a stringent goal for themselves and work towards achieving them during the course of the year. Right use of the methodology often leads these organizations to achieve these goals.
- **Statistical Measure:** Six Sigma is a data driven methodology. Statistical Analysis is used to identify root- causes of the problem. Additionally, Six Sigma methodology calculates the process performance using its own unit known as Sigma unit.
- **Robust Methodology:** Six Sigma is the most accepted methodology available in the market today which is a documented methodology for problem solving. If used in the right manner, Six Sigma improvements are sometimes considered bullet-proof and they give high yielding returns.

OR (Alternate question to Q. No. 2)

Answer 2A(a)

Business Process Reengineering (BPR) is an endeavour to fabricate the operations of the business on an extensive scale and the act of recreating a core business process with the goal of improving product output, quality, or reducing costs. The primary objective of BPR is to eliminate redundancies or futile layers in the whole process and eliminate enterprise costs.

BPR involves the following steps:

i. **Define objectives and framework:** There must be a clear definition of the objectives of choosing BPR. Such objectives must be clearly laid out in qualitative and quantitative terms. After defining such objectives, the requirement for change must be communicated to the employees to apprise them about the upcoming processes. This becomes important as the willingness of the employees to adopt the change is a key for the success of BPR.

ii. **Identify customer needs:** The requirements and feedback of the customers must be given due importance while designing the BPR. It must be ensured that the new processes are able to deliver the added value to the customer.

iii. **Study the existing process:** In order to re-engineer, the company must have to analyze its existing business process. A SWOT should be carried out to have a clear view of the strengths and weaknesses of the existing processes.

iv. **Formulate a redesigned process plan:** After an analysis of the prevailing business process, the modifications to be made are chalked down. These modifications form a base for the re-designing of process. Then, a plan is laid down by selecting the best alternative.

v. **Implement the redesign:** After an analysis of the prevailing business process, the modifications to be made are chalked down. These modifications form a base for the re-designing of process. Then, a plan is laid down by selecting the best alternative.

Answer 2A(b)

All the environmental forces impact industries in varying degree. Over a period of time, these may change and oscillate between dominant factors and insignificant factors.

Retail Industry:

- Macro environmental factors such as Technological, Economic, Demographic, Social, Legal and political factors
- Rapid change in production process and product innovation
- Foreign Direct Investment and policies thereon
- Changes in Direct and indirect taxes
- Inflation, interest rates
- Changes in employment/ labour laws
- Change in attitude towards health
- Developments in IT can help in support supply chain management, logistics and transportation

Automobile Industry:

- Macro environmental factors such as Technological, Economic, Demographic, Social, Legal and political factors
- Government policies and subsidies
- New research and development
- Anti-pollution pressures like, use of eco-friendly cars.
- Use of alternative fuels
- Population growth & age mix
- Rural urban ratio
- Changes in family structure
- Changes in income levels
- Changes in Import & Excise Duties
- Foreign Direct Investment
- Financing facilities at low interest rates

Education Industry:

- Macro environmental factors such as Technological, Economic, Demographic, Social, Legal and political factors
- Changes in government policies, Proposed Higher Education and Research Outlays
- Privatization of Higher Education
- International Universities

- Availability of soft loans for higher/ professional education
- Attitude towards education
- Mobility of students
- Income
- Job opportunities

Answer 2A(c)

Being appointed as the head of a strategic business unit of a large multiproduct company, Mrs. Aashna Kedia has been advised to perform the following key strategic leadership roles:

- Navigator – Clearly and quickly works through the complexity of key issues, problems and opportunities to affect actions (e.g., leverage opportunities and resolve issues).
- Strategist – Develops a long-range course of action or set of goals to align with the organization's vision.
- Entrepreneur – Identifies and exploits opportunities for new products, services and markets.
- Mobilizer – Proactively builds and aligns stakeholders, capabilities, and resources for getting things done quickly and achieving complex objectives.
- Talent Advocate and Innvoator – Attracts, develops, and retains talent to ensure that people with the right skills and motivations to meet business needs are in the right place at the right time.
- Captivator – Builds passion and commitment toward a common goal.
- Global Thinker – Integrates information from all sources to develop a well-informed, diverse perspective that can be used to optimize organizational performance.
- Change Driver – Creates an environment that embraces change; makes change happen – even if the change is radical – and helps others to accept new ideas.
- Enterprise Guardian – Ensures shareholder value creation through courageous decision-making that supports enterprise – or unit-wide interests.

These nine roles are important at senior strategic levels because they help leaders understand what to do to be strategic. They address the broader challenges leaders face as they transition from managing more narrowly focused 'silos' to taking on the challenges of more enterprise-wide leadership.

Answer 2A(d)

SWOT stands for strengths, weaknesses, opportunities, and threats, is a tool for strategic analysis of any organization, which takes into account examination of the company's internal as well as its external environment. It consists in recognition of key assets and weaknesses of the company and marching them to exploit future opportunities and combating threats. SWOT is quite helpful in formulating a company's strategy.

Strength: Strength is an inherent capability of the organisation which it can use to gain strategic advantage over its competitors.

Weakness: A weakness is an inherent limitation or constraint of the organisation which creates strategic disadvantage to it.

Opportunity: An opportunity is a favourable condition in the organisation's environment which enables it to strengthen its position.

Threat: A threat is an unfavourable condition in the organisation's environment which causes a risk for, or damage to, the organisation's position.

SWOT analysis helps managers to craft a business model (or models) that will allow a company to gain a competitive advantage in its industry (or industries). Competitive advantage leads to increased profitability, and this maximises a company's chances of surviving in the fast changing, competitive environment. Key reasons for SWOT analyses are:

- It provides a logical framework
- It presents a comparative account
- It guides the strategist in strategy identification.

PART-II

Question 3

PRAKS Ltd. is planning for an IPO of 200,000 shares, at a book-built price of ₹ 100 each, resulting in an IPO size of ₹ 200,00,000. As per the ICDR Regulations, the over- allotment component under the Green Shoe mechanism could be up to 15% of the IPO. Prior to the IPO, the stabilising agent would borrow such number of shares to the extent of the proposed Green Shoe shares from the pre-issue shareholders. These shares are then allotted to investors along with the IPO shares. The total shares issued in the IPO therefore stands at 230,000 shares. IPO proceeds received from the investors for the IPO shares, i.e. ₹ 200,00,000 being 200,000 shares at the rate of ₹ 100 each, are remitted to the Issuer Company, while the proceeds from the Green Shoe Shares are parked in a special escrow bank account, i.e. Green Shoe Escrow Account. During the price stabilization period, if the share price drops below ₹ 100, the stabilising agent would utilize the funds lying in the Green Shoe Escrow Account to buy these back shares from the open market. This gives rise to the following three situations, examine all situations given below with reference to the role of stabilising agent.

(a) Where the stabilising agent manages to buyback all of the Green Shoe Shares, i.e., 30,000 shares;

(5 marks)

(b) Where the stabilising agent manages to buyback none of the Green Shoe Shares;

(5 marks)

(c) Where the stabilising agent manages to buy-back some of the Green Shoe Shares, say 20,000 shares.

(5 marks)

Answer 3

a) **Where all Green Shoe Shares are bought back:** In this situation, funds in the Green Shoe Escrow Account (30,000 shares x ₹100 i.e ₹ 30,00,000) would be deployed by the stabilising agent towards buying up shares from the open market. Given that the prices prevalent in the market would be less than the issue price of ₹ 100, the stabilising agent would have sufficient funds lying at his disposal to complete this operation.

Having bought back all of the 30,000 shares, these shares would be temporarily held in a special depository account with the depository participant (Green Shoe Demat Account), and would then be returned to the lender shareholders, within a maximum period of two days after the stabilisation period.

b) **Where none of the Green Shoe Shares are bought back:** This situation would arise in the event that the share prices have fallen below the Issue Price, but the stabilising agent is unable to find any sellers in the open market, or in an event where the share prices continue to trade above the listing price, and therefore there is no need for the stabilising agent to indulge in price stabilisation activities.

In either of the above-said situations, the stabilising agent is under a contractual obligation to return the 30,000 shares that had initially been borrowed from the lending shareholder(s). Towards meeting this obligation, the issuer company would allot 30,000 shares to the stabilising agent into the Green Shoe Demat Account (the consideration being the funds lying the Green Shoe Escrow Account), and these shares would then be returned by the stabilising agent to the lending shareholder(s), thereby squaring off.

c) **Where some of the Green Shoe Shares are bought back, say 20,000 shares:** This situation could arise in an event where the share prices witness a drop in the initial stages of the price stabilization period, but recover towards the later stages, generally after such purchase.

In this situation, the stabilising agent has a responsibility to return 30,000 shares to the lending shareholder(s), whereas the stabilising activities have yielded only 20,000 shares.

Similar to the instance mentioned in Situation (b) above, the issuer company would allot the differential 10,000 shares into the Green Shoe Demat Account to cover up the shortfall, and the stabilising agent would discharge his obligation to the lending shareholder(s) by returning the 30,000 shares that had been borrowed from them.

In both Situation (b) and (c), the issuer company would need to apply to the exchanges for obtaining listing/ trading permissions for the incremental shares allotted by them, pursuant to the Green Shoe mechanism.

Any surplus lying in the Green Shoe Escrow Account would then be transferred to the Investor Protection and Education Fund established by SEBI, as required under ICDR Regulations and the account shall be closed thereafter.

Question 4

(a) Swadha Ltd. is a well-established company which wants to issue equity shares with differential voting rights in the near future. In this regard, explain the related provisions/conditions of Companies (Share Capital and Debentures) Rules 2014.

(b) Which entities are exempted from registration under the SEBI (Investment Advisers or IA) Regulations 2013 ? Briefly explain.

(c) What do you understand by Initial Public Offer (IPO) ? State the eligibility requirements for an Initial Public Offer under Regulation 6(1) of SEBI (ICDR) Regulations, 2018.

(5 marks each)

Answer 4(a)

Swadha Ltd. is required to comply with the following conditions for issuing shares with differential rights [Rule 4 of the Companies (Share Capital and Debentures) Rules, 2014]

No company limited by shares can issue equity shares with differential rights as to dividend, voting or otherwise. Such company has to comply with the following conditions, namely:

a) **Authorization in Articles of Association:** The articles of association of the company authorizes the issue of shares with differential rights.

b) **Passing of Ordinary Resolution at General Meeting:** The issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders. Where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot.

c) **Limit for voting power not exceeding 74%:** The voting power in respect of shares with differential rights of the company shall not exceed seventy four percent of total voting power including voting power in respect of equity shares with differential rights issued at any point of time.

d) **No defaults:** The company has not defaulted in the following:

- the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
- the company has no subsisting default in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
- the company has not defaulted in payment of the dividend on preference shares or repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting the amount in Investor Education and Protection Fund to the Central Government.

However, a company may issue equity shares with differential rights upon expiry of five years from the end financial year in which such default was made good.

e) The company has not been penalized by Court or Tribunal during the last three years of any offence under the RBI Act, 1934, the SEBI Act, 1992, the Securities Contracts Regulation Act, 1956, the Foreign Exchange Management Act,1999 or any other Special Act, under which such companies being regulated by sectoral regulators.

f) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice versa.

g) The Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details .

h) The holders of the equity shares with differential rights enjoys all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

In case Swadha Ltd. is a listed entity, additional requirements as per SEBI will also apply.

Answer 4(b)

Exemptions from registration under Investment Advisers Regulations

The following entities have been exemptions from registration under the SEBI (Investment Adviser) Regulations, 2013:

a) Any person who gives general comments in good faith in regard to trends in the financial or securities market or the economic situation where such comments do not specify any particular securities or investment product;

b) Entities which are providing advice/incidental advice to their primary activity and are regulated by the respective regulator/self-regulatory body/institute. These include-

i. Insurance agent or insurance broker;

ii. Any pension advisor;

iii. Any distributor of mutual funds;

iv. Any advocate, solicitor or law firm;

v. Any member of Institute of Chartered Accountants of India, Institute of Company Secretaries of India, Institute of Cost and Works Accountants of India, Actuarial Society of India or any other professional body;

vi. Any stock broker, portfolio manager or merchant banker registered under respective SEBI Regulations, who provides any investment advice to its clients incidental to their primary activity:

However, such intermediaries shall comply with the general obligation(s) and responsibilities as specified in Chapter III of Investment Adviser regulations.

vii. Any fund manager of a mutual fund, alternative investment fund or any other intermediary, by whatever name called.

c) Any person who provides investment advice exclusively to clients based out of India (except Non-Resident Indian or Person of Indian Origin).

d) Any principal officer, persons associated with advice and partner of a registered investment adviser. However, such principal officer, persons associated with advice and partner shall comply with regulation 7 of these regulations;

e) Any other person as may be specified by SEBI.

Answer 4(c)

Initial Public Offering (IPO) means an offer of specified securities by an unlisted issuer to the public for subscription and which includes fresh issuance of shares by the company or includes an Offer for Sale (OFS) of specified securities to the public by any existing holder of such securities in an unlisted issuer. In order to qualify as an Initial public offer, the offer of securities must be by an unlisted issuer company and such an issue shall be made to the public and not to the existing shareholders of the unlisted issuer company or to selected group of investors.

Eligibility requirements for an Initial Public Offer [Regulation 6(1) of SEBI (ICDR) Regulations, 2018]

An issuer shall be eligible to make an IPO only if:

a) the issuer has net tangible assets of at least ₹ 3 Cores on a restated and consolidated basis, in each of the preceding three full years of (12 months each) of which not more than 50% is held in monetary assets;

However, if more than 50% of the net tangible assets are held in monetary assets, the issuer has utilized or made firm commitments to utilize such excess monetary assets in its business or project. This limit of 50% shall not apply in case of IPO is made entirely through an offer for sale.

b) the issuer has an average operating profit of at least ₹ 15 Cores, calculated on a restated and consolidated basis, during the three preceding years with operating profit in each of the three preceding years;

c) the issuer has a net worth of at least ₹ 1 crore in each of the preceding three full years, calculated on a restated and consolidated basis;

d) in case the issuer has changed its name within the last one year, at least 50% of the revenue calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by the new name.

An issuer who does not meet the above criteria can still make an IPO provided it offers 75% of its issue to QIBs and follows book building process for discovery of price.

Question 5

(a) Balance sheet of GKJ Ltd. for the year ended 31st March, 2024 is given below :

Liabilities	**Amount (₹ lakh)**	**Assets**	**Amount (₹ lakh)**
Equity Share ₹ 10 each	200	Fixed Assets	500
Retained Earnings	200	Raw Materials	150
11% Debentures	300	W.I.P.	100
Public Deposits (Short-term)	100	Finished goods	50
Trade Creditors	80	Debtors	125
Bills Payable	100	Cash/Bank	55
	980		980

Calculate the amount of maximum permissible bank finance under three methods as per Tandon Committee lending norms. The total core current assets are assumed to be ₹ 30 lakh.

(5 marks)

(b) From the following information of Ganpati Ltd., you are required to calculate :

(i) Net operating cycle period.

(ii) Number of operating cycles in a year.

Particulars	**(₹)**
Raw material inventory consumed during the year	6,00,000
Average stock of raw material	50,000
Average cost of production	5,00,000
Average work-in-progress inventory	30,000
Cost of goods sold during the year	8,00,000
Average finished goods stock held	40,000
Average collection period from debtors	45 days

Average credit period availed	30 days
No. of days in a year	360 days

(5 marks)

(c) Galaxy Ltd. is a newly incorporated company and it would like to purchase raw materials from domestic sources as well as from other countries under Letter of Credit (LC). On the basis of the following information, calculate the limit for Letter of Credit (LC) for the Financial Year 2024-25 :

(i) Estimated Raw Material purchase for FY 2024-25	₹ 480 crore
(ii) Estimated purchase under Letter of Credit (LC) for FY 2024-25 (90%)	₹ 432 crore
(iii) Of which import of Raw Material under Letter of Credit (30%)	₹ 129.60 rore
(iv) Lead Time : Domestic Import	 1.5 months 2.5 months
(v) Transit Time : Domestic Import	 1.5 months 2.5 months
(vi) Credit (Usance) Period available : Domestic Import	 2 months 5 months

(5 marks)

Answer 5(a)

Current Assets = Raw Material + W.I.P + Finished Goods + Debtors + Cash/Bank

Current Assets = ₹ 150 Lakh + ₹ 100 Lakh + ₹ 50 Lakh + ₹ 125 Lakh + ₹ 55 Lakh

= ₹ 480 lakh

Current Liabilities = Public Deposits (Short-term) + Trade Creditors + Bills Payable

= ₹ 100 Lakh + ₹ 80 Lakh + ₹ 100 Lakh = ₹ 280 lakh

Maximum Permissible Banks Finance under Tandon Committee Norms

Method I

Maximum Permissible Bank Finance = 75% of (Current Assets – Current Liabilities other than bank borrowings)

= 75% of (₹ 480 Lakh – ₹ 280 Lakh)

= ₹ 150 lakh

Method II

Maximum Permissible Bank Finance = (75% of Current Assets) – Current Liabilities

= (75 % of ₹ 480 Lakh) – ₹ 280 Lakh

= ₹ 80 lakh

Method III

Maximum Permissible Bank Finance = 75% of (Current Assets – Core Current Assets) – Current Liabilities

= 75 % of (₹ 480 Lakh – ₹ 30 Lakh) – ₹ 280 Lakh

= ₹ 57.5 lakh

Answer 5(b)

(i) Calculation of Net Operating Cycle period of Ganpati Ltd.

$$\text{Raw Material storage period (R)} = \frac{\text{Average stock of raw material}}{\text{Average Cost of Raw Material Consumption per day}}$$

$$= \frac{₹\ 50{,}000}{₹\ 6{,}00{,}000} \times 360$$

= 30 days

$$\text{WIP inventory holding period (W)} = \frac{\text{Average WIP inventory}}{\text{Average Cost of Production per day}}$$

$$= \frac{₹\ 30{,}000}{₹\ 5{,}00{,}000} \times 360$$

= 21.60 OR 22 days

$$\text{Finished Goods inventory holding period (F)} = \frac{\text{Average stock of Finished Goods}}{\text{Average Cost of Goods sold per day}}$$

$$= \frac{₹\ 40{,}000}{₹\ 8{,}00{,}000} \times 360$$

= 18 days

Receivables (Debtors) collection period (D) = 45 days

Credit Period allowed by creditors (C) = 30 days

Net Operating Cycle = R + W + F+ D – C

= 30 + 22 + 18 + 45 – 30 = 85 days

(ii) Number of operating cycles in a year = $\frac{\text{Number of days in a year}}{\text{Operating cycle period}}$

= 360/85 days

= 4.23 times

Answer 5(c)

Galaxy Ltd.

(Amount in ₹ Crore)

Annual Raw Material Consumption for FY 2024-25	A	₹ 480	
Estimated purchase under Letter of Credit (LC) for FY 2024-25 (90 %)	B	₹ 432	
		Calculation of Inland Letter of Credit (ILC)	**Calculation of Foreign Letter of Credit (FLC)**
Annual Raw Material Procurement through ILC/FLC	C	₹ 302.40	₹ 129.60
Monthly Consumption (C/12)	D	₹ 25.20	₹10.80
Lead Time (Time from order placement to shipment)	E	1.5 months	2.5 months
Transit Time	F	1.5 months	2.5 months
Credit (Usance) Period Available	G	2 months	5 months
Total Period	H=E+F+G	5 months	10 months
LC limit Required for FY 2024-25	I = D x H	**₹ 126**	**₹ 108**

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

Question 6

(a) Explain the provisions relating to "Special Situation Fund" notified in SEBI (Alternative Investment Funds) (Amendment) Regulations, 2022.

(5 marks)

(b) Explain the provision relating to maintenance of records by an investment manager under the SEBI Infrastructure Investment Trusts (InvITs) Regulations.

(5 marks)

(c) Discuss various factors to be considered by the management of a company for a successful Road Show while preparing for marketing of an IPO.

(5 marks)

OR (Alternative question to Q. No. 6)

Question 6A

(a) What are the pre-issue formalities under Regulation 28(1) of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 for ESPS / ESOS / SARS / GEBS/RBS ?

(b) What are the conditions to become an Angel Investor under SEBI (Venture Capital Fund) Regulations, 1996 ?

(c) What are the eligibility criteria and minimum subscription requirement for an issuer to make initial public offer in terms of IFSCA (Issuance and Listing of Securities) Regulations, 2021 ?

(5 marks each)

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

Answer 6(a)

Chapter III-B on Special Situation Fund was inserted vide SEBI (Alternative Investment Funds) (Amendment) Regulations, 2022. Special Situation Fund means a Category 1 Alternative Investment Fund that invests in special situation assets in accordance with its investment objectives and may act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016. The provisions of this Chapter shall apply to special situation funds and schemes launched by such special situation funds.

Investment in special situation funds

1) Each scheme of a special situation fund shall have a corpus as may be specified by the SEBI.
2) The special situation fund shall accept from an investor, an investment of such value as may be specified by the SEBI.
3) The special situation fund shall not accept investments from any other Alternative Investment Fund other than a special situation fund.

Investment by special situation funds

1) Special situation funds shall invest only in special situation assets and may act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016. However, the special situation fund shall not invest in,
   i. its associates; or
   ii. the units of any other Alternative Investment Fund other than the units of a special situation fund; or
   iii. units of special situation funds managed or sponsored by its manager, sponsor or associates of its manager or sponsor.
2) Any investment by a special situation fund in the stressed loan acquired under clause 58 of the Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 as amended from time to time shall be subject to lock-in period as may be specified by the SEBI.

   In this context, SEBI vide its Circular No. SEBI/HO/IMD I/DF6/P/CIR/2022/009 dated January 27, 2022 has specified the following:
   a) Each scheme of SSF shall have a corpus of at least ₹ 100 crore.
   b) SSF shall accept an investment of value not less than ₹ 10 crore from an investor. In case of an accredited investor, the SSF shall accept an investment of value not less

than ₹ 5 crore. Further, in case of investors who are employees or directors of the SSF or employees or directors of the manager of the SSF, the minimum value of investment shall be 25 lakh rupees.

c) SSF intending to act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016 shall ensure compliance with the eligibility requirement provided thereunder.

Answer 6(b)

Regulation 26 of the SEBI (Infrastructure Investment Trust) Regulations, 2014 stipulates that the investment manager shall maintain records pertaining to the activity of the InvIT, wherever applicable, including-

a) all investments or divestments of the InvIT and documents supporting the same including rationale for such investments or divestments;

b) agreements entered into by the InvIT or on behalf of the InvIT;

c) documents relating to appointment of persons;

d) insurance policies for infrastructure assets;

e) investment management agreement;

f) documents pertaining to issue and listing of units including placement memorandum, draft and final offer document, in-principle approval by designated stock exchanges, listing agreement with the designated stock exchanges, details of subscriptions, allotment of units, etc;

g) distributions declared and made to the unit holders;

h) disclosures and periodical reporting made to the trustee, SEBI, unit holders and the designated stock exchanges including annual reports, half yearly reports, etc.;

i) valuation reports including methodology of valuation;

j) books of accounts and financial statements;

k) audit reports;

l) reports relating to activities of the InvIT placed before the board of directors of the investment manager;

m) unit holders' grievances and actions taken thereon including copies of correspondences made with the unit holder and SEBI, if any;

n) any other material documents;

Answer 6(c)

Roadshows represent meetings of issuers, analysts, intermediaries and potential investors. Details about the company are presented in the roadshows and such details usually include the following information about the company making the issue:

- History
- Organisational structure
- Principal objects
- Business lines

- Position of the company in Indian and International Market
- Past performance of the company
- Future plans of the company
- Competition – domestic as well as foreign
- Financial results and operating performance
- Valuation of shares
- Review of Indian stock market and economic situations.

Thus, at road shows, series of information presentations are organised in selected cities around the world with analysts and potential institutional investors. It is, in fact, a conference by the issuer with the prospective investors.

During road shows, the investors give indication of their willingness to buy a particular quantity at particular terms. Their willingness is booked as orders by the marketing force of lead manager and co-lead manager. This process is known as book building.

A road show generally arranged by the lead manager by sending invitation to all prospective investors.

OR (Alternative question to Q. No. 6)

Answer 6 A(a)

Pre-Issue Formalities

Checklist for Prior In-principle approval under Regulation 28(1) of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 for ESPS/ESOS/SARS/GEBS/RBS:

1) Certified copy of Stock Option/Stock Purchase Scheme/ Stock Appreciation Rights Scheme/ General Employee Benefits Scheme/ Retirement Benefit Schemes, certified by the Company Secretary.
2) Certified copy of statement to be filed with the Stock Exchange as required under Regulation 10(b) of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.
3) Certified true copy of the notice of AGM/EGM for approving the Scheme/for amending the Scheme/for approving grants under Regulation 6 of the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, certified by the Company Secretary.
4) Certified true copy of special resolution along with the explanatory statement passed by the shareholders of the Company approving/ amending the Scheme.
5) Certificate of Secretarial Auditors on compliance with SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.
6) Certificate of Merchant Banker on compliance with SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.
7) List of Promoters as defined under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.
8) Details of employee (wherever applicable) -
   a) Who have been granted options/issued shares in excess of 5% of option/shares issued in one year.

b) Who have been granted options/issued shares equal to or exceeding 1% of issued capital during any one year.

9) Copy of latest Annual Report.

10) Specimen copy of Share certificate (where shares are issued in physical form).

11) Confirmation from the Company.

12) Undertakings as required by SEBI.

13) Reconciliation statement.

14) Certified true copy of irrevocable trust deed.

15) Certified true copy of Disclosure document (applicable only for ESOS and SARS).

16) Processing fees.

Answer 6 A(b)

Regulation 19A(2) of the SEBI (Alternative Investment Funds) Regulation, 2012 defines the 'Angel Investor' which means any person who proposes to invest in an angel fund and satisfies one of the following conditions, namely,

i. an individual investor who has net tangible assets of at least two crore rupees excluding value of his principal residence, and who:

a) has early stage investment experience, or

b) has experience as a serial entrepreneur, or

c) is a senior management professional with at least ten years of experience.

ii. a body corporate with a net worth of at least ten crore rupees; or

iii. an Alternative Investment Fund registered under SEBI (AIF) Regulations or a Venture Capital Fund registered under the SEBI (Venture Capital Funds) Regulations, 1996.

Answer 6 A(c)

The eligibility criteria for an issuer to make an initial public offer in terms of IFSCA (Issuance and Listing of Securities) Regulations, 2021 is as under:

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

i. the issuer has an operating revenue of at least USD 20 million in the preceding financial year; or

ii. the issuer has an average pre-tax profit, based on consolidated audited accounts, of at least USD 1 million during the preceding three financial years, or any other eligibility criteria that may be specified by the Authority;

iii. Further, the issuer shall have commenced business at least three years prior to the date of filing of prospectus.

2. If an issuer has issued SR equity shares or dual class shares to any shareholder, the said issuer shall be allowed to do an initial public offer of ordinary shares for listing on the recognized stock exchange(s) subject to compliance with the following:

a) The issue of SR equity shares had been authorized by a special resolution passed at a general meeting of the shareholders of the issuer;

b) The SR equity shares have been held for a period of atleast 6 months prior to the filing of the red herring prospectus;

c) The SR equity shares shall have voting rights in the ratio of a minimum of 2:1 upto a maximum of 10:1 compared to ordinary shares and such ratio shall be in whole numbers only;

d) The SR equity shares shall have the same face value as the ordinary shares; and

e) The SR equity shares shall be equivalent to ordinary equity shares in all respects, except for having superior voting rights

Offer size

The issue shall be of size not less than USD 15 million.

Minimum subscription

For the offer to be successful, the minimum subscription received in the issue shall be at least 75% of the issue size and the minimum number of subscribers shall be 200.

CORPORATE RESTRUCTURING, VALUATION AND INSOLVENCY

GROUP 2 PAPER 6

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART- I

Question 1

Case Study :

ABC Ltd. was incorporated on May 12, 1986, under the Indian Companies Act, having its registered office at Mumbai, Maharashtra. The present capital structure of the petitioner company is as follows :

₹ 1,000 crore Authorised Capital-100 crore equity shares of ₹ 10 each. Issued Subscribed Capital and paid-up capital of ₹ 780 crore -78 crore equity shares of ₹ 10 each [includes equity shares represented by GDRs]. The company is having 4 business segments related to manufacturing of products L, M, N and O. Turnover of O product is around ₹ 1,300 crore. Asset of ABC Ltd are ₹ 2,700 crore out of which product O related asset are ₹ 1,400 crore.

XYZ Ltd. is a company having its registered office at Surat, Gujrat. Authorised, issued and paid up capital of company is ₹ 750 crore having turnover of ₹ 820 crore. It is engaged in the business of manufacture and sale of product O. Assets of XYZ Ltd. are ₹ 1,500 crore.

XYZ Ltd. already hold 14.98% of the equity shares of the ABC Ltd. acquired at ₹ 267 per share from Six ventures and got two directors in Board of Directors of ABC Ltd. XYZ Ltd. has made an open offer to shareholders of ABC Ltd at ₹ 190 per share to acquire controlling stake of ABC Ltd. ABC Ltd. Management opposed the open offer citing reasons of low price that was not beneficial to the shareholders of ABC Ltd. but in reality the management of ABC Ltd. had fear of losing control over the company. XYZ Ltd. had an eye on the Product O business of ABC Ltd. for a long time. The open offer was a step towards fulfilling the dream. Full control of product O business was ultimate purpose of XYZ Ltd. ABC Ltd. script was trading at ₹ 207.50 on the closing hours of trading at the Bombay Stock Exchange.

After lot of fights and hassles, both companies came to truce. Pursuant to acquisitions through negotiated transactions, a proposal to demerge the ABC Ltd. company's Product O business into company TRM Ltd. and acquisition of 51% controlling stake in TRM Ltd. was given by XYZ Ltd. and after due deliberation, the Board of Directors of the ABC Ltd company accepted the proposal for demerger of the Product O business into TRM Ltd. and subsequent acquisition of 51% stake in same by XYZ Ltd. After demerger TRM Ltd. will have around 35% market share of product O business on pan India basis.

ABC Ltd. Employees Welfare Foundation is an employee welfare trust established under the Indian Trusts Act, 1882.

Shareholders of ABC Ltd. and XYZ Ltd. call meeting of shareholders, creditors and pass special resolution. They submit copy of resolution to ROC, NCLT and publish in newspaper about successful arrangement. Few members of ABC Ltd. having 1.5% shares of valued ₹ 10 lakh objected to scheme of Acquisition by XYZ Ltd. ABC Ltd. Employee trust also objected to acquisition. NCLT cancelled the scheme citing grounds of unfair, unjust and objections of members having 1.5% shares in company.

Based on above facts, answer the following with reasons quoting relevant provisions :

(a) Whether the proposed combination crosses the thresholds prescribed by the Competition Commission of India thus necessitating notice to CCI before going for proposed acquisition ?

(b) Is it a hostile or friendly acquisition ? Is it beneficial to go for taking control of ABC Ltd for gaining access to product O business or is it beneficial to cause demerger of Product O business by ABC Ltd into TRM Ltd and then acquiring of 51% controlling stake in same by XYZ Ltd ? Will it result in reduction of capital requiring separate approvals ? Explain briefly.

(c) Whether the compliance approvals given by the shareholders is sufficient for successful acquisition of product O business of ABC Ltd. Examine critically.

(d) Analyse whether NCLT will approve the draft scheme keeping in view the objection raised by shareholders of ABC Ltd ?

(*5 marks each*)

Answer 1(a)

As per Section 5 of the Competition Act, 2002, Combination is defined as (i) acquisition of control, shares, voting rights or assets; or (ii) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service; or (iii) exceeding financial thresholds stated in it which are required to be mandatorily approved by the Competition Commission of India(CCI).

Regulation 9 of the CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 states that it is the responsibility of the acquirer to notify an acquisition or a hostile takeover. In case of a merger or an amalgamation, a joint notice is to be filed by the merging or amalgamating parties. In case of formation of a joint venture, the responsibility to file a notice would lie with all the parties forming the joint venture.

Thresholds For Filing Notice:

		Assets		**Turnover**
	India	> Rs.2000 crore	OR	>Rs. 6000 crore
Enterprise Level	Worldwide with	> US$ 1 bn. With at least Rs.1000 crore in India		> US$ 3 bn. With at least Rs.3000 crore in India
OR				
		Assets		**Turnover**
Group Level	India	>Rs. 8000 crore	OR	>Rs. 24000 crore
	Worldwide with	> US$ 4 bn With at least Rs.1000 crore in India		>US$ 12 bn. With at least Rs.3000 crore in India

Item 1 of Schedule 1 along with Explanation read with Regulation 4 of the CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 states that where acquisition of voting rights or shares under section 5 shall be treated as Combination to be reported under section 6 if the acquirer becomes a member on the Board of Directors of the enterprise and exercise a right to nominate or control Board of Directors of the enterprise though acquisition is less

than 25% of shares or voting rights of an enterprise. Acquisition of less than 10% shall be treated solely as an investment.

In the present case, XYZ Limited, the acquirer, has to notify the substantial acquisition or hostile takeover under section 6 of the Act to CCI because as a result of such acquisition, Combination is meeting threshold of combined assets (2700 cr+1500 cr=4400 cr) and it holds the total shares or voting rights of ABC Limited between 10 to 25% and got two directors in the Board of Directors of ABC Limited.

Regulation 5(3)(a) of the CCI(Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 states that the parties to the combination may, at their option, give notice in Form II, as specified in schedule II to these regulations, preferably in the instances where the parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than fifteen percent (15%) in the relevant market.

Regulation 5(9) of the CCI(Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 provides that where in a series of steps or individual transactions that are related to each other, assets are being transferred to an enterprise for the purpose of such enterprise entering into an agreement relating to an acquisition or merger or amalgamation with another person or enterprise, for the purpose of section 5 of the Act, the value of assets and turnover of the enterprise whose assets are being transferred shall also be attributed to the value of assets and turnover of the enterprise to which the assets are being transferred.

In the present case, XYZ Limited, the acquirer, has to notify the substantial acquisition or hostile takeover to CCI because as a result of such acquisition, it holds not less than 10% the total shares or voting rights of ABC Limited and got two directors in the Board of Directors of ABC Limited.

As it is meeting threshold criterion for demerger of TRM Limited from assets crossing ₹2000 crore, further acquisition of 51% shareholding by XYZ Limited in TRM Limted is part of the same transaction and market share of product "O" for TRM Limited is crossing 15%. A notice of combination shall be filed by the parties with CCI under section 5 and the CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

Answer 1(b)

Takeovers that occur without consent of acquired company/ target company are commonly called hostile takeovers. Here earlier attempt by ZYZ Ltd. to give open offer for Controlling stake and onboarding two directors in ABC Ltd. can be termed as hostile. But subsequent agreement and steps taken for demerger of Product O business and then taking 51% stake in TRM Ltd. give narrative of agreed/ friendly acquisition.

Taking of controlling stake in ABC Ltd. only for product O business seems hostile takeover and unnecessarily being saddled with burden of managing of L, M and N product segments of ABC Ltd. when company XYZ Ltd. is really interested in taking product O business of ABC Ltd. Moreover, complexity of compliances/approvals/cross border issues will also increase. Demerger into TRM Ltd. seems more focused approach.

Pursuant to Section 230 of the Companies Act, 2013, a company may propose for compromise or arrangement with its creditors or its members which may include reduction of share capital of the company and NCLT will permit the same under section 230 and 232 of companies Act, 2013, separate compliance under section 66 is not required.

Answer 1(c)

In the present case reduction of share capital, demerger, acquisition, notice to Competition Commission of India (CCI) for crossing threshold of asset/turnover, depository receipts attracting Reserve Bank of India (RBI) /Foreign Exchange Management Act (FEMA) & SEBI (SAST) Regulations, 2011 alongwith other sector regulator specific compliance issues are involved. Here both companies i.e., transferor and transferee will have to comply provisions of section 230 to 232 of Companies Act, 2013, SEBI(SAST) Regulations 2011, FEMA, Competition Act, approval of sector regulators (if product L, M, N and O need specific compliance issues to be ensured).

Hence, mere submission of copy of resolution to ROC, NCLT and publishing in newspaper about successful arrangement will not suffice. NCLT will reject such application.

Merger or amalgamation of companies involves various issues including the regulatory approvals. These regulatory approvals are to be obtained not only from the sector in which the company is operating (for example in case of merger of two banks, RBI's approval is needed) but also from other departments like Income Tax, SEBI, ROC, etc. The companies are required to obtain following approvals in respect of the scheme of amalgamation:

(i) Authorisation

- Pre-approval authorisation about appointment of intermediaries, advisors, etc.
- Approval of Valuation Report by Audit Committee.

(ii) Approval of Board of Directors

- Approval of scheme of amalgamation by the Board of both the companies.
- Board resolution should, besides approving the scheme, authorise a Director/Company Secretary/ other officer to make application to Tribunal, to sign the application and other documents and to do everything necessary or expedient in connection therewith, including changes in the scheme.

(iii) Approval of Shareholders/Creditors, etc.

Members' and creditors' approval to the scheme of amalgamation is sine qua non for Tribunal's sanction. This approval is to be obtained at specially convened meetings held as per Tribunal's directions [Section 230(1)]. However, the Tribunal may dispense with meetings of members/creditors [Section 230(9)].

(iv) Approval of the Stock Exchanges

A listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement, shall file the draft scheme of arrangement, proposed to be filed before Tribunal with the stock exchange(s).

(v) Approval of Financial Institutions

The approval of the Financial Institutions, trustees to the debenture holders and banks, investment corporations would be required if the Company has borrowed funds either as term loans, working capital requirements and/ or have issued debentures to the public and have appointed any one of them as trustees to the debenture holders.

(vi) Approval from the Land Holders

If the land on which the factory is situated is the lease-hold land and the terms of the lease deed so specifies, the approval from the lessor will be needed.

(vii) Approval of the Tribunal

- Both companies (amalgamating as well as amalgamated) involved in a scheme of compromise or arrangement or reconstruction or amalgamation is required to seek approval of the respective Tribunal for sanctioning the scheme.
- Every amalgamation, except those, which involve sick industrial companies, requires sanction of Tribunal which has jurisdiction over the State/area where the registered office of a company is situated.
- If transferor and transferee companies are under the jurisdiction of different Tribunals, separate approvals are necessary.
- The notice of every application filed with the Tribunal has to be given to the Central Government (Regional Director, having jurisdiction of the State concerned).

(viii) Approval of Reserve Bank of India

Where the scheme of amalgamation envisages issue of shares/cash option to Non-Resident Indians, the amalgamated company is required to obtain the permission of Reserve Bank of India subject to conditions prescribed under the Regulations issued by RBI.

(ix) Approvals from Competition Commission of India (CCI)

The provisions relating to regulation of combination as provided under Sections 5 and 6 of the Competition Act, 2002 would also be required to be complied with by companies, if applicable.

Answer 1(d)

As per proviso to Section 230(4) of the Companies Act, 2013, any objection to the compromise or arrangement shall be made by persons holding 10% or more of the shareholding or having 5% or more of the total outstanding debt as per latest audited financial statement. Thus, shareholders holding less than 10% or more of the shareholding are not entitled to object to the scheme as matter of statutory right.

There are other built-in safeguards in the matter of approval of the scheme of compromise and arrangements. The notice convening the meetings and also the notice of hearing of the petition (in Form CAA- 2) is required to be published in the newspaper as per the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The notice is also required to be given to various statutory authorities, sectoral regulators, etc. Though there may not be any express protection to any dissenting minority shareholders to file their objections as a matter of right on this issue, the Tribunal, while approving the scheme, may follow judicious approach more particularly in view of the publication of the public notices about the proposed scheme in the newspapers. Any interested person (including a minority shareholder) may appear before the NCLT. There have been, however, occasions when shareholders holding miniscule shareholdings, have made frivolous objections against the scheme, just with the objective of stalling or deferring the implementation of the scheme. The courts have, on a number of occasions, overruled their objections. Thus, shareholders holding less than 10% or more of the shareholding are not entitled to object to the scheme as matter of statutory right.

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

Question 2

(a) PQR Ltd. is a company listed on the National Stock Exchange. The latest audited financial position of PQR Ltd. is as under :

Paid up equity Capital	₹ 780

Crore Free Reserves	₹ 39,564 Crore
Share Premium	₹ 1,456 Crore
Total secured and unsecured debts	₹ 1,867 Crore

The company intends to buy-back its fully paid-up equity shares of ₹ 10 each not exceeding 21,617,000 equity shares at ₹ 1,945 per equity share payable in cash for aggregate consideration not exceeding ₹ 4,204.51 crore. Examine whether the above buy-back offer through tender route can be approved by the Board of Directors for all 21,617,000 equity shares, keeping in view the legal framework for buy-back of securities ?

(*5 marks*)

(b) Dragon Esquire Ltd. Indian company demerged plastic toys division into Zen Ltd. If demerger satisfies conditions of section 2(19AA) of the Income Tax Act, 1961, advise Zen Ltd, regarding the tax concession available to the Zen Ltd, the Resulting Company.

(*5 marks*)

(c) ABC and Co. (P) Ltd. and XYZ Ltd. have finalized a scheme of arrangement. The registered offices of both the companies are located in Delhi. A joint-petition is proposed to be filed before the Tribunal for sanction of the scheme.

Give your brief opinion in the light of the provisions of the Companies Act, 2013 and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 whether such a joint-petition can be filed ?

(*5 marks*)

(d) X Ltd. acquired Y Ltd. under the scheme of merger sanctioned by the Tribunal, Y Ltd. ceases to exist. Consideration is discharged by way of issue of equity shares of X Ltd. to the shareholders of Y Ltd. in the ratio of 1 : 1 X Ltd. already held 5% in Y Ltd. as an investment prior to the effective date of merger i.e., 1st October 2022. 86% of the shareholders (by face value) of Y Ltd. excluding X Ltd. agreed to become shareholders of X Ltd. Examine critically whether the above case will qualify to be classified as merger as per AS-14.

(*5 marks*)

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

Question 2A

(*i*) In any scheme of compromise and arrangement, merger and amalgamation share exchange ratio is needed to be calculated which requires basic calculation of EBITA, PAT and Super Profit for valuation of shares. From the following information related to Wise Ltd., calculate :

(a) EBITA

(b) PAT

(c) Super profit

(₹ Figures are given in lakh)

Net tangible assets	₹ 900
Operational Revenue	₹ 2,150

Employment Cost ₹ 340 (including onetime payment of ₹ 40 lakh, not likely to occur in future)
Managerial Remunerations ₹ 75 (to be increased by ₹ 20 lakh from next year)

Cost of goods sold	₹ 920
Finance charges	₹ 170
Depreciation/Amortization	₹ 70

Tax provision is to be made @ 30%.

Expected rate of return on assets is to be assumed @ 25%.

(*5 marks*)

(ii) Petition by Frugal Industries Limited (19.12.2019), under a scheme of arrangement under Section 230-234 of the Companies Act, 2013 [in the nature of demerger] was filed before National Company Law Tribunal (''NCLT '), Mumbai Bench. Demerger application contemplated transfer of hiving off two specified undertakings of Frugal Industries Limited into two overseas Resulting Companies, viz. Frugal (Sweden) B. V., and Frugal Holdings USA Inc.

Since, Petitioner Frugal Comapany is listed company having its shares listed on BSE Limited and National Stock Exchange of India Limited, therefore the company sought the approval of the Stock Exchanges and SEBI which provided their no objection to the Scheme of Demerger. Further, meetings of equity shareholders and unsecured creditors were convened, whereby demerger scheme was approved by majority of equity shareholders and unsecured creditors. However, Regional Director of Companies red flagged the following observation on scheme of demergers :

(a) Section 234 refers to cross border mergers and amalgamations and not to demergers.

(b) Section 2 (19AA) of the Income Tax, 1961 is violated and same will not amount to tax neutral transaction.

(c) Company to comply with provisions of FEMA and RBI.

Advice as Company Secretary of the Company on the observations raised by RD.

(*5 marks*)

(iii) Raja Ltd has sold entire engineering division to Vibha Ltd for ₹ 2,500 crore while retaining other remaining business of chemicals and fertilisers with it :

- Is this sale of engineering division slump sale ?
- How the gain/loss on slump sale is calculated ?
- Explain the taxation aspects of slump sale.

(*5 marks*)

(iv) ''Documentation is an important aspect in fulfilment of legal requirements and obligations in merger and amalgamation for an effective and successful venture.'' Analyse the statement indicating the important steps to be involved for successful completion of mergers or amalgamations.

(*5 marks*)

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

Answer 2(a)

According to Section 68(1) of the Companies Act, 2013, a company whether public or private, may purchase its own shares or other specified securities (hereinafter referred to as "buy-back") out of:

(i) its free reserves; or

(ii) the securities premium account; or

(iii) the proceeds of any shares or other specified securities.

The buy-back shall be authorised by its articles.

Quantum of Buy-back

(a) Board of directors can approve buy-back upto 10% of the total paid-up equity capital and free reserves of the company and such buyback has to be authorized by the board by means of a resolution passed at the meeting. Free reserve includes share premium also.

(b) Shareholders by a special resolution can approve buy-back up to 25% of the total paid-up capital and free reserves of the company. In respect of any financial year, the shareholders can approve by special resolution up to 25% of total equity capital in that year. Debt equity ratio post buy back should not exceed 2:1.

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

In case the number of shares or other specified securities offered by the shareholders or security holders is more than the total number of shares or securities to be bought back by the company, the acceptance per shareholder shall be on proportionate basis out of the total shares offered for being bought back.

In the present case, since the paid-up equity capital, share premium and free reserves is Rs. 41,800 crores as per the latest audited financial statement, the Board can authorise through a resolution passed at its meeting the buyback of shares totaling Rs. 4180 crore, which is less than the Rs. 4204.51 crore which company wants to buyback. Shareholders in their meeting can by special resolution approve buyback up to 25% of Paid up capital and free reserves. So, 25% of 41800 crore i.e. Rs. 10450 crore can be bought back.

After the completion of the buyback scheme for Rs. 4204.51 crore, the company's paid up capital and free reserve would drop to Rs 37,595.49 crore (Rs. 41800 crores minus Rs. 4204.51 crore) and total secured and unsecured debts is Rs. 1867 crore. Thus, the debt equity ratio is after by back scheme has been fully completed would be 0.0496, which is less than the stipulated 2:1. Hence, PQR Limited can proceed with the proposed buy back scheme by passing a special resolution passed at the shareholders meeting.

Answer 2(b)

The resulting company shall be eligible for tax concessions only if the following two conditions are satisfied:

(i) The demerger satisfies all the conditions laid down in section 2(19AA); and

(ii) The resulting company is an Indian company.

The following concessions are available to the resulting company pursuant to a scheme of demerger:

(a) *Amortisation of certain preliminary expenses (Section 35D):* The benefit of amortization of preliminary expenses under section 35D of the Income-tax Act, 1961 are ordinarily available only to the assessee who incurred the expenditure. However, the benefit will not be lost in case the undertaking of an Indian company which is entitled to the amortization is transferred to another Indian company in a scheme of demerger within the 5 years period of amortisation. In that event the deduction in respect of previous year in which the demerger takes place and the following previous year within the 5 years period will be allowed to the resulting company and not to the demerged company.

(b) *Treatment of bad debts [Section 36(1)(vii)]:* Where due to demerger, the debts of the demerged company have been taken over by the resulting company and subsequently by such debt or part of debt becomes bad such bad debt will be allowed as a deduction to the resulting company. This is based upon the decision of the Supreme Court in the case of *CIT v. Veerabhadra Rao (T.), K. Koteswara Rao & Co.(1985) 155 ITR 152 (SC)*.

(c) *Exemption of Capital Gain Tax:* Section 47 of the Income Tax Act, 1961 treats certain transactions from amalgamation as not transfer and hence capital gains tax will not be applicable w.r.t.

- transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company.
- any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of

the demerged company if the transfer or issue is made in consideration of demerger of the undertaking

(d) *Expenditure on Amalgamation:* Section 35DD of the Income-tax Act, 1961 provides that where an assessee being an Indian company incurs any expenditure, on or after the 1st day of April, 1999, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the amalgamation or demerger takes place.

(e) *Forward and set off of business losses and unabsorbed depreciation of the demerged company [Section 72A (4) & (5)]:* Notwithstanding anything contained in any other provisions of this Act, in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall–

(a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;

(b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.

Answer 2(c)

According to Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, where more than one company is involved in a scheme in relation to which an application under sub-rule (1) is being filed, such application may, at the discretion of such companies, be filed as a joint-application.

Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint-application. In case, the registered office of the companies involved is in different states, there will be two Tribunals having the jurisdiction over those. Both the companies shall have to file separate petition with the respective Tribunals. However, as a matter of practice and smother the process, first registered office of companies may be shifted as per section 12 of the Companies Act, 2013 to a single jurisdiction.

In case of merger application of Dhanrashi Dealcomm Private Limited, Subhshiv Commotrade Private Limited, Touchwin Dealer Private Limited, Trideva Vinimay Private Limited, Dhanganga Commotrade Private Limited, Quality Retailers Private Limited, being the Applicant No. 2, 3, 4, 5, 6, 7 ("Transferor Companies") with Karni Plaza Makers Private Limited Transferee company joint application was admitted by NCLT. The same saves lot of time/cost and provide convenience. Similarly in case of M/s Sun Pharma Medisales Pvt. Ltd. & Others (Joint Application) NCLT Bench: Ahmedabad allowed joint petition.

Answer 2(d)

An amalgamation should be considered to be an amalgamation in the nature of merger when Shareholders holding not less than 90% of the face value of the equity shares of the transferor company (other than the equity shares already held therein, immediately before the amalgamation, by the transferee company or its subsidiaries or their nominees) become equity shareholders of the transferee company by virtue of the amalgamation.

Even if we exclude the shares of Y Ltd. already held by X Ltd., consequent to the allotment of shares pursuant to merger, 90% criteria for amalgamation to be classified as merger is being met. Since 90% of the remaining shares i.e., 95% comes out to 85.5% shareholders. Thus, the threshold is being met. Hence the above case will qualify as merger.

OR (Alternative to Question No. 2)

Answer 2(A)(i)

(a) Calculation of EBITA (Rs.in Lakhs)

Operational Revenue	Rs. 2150
Less: Cost of goods sold	Rs. 920
Employment Cost	Rs. 340
Managerial Remuneration	Rs. 75
EBITA	**Rs. 815**

(b) Calculation of PAT (Rs. in lakhs)

EBITA	Rs. 815
Less: Finance charges	Rs. 170
Less: Depreciation / Amortization	Rs.70
PBT	**Rs. 575**
Less: Taxes @ 30% =	Rs.172.50
PAT	**Rs. 402.50**

(c) Computation of Super Profit

(i) Future Maintainable Profit (Rs. in lakhs)

PBT	Rs. 575
Add: Employment Cost onetime payment not likely to occur future	Rs.40
Less: Increase in Managerial Remuneration	Rs.20
	Rs.595
Less: Taxes @ 30%	Rs.178.50
Future Maintainable Profit	Rs. 416.50

(ii) Super Profit (R in lakhs)

Future Maintainable Profit	₹ 416.50
Less: Expected return on assets (₹ 900 lakhs*25%) ₹	225
Super Profit	₹ 191.50

Answer 2A(ii)

To

Xxxxx

Frugal Industries Limited

Dear Sir,

This is to advice that under scheme of arrangement, either in the nature of merger or demerger the Frugal Industries demerged company has to comply with Section 230 to 234 of Companies Act, 2013, international laws applicable to company, such as Swedish Laws, USA laws, RBI, FEMA, Income Tax Act, Compliance with Sectoral Regulations as applicable to the company alongwith SEBI Compliances etc.

While going through the provisions of Section 234 it is evident that same applies to cross border mergers of Indian companies with foreign companies and vice versa and the provisions mention only about the words "Merger" and/ or "Amalgamation" so the Section 234 do not provide for or rather restrict the demerger of the Indian Companies with foreign company.

In addition to the above, Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 is silent on 'Demergers' and mentions only 'Mergers' and 'Amalgamations'. Moreover, Foreign Exchange Management (Cross Border Merger) Regulations, 2018 are applicable to the mergers and amalgamations of the Indian companies with the foreign companies only.

For obtention of Prior approval of RBI for undertaking any cross-border merger, the transferee entity to ensure valuation by a valuer and a declaration is required to be submitted by the transferee company along with the application to RBI for obtaining its approval for the merger.

Procedure as specified in Section 230-232 of the Act are to be undertaken (like as applicable to a domestic merger. In case of outbound merger, foreign entity involved should be from a permitted jurisdiction.

In the Sun Pharma's Scheme of Arrangement NCLT Ahmedabad stated that the Rule 25A is silent on "demergers". The Procedure mentioned in Rule 25A is for Inbound as well as Outbound merger. In absence of clarity over the permissibility of a foreign company demerging its business undertaking to an Indian company or vice versa under the Act, one should not follow the same procedure for cross border demergers.

RBI Foreign Exchange Management (Cross Border Merger) Regulations, 2018 defines Cross Border Merger as:

'Cross border merger' means any merger, amalgamation or arrangement between an Indian company and foreign company in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013; Interestingly, the notified FEMA Regulations, 2018 has not included word "Demerger" in the definition of Cross Border Merger. Thus, the NCLT rejected the scheme.

Section 2(19AA) of the Income Tax Act defines the term demerger as "the transfer of one or more undertakings by a demerged company to another company." One of the conditions of section 2(19AA) is the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger. This section is violated as demerger scheme was approved by majority of equity shareholders. Therefore, taxation benefits available to demerged companies under the Income Tax Act will not be available in this case.

Yours Sincerely

XXKKXXXXX

Company Secretary

Answer 2A(iii)

Section 2(42C) of the Income Tax Act, 1961 defines slump sale as a means of transfer of one or more undertakings by any means for a lump sum consideration without values being assigned to the Individual assets and liabilities in such transfer.

The word any means now allows the transfer of a business undertaking not only 'by way of sale' but also 'by way of an exchange' or any other transfer structure defined in Section 2(47) of the Act to be included within its scope. Thus, sale of engineering division is considered as slump sale.

As per section 50B of the Income Tax Act, 1961 any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains from the transfer of long-term capital asset and shall be deemed to be the income of the previous year in which the transfer took place. The gain or loss resulting out of a slump sale shall be a Capital Gain/Loss under the Income Tax Act. The computation has been prescribed as follows:

Amount of Full Value of Consideration - Expenses in relation to transfer =Net Consideration-Cost of Acquisition / net worth =Capital Gain or (Loss)

Sale consideration to be calculated as per the Fair Market Value computation which includes monetary as well as non-monetary considerations.

The capital gain or loss as computed above will be either long term or short-term depending upon the period for which the undertaking is held. If the undertaking is held for more than 36 months, the resulting capital gain or loss shall be long-term and if it is held for less than 36 months, the resulting capital gain or loss shall be short term. Further, there will be no indexation benefit available in the computation of the capital gains.

Tax rates: The rates of tax applicable to the capital gain in a slump sale are as follows:

- Short Term Capital Gain: Normal Rates of taxation and
- Long Term Capital Gain: 20%.

In computing the net worth of the entity, the following points need to be considered:

1. The value of net worth should not take into account any change in the value of the asset or liability resulting from revaluation of such asset or liability.
2. In case of depreciable assets under the Income Tax Act, the Written Down Value of Block of assets as per the Act shall be considered.
3. In case of assets on which 100% deduction has been allowed under section 35AD (specified business), the value of such assets will not be considered.
4. In case of any other asset, value as appearing in the books of accounts shall be considered.
5. After considering the above points, if the resulting net worth is negative, then the cost of acquisition shall be taken as nil for the purpose of computation of capital gains.
6. Value of goodwill of business or profession (other than goodwill acquired by purchase from a previous owner) would need to be taken as NIL.

Answer 2A(iv)

Documentation is an important aspect in fulfillment of legal requirements and obligations in merger and amalgamation for an effective and successful venture. The quantum of such obligations will depend upon the size of company, debt structure and profile of its creditors, compliances under the corporate laws, controlling regulations, etc. In all or in some of these cases legal documentation would be involved. If foreign collaborators are involved, their existing agreements would need a mandatory documentation to protect their interests if their terms and conditions so require. Secured debenture holders and unsecured creditors would also seek legal protection to their rights with new or changed management of the amalgamating company. Regulatory bodies like the RBI, Stock Exchanges, SEBI, etc. would also ensure adherence to their respective guidelines, regulations or directives. In this way, while drafting the scheme of merger and amalgamation the transferor and transferee would have to ensure that they meet legal obligations in all related and requisite areas.

Stages Involved in Mergers or Amalgamation

In brief, it can be said that there are broadly eight stages involved in merger and amalgamation, which are listed below:

Stage 1– Drafting of the Scheme.

Stage 2 – Obtaining the approval of the Board of Directors of the companies involved.

Stage 3 – Obtaining approval of the stock exchanges in case of listed companies.

Stage 4 – Application / Petition for convening the meeting of members/creditors shall be filed with National Company Law Tribunal.

Stage 5 – Convening meetings of the Shareholders and Creditors and obtaining their consent on. Stage 6–Scheme Approvals or No objection from Regional Director / Official Liquidator.

Stage 7- Filing of final petition with NCLT for approving the Scheme.

Stage 8 - Obtaining order for approval for scheme of merger/amalgamation from the National Company Law Tribunal.

PART-II

Question 3

(*a*) "Valuers must follow the ethical principles of integrity, objectivity, impartiality, confidentiality, competence and professionalism to promote and preserve the public trust." Explain the core principles of valuation to be followed by valuers.

(*b*) Mr. VG is a practicing member of ICSI and he has also passed PMQ course exam on Valuation conducted by ICSI in the year 2022. Recently VG was appointed as valuer by RJ Electronics Ltd. for valuation of assets/liabilities under merger scheme. Mr. VG has submitted valuation report which has been challenged by directors on grounds of valuers' credentials. Evaluate director's objection giving relevant provisions.

(*5 marks each*)

Answer 3(a)

Core Principles of Valuation: -

- Ethics- Valuers must follow the ethical principles of integrity, objectivity, impartiality, confidentiality, competence and professionalism to promote and preserve the public trust.
- Competency- At the time the valuation is submitted, valuers must have the technical skills and knowledge required to appropriately complete the valuation assignment.
- Compliance- Valuers must disclose or report the published valuation standards used for the assignment and comply with those standards.
- Basis (i.e., Type or Standard) of Value- Valuers must select the basis (or bases) of value appropriate for the assignment and follow all applicable requirements. The basis of value (or bases) must be either defined or cited.
- Date of Value-Effective Date/Date of Valuation - Valuers must disclose or report the date of value that is the basis of their analyses, opinions or conclusions. Valuers must also state the date they disclose or report their valuation
- Assumptions and Conditions - Valuers must disclose significant assumptions and conditions specific to the assignment that may affect the assignment result.
- Intended Use- Valuers must disclose or report a clear and accurate description of the intended use of the valuation.
- Intended User(s)- Valuers must disclose or report a clear and accurate description of the intended user(s) of the valuation
- Scope of Work- Valuers must determine, perform, and disclose or report a scope of work that is appropriate for the assignment that will result in a credible valuation
- Identification of Subject of Valuation- Valuers must clearly identify what is being valued.
- Data- Valuers must use appropriate information and data inputs in a clear and transparent manner so as to provide a credible valuation.
- Valuation Methodology - Valuers must properly use the appropriate valuation methodology (ies) to develop a credible valuation.
- Communication of Valuation- Valuers must clearly communicate the analyses, opinions and conclusions of the valuation to the intended user(s).

Answer 3(b)

Section 247 of the Companies Act, 2013 and the Companies (Registered Valuers and Valuation) Rules, 2017 Valuation Rules) *inter alia* provides for (a) registration of valuers, who may be individuals or partnership firms or Companies, with the Central Government for conduct of valuation of different classes of assets under the Companies Act, 2013;

The Central Government delegated its powers and functions under section 247 of the Act to the Insolvency and Bankruptcy Board of India (IBBI) and specified it as the Authority under the said Rules. Only a person registered with the Authority as Registered Valuers can conduct valuations required under the Companies Act, 2013 and the Insolvency & Bankruptcy Code. Subject to meeting other requirements, an individual is eligible to be a Registered Valuer, if he:

(a) is a fit and proper person,

(b) has the necessary qualification and experience,

(c) is a valuer member of a Registered Valuers Organization (RVO),

(d) has completed a recognised educational course as member of an RVO,

(e) has passed the valuation examination conducted by the Authority within three years preceding the date of making the application for registration, and

(f) is recommended by the RVO for registration as a valuer. The individual is required to have either a post-graduate qualification in the specified discipline and three years' experience, or a bachelor's degree in the specified discipline and five years' experience.

Mr. VG is neither qualified, as he has no required experience [Passed in 2022 shows that 3-year experience is not possessed by Mr. VG], nor he is registered with IBBI. Objection of directors is justified/ tenable.

Question 4

(*a*) "Determining the value of a business is complicated and intricate process. Valuing a business requires the determination of its future earnings, potential and risk inherent in it." Examine the statement explaining major factor influencing the valuation of a business.

(*b*) ABC Ltd is going through the report on valuation of assets/debts/property of company submitted by registered valuer. Discuss salient Contents of Summarized Valuation Report which must be invariably incorporated in valuation report ?

(*5 marks each*)

Answer 4(a)

Factors Influencing Valuation

Determining the-value of a business is a complicated and intricate process. Valuing a business requires determination of its future earnings potential and the risks inherent to those future earnings. The process arriving at this value includes a detailed analysis of its mix of physical and intangible assets, and the economic and industry conditions. Major factors influencing the valuation of a business include:

- debt equity ratio
- nature of business and its growth history
- customer base

- areas of operations
- audited financial statements
- management team and its competency
- litigation and disputes
- Related Party Transactions, etc.

The other salient factors include:

1. The stock exchange price of the shares of the two companies before the commencement of negotiations or the announcement of the bid.
2. Dividends paid on the shares.
3. Relative growth prospects of the two companies.
4. In case of equity shares, the relative gearing of the shares of the two companies.
5. Voting strength in the merged (amalgamated) enterprise of the shareholders of the two companies
6. Past history of the prices of shares of the two companies.
7. Merger and amalgamation deals can take a number of months to complete during which time valuations can fluctuate substantially. Hence provisions must be made to protect against swings.

Answer 4(b)

Valuation Report preparation exercise is based on the observation, inspection, analysis, and calculation. Considering the shareholder's interest and the need for transparency and upholding corporate governance principles and after taking into view aspects of minority interest, transparency and corporate governance the Expert Group of Ministry of Corporate Affairs recommended that the following matters should compulsorily be covered in the Valuation Report, in a clear, unambiguous and non-misleading manner, consistent with the need to maintain confidentiality: Contents of summarised report are as under-

1. Background Information
2. Purpose of Valuation and Appointing Authority
3. Identity of the valuer and any other experts involved in the valuation
4. Disclosure of valuer Interest/Conflict, if any
5. Date of Appointment, Valuation Date and Date of Report
6. Sources of Information
7. Procedures adopted in carrying out the Valuation
8. Valuation Methodology
9. Major Factors influencing the Valuation
10. Conclusion
11. Caveats, Limitations and Disclaimers.

PART-III

Question 5

(a) M/s SHIKSHA Pvt. Ltd (Operational Creditor) provided digital classroom services to M/s ABC Pvt Ltd. (Corporate Debtor) between 16th April 2015 and 23rd June, 2020 and accordingly the Operation Creditor raised 219 invoices. In light of the non- payment by Corporate Debtor, the Operation Creditor issued Demand Notice under Section 8 of the IBC, 2016 wherein date of default was mentioned as 16th April 2015 (the date of first invoice) and subsequently initiated proceedings under Section 9 of the IBC, 2016 wherein the date of default was mentioned as 23rd June, 2020 (the date of last invoice). As a company secretary of M/s SHIKSHA Pvt. Ltd. (Operational Creditor) advise whether ground of claim is time barred or not citing relevant case laws.

(*5 marks*)

(b) Mr. G. (Appellant) filed an application under Section 7 of the IBC, 2016 with the National Company Law Tribunal (NCLT) seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against BW Private Limited. On 26th August, 2022, NCLT dismissed the application. Subsequently, on 2nd September, 2022, the Appellant applied for a certified copy of the NCLT order, which the NCLT's registry received on 5th September, 2022. On September 15, 2022, the certified copy of order was provided to the Appellant. Following this, on 10th October, 2022, the Appellant e-filed an appeal with the National Company Law Appellate Tribunal (NCLAT) against the NCLT order along with an application for condonation of a five-day delay. As a Company Secretary of petitioner company [appellant] advise about time barred issues/ admissibility of appeal before NCLAT.

(*5 marks*)

(c) The Insolvency and Bankruptcy Code, 2016 read with Regulation 37 of CIRP Regulations provides for various measures to resolve the insolvency of corporate debtor ? Explain those measures.

(*5 marks*)

(d) In the third meeting of Committee of Creditors of ABC Company Ltd, the Interim Resolution Professional was replaced by another person as the Resolution Professional. The appellant wants to file an application before the Adjudicating Authority for confirmation of the RP's appointment. As legal advisor of ABC Company, advise with relevant case laws as to whether the Adjudicating Authority can reject the application on the basis that the Committee of Creditor's decision was taken in its third meeting (and not the first meeting, as prescribed in the IBC) and no reasons were given for not adopting the resolution to replace the Interim Resolution Professional in the first meeting ?

(*5 marks*)

Answer 5(a)

Supreme Court (SC) division bench in the case of *M/s. Next Education India Pvt. Ltd. Vs. M/s. K12 Techno Services Pvt. Ltd* has settled the law regarding the determination of the limitation period where the Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) has been filed on the basis of several invoices. Supreme Court (SC) division bench held that when a petition is filed under Section 9 of the I&B Code based on several invoices wherein some of the invoices are time-barred, the Adjudicating Authority must consider invoices raised at least three years preceding the date of filing of Section 9 petition to determine limitation. The Supreme Court

set aside the orders of the NCLT and NCLAT and while considering the starting point of limitation as 12th March 2011 categorically stated that the NCLT should have taken into consideration the subsequent invoices raised up till at least three years preceding the date of the Company Petition rather than considering the starting point of limitation as 12th March 2011.

Earlier, NCLT had dismissed the Company Petition on the ground of the claim being time barred. The NCLAT after lengthy consideration decided that as the section 9 petition emanates from the Demand Notice issued under section 8, considered the date of default shall in the matter be 12th March 2011 which is time barred as the limitation period expired on 12th March 2014. The said NCLAT order was challenged by way of the present appeal in Supreme Court.

In the given case last date of invoice i.e., 23rd June, 2020 will be considered at least three years preceding date of filing up petition in NCLT for ascertaining limitation period for filing petition.

Answer 5(b)

Section 61 of the IBC specifies a 30-day deadline for filing an appeal against an NCLT order, and the NCLAT can only condone a delay of up to 15 days if sufficient cause is shown. Section 61 of the IBC does not require the appellant to wait for the receipt of a certified copy of the order before filing an appeal.

In recently decided case of *Sanket Kumar Agarwal vs. APG Logistics Private Limited (2023),* Hon'ble Supreme Court of India held that the date of pronouncement of the order and time taken to provide certified copy by the Adjudicating Authority would stand excluded from limitation period for filing an appeal before the National Company Law Appellate Tribunal under Section 61(2) of the Insolvency and Bankruptcy Code, 2016.

It was noted that the appeal was filed through the e-portal on 10 October 2022, which was the 46th day following the NCLT order. The Court relied on Section 12(2) of the Limitation Act, 1963 (Limitation Act), Since the certified copy was received by the Appellant on 15th September 2022, the time taken by the court between 5th September 2022 and 15th September 2022 to provide the certified copy should have been excluded when calculating the limitation under Section 61(2) of the IBC. As a result, the Supreme Court allowed the appeal thereby setting aside the NCLAT's order. Here G [Appellant] can file appeal in NCLAT.

Answer 5(c)

Insolvency and Bankruptcy Code, 2016 read with Regulation 37 of CIRP Regulations provides for various measures to resolve the insolvency of the corporate debtor. These measures are detailed as follows:

i. Transfer of all or part of the assets of the corporate debtor to one or more persons.

ii. Sale of all or part of the assets whether subject to any security interest or not.

iii. Restructuring of the corporate debtor, by way of merger, amalgamation and demerger.

iv. The substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons.

v. Cancellation or delisting of any shares of the corporate debtor, if applicable.

vi. Satisfaction or modification of any security interest.

vii. Curing or waiving of any breach of the terms of any debt due from the corporate debtor.

viii. Reduction in the amount payable to the creditors.

ix. Extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor.

x. Amendment of the constitutional documents of the corporate debtor.

xi. Issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose.

xii. Change in portfolio of goods or services produced or rendered by the corporate debtor Change in technology used by the corporate debtor.

xiii. Obtaining necessary approvals from the Central and State Governments and other authorities.

xiv. Sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets and manner of dealing with remaining assets.

Answer 5(d)

In the case of *Punjab National Bank Vs. Mr. Kirah Shah*, Interim Resolution Professional of ORG Informatics Ltd. [CA (AT) (Ins) No. 749/2019]-NCLAT held that the Committee of Creditors is not required to record any reason for replacing the RP that may otherwise call for proceedings against such Resolution Professional. Having decided to remove the Resolution Professional with 88 percent of the voting share, the decision of Committee of Creditors was not open to the AA interfering with such decision, till it is shown that the decision of the Committee of Creditors is perverse or without jurisdiction.

Further in case of *Bank of India vs. M/s Nithin Nutrition Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 497 of 2020* (with connected appeals)]-NCLAT observed that neither section 22 nor section 27 of the IBC requires the Committee of Creditors to give any reasons. The reason is that the relationship between the RP and the Committee of Creditors is that of confidence. If there is loss of confidence and the RP continues in the role, the corporate debtor would be put to loss because of the bad relationship between the Interim Resolution Professional/RP and the Committee of Creditors NCLAT held that the Committee of Creditors has the requisite powers to propose changing the Interim Resolution Professional even in meeting/s subsequent to the first one and there is no requirement that they should give particular reasons for the change

Therefore, appointment of RP is valid/proper and Adjudicating Authority cannot reject the application.

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

Question 6

(a) Examine whether the recommendations of the Insolvency Law Committee (ILS) on Cross-border insolvency are in line with the provisions set out in the UNCITRAL Model Law on Cross-border insolvency ?

(b) A Scheduled Indian Bank advanced money to XYZ limited and the debt due to non-payment has been classified as 'Doubtful' by the Bank. The lender Bank intends to proceed against the debtor under SARFAESI Act, 2002. What are the majors available to the Bank for recovering its secured debt ?

(c) Abid Industries Ltd filed petition for insolvency in NCLT, Delhi which admitted petition and subsequently resolution plan was submitted by RP to committee of creditors which was approved by 87% majority. Resolution plan provided for extinguishment of all claims (except criminal proceedings) against the Corporate Debtor, exemption of all taxes/dues by the

Government/local authorities, and closure of all proceedings pending against the Corporate Debtor relating to such dues. The Resolution Plan, so approved, has been submitted to NCLT for approval. Referring to relevant section and case law, discuss the tenability of Resolution Plan duly approved by 87% majority.

(d) Operational Creditors of Joy Ltd moved a petition to NCLT against RP for directions under section 60(5) of the IBC, 2016 to direct the RP to give notice of all CoC meetings, to provide minutes of the meeting and to permit to attend the meetings of CoC. As per the operational creditors, their debt is more than 10% of the operational debt and hence, as per the Code they must be allowed to attend the meetings. Are operational creditors legally entitled to attend and vote at meeting of CoC ? Discuss by giving relevant case laws.

(*5 marks each*)

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

Question 6A

(*i*) Who is contributory ? Critically examine IBC provisions regarding Liquidator's authority to realise amount due from contributory and Contributory's right to receive any surplus left after paying all dues by Liquidator.

(ii) Try & Win Ltd company has applied to Registrar of Companies (ROC) for striking off its name from register of companies on 22nd July, 2023. Company has recently [on 26th June 2023] shifted its registered office from Patna to Kolkata. What are legal provisions in this context ? Elucidate.

(iii) Section 208 (1) of the Insolvency and Bankruptcy Code 2016 says that where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take actions as may be necessary. What are the functions and obligations of Insolvency Professionals ?

(iv) Companies (Winding-up) Rules, 2020 allow certain classes of companies to close their business by making a winding-up application to Central Government without going to NCLT. Explain the summary procedure for liquidation under Companies (Winding- up) Rules, 2020.

(*5 marks each*)

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

Answer 6(a)

The Insolvency Law Committee (ILC) on Cross Boarder insolvency constituted by the Ministry of Corporate Affairs recommended certain modifications in the existing Insolvency and Bankruptcy Code, 2016 to match with the models of United Nations Commission on International Trade Law (UNCITRAL). The necessity of having Cross Border insolvency framework arises from the fact that many Indian companies have global presence and many foreign companies are operating in India. Inclusion of comprehensive legal laws dealing with cross border insolvency will boost greater confidence among foreign investors, adequate flexibility for seamless integration with the domestic insolvency law and a robust mechanism for international cooperation.

The key recommendations of the ILC are as under:

i. The recommendation will enable Indian companies having foreign assets to proceed and take advantage of the framework of UNCITRAL.

ii. The Committee recommended that the Model Law may be adopted initially on a reciprocity

basis. Reciprocity indicates that a domestic court will recognize and enforce a foreign court's judgement only if the foreign country has adopted similar legislation to the domestic country.

iii. Access to foreign representatives- The Model Law allows foreign insolvency professionals and foreign creditors access to domestic courts to seek remedy directly.

iv. The model law will allow recognition of foreign proceedings and provides relief based on this recognition.

v. The model law lays down the basic framework for cooperation between domestic and foreign courts and domestic and foreign insolvency professionals.

vi. The model provides for commencement of domestic insolvency proceedings, when a foreign insolvency proceeding has already commenced or vice versa. It also provides for coordination of two or more concurrent insolvency proceedings in different countries by encouraging cooperation between courts.

vii. Part Z of the recommendation provides for the adjudicating authority may refuse to take action under the Code if it is contrary to public policy.

Thus, the recommendation of the Insolvency Law Committee (ILC) is completely on the lines of UNCITRAL.

Answer 6(b)

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto. The provisions of the ordinance enabled banks and financial institutions to manage problems of liquidity, asset liability mismatches and improvement in recovery by exercising powers to take possession of securities, sell them and reduce non-performing assets by adopting measures for recovery or reconstruction.

The SARFAESI Act, 2002 has empowered the Banks and Financial Institutions with vast power to enforce the securities charged to them. The Banks can now issue notices to the defaulters to pay up the dues if they fail to do so within 60 days of the date of the notice, the banks can take over the possession gussets like factory, land and building, plant and machinery etc. charged to them including the right to transfer by way of lease, assignment or sale and realize the secured assets. In case the borrower refuses peaceful hanging over of the secured assets, the bank can also file an application before the District Magistrate or Chief Metropolitan Magistrate for taking possession of assets. The Banks can also take over management of business of the borrower. The bank in addition can appoint any person to manage the secured assets the possession of which has been taken over by the bank. Banks can package and sell loans via "Securitisation" and the same can be traded in the market like bonds and shares.

The other majors are:

- Securitization of financial assets and issue of security receipt

  Acquire financial assets by agreements, issuance of debentures or bonds. Redeem the security receipts given to the QIBs after their realization.

- Reconstruction of financial assets

  Subject of Varying RBI standards, take actions for proper management, a sale, a debt restructures, a settlement, or to take control.

- Enforcement of security interest

  Enforce the secured creditor's security interest without the need of court action.

- Other Functions

  Act as a recovery agent for financial Institutions (Fts) or bank, as the manager of the secured assets appointed by the lender, or as the receiver assigned by the court.

Answer 6(c)

In the matter of *Small Industries Development Bank of India vs. Tirupati Jute Industries Limited* [CP (IB) 508/KB/18 and connected matters], the Adjudicating Authority(AA) noted that the resolution plan, which has been submitted for its approval, was subject to extinguishment of all claims (except criminal proceedings) against the Corporate Debtor, exemption of all taxes/dues by the Government/ local authorities, and closure of all proceedings pending against the Corporate Debtor relating to such dues.

The Adjudicating Authority rejected the plan and ordered for liquidation. It observed that such a plan should not have been approved by the CoC, as it was not consistent with the provisions of section 30(2)(e) of the Insolvency & Bankruptcy Code. The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan does not contravene any of the provisions of the law for the time being in force.

AA also observed that the Resolution Professional did not give correct advice when he submitted the plan for approval of CoC and therefore, it would not be proper to appoint him as the Liquidator.

Thus, resolution plan approved by COC and submitted to AA is not fair/just hence its tenability / justifiability is questionable and liable to be rejected.

Answer 6(d)

Section 24(3) of the Insolvency & Bankruptcy Code provides that the resolution professional shall give notice of each meeting of the committee of creditors to-

(a) members of committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5);

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent of the debt.

In *Consolidated Engineering Company & Another vs. Golden Jubilee Hotels Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 501 of 2018]*, the NCLAT held that the AA has rightly held that 10 percent of total debt for the purpose of representation in the committee of creditors is to be calculated on the basis of the claim as collated and noticed by the RP. It cannot be based on the amount claimed by all the operational creditors until it is verified and compared. If the claim of operational creditors on verification is found to be less than 10 percent, the operational creditors have no right to claim representation in the meeting of the committee of creditors.

However, taking into consideration facts and circumstances of the case, NCLAT allowed the representative of operational creditor only to watch proceedings of the CoC as agreed by the learned counsel for the RP.

So, claims of operational creditors are to be verified by resolution professional and if it is less than 10%, they [operational creditors] will not be given representation in meeting.

Operational Creditors are not legally entitled to attend and vote at CoC if there are two or more than two unrelated Financial Creditors in the Corporate Debtor. They can only watch proceedings if the amount of their aggregated dues is not less than 10% of the debt of the Corporate Debtor.

OR (Alternate Question to Q. No to 6)

Answer 6A(i)

The IBBI (Liquidation Process) Regulations, 2016 defines "contributory" means a member of the company, a partner of the limited liability partnership, and any other person liable to contribute towards the assets of the corporate debtor in the event of its liquidation.

Regulation 40 of the Liquidation Process Regulations provides for Liquidator to realize uncalled capital or unpaid capital contribution as follows:

- The liquidator shall realize any amount due from any contributory to the corporate person.
- Realisation of uncalled capital and calls in arrear: The liquidator shall be entitled to call and realize the uncalled capital of the corporate person and to collect the arrears if any due on calls made prior to the liquidation commencement date.
- The liquidator shall exercise this power notwithstanding any charge or encumbrance on the uncalled capital of the corporate person.
- A 15 days demand notice shall be served to the contributory to make the payments within fifteen days from the receipt of the notice.

Along with right to serve demand notice to collect dues or calls-in-arrear, the liquidator is vested with the right to hold all moneys so realized subject to the rights, if any, of the holder of any such charge or encumbrance.

Subject to the directions of the Adjudicating Authority, Liquidator under Section 35(1) (h) of Insolvency & Bankruptcy Code shall have power to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor.

No distribution shall be made to a contributory, unless he makes his contribution to the uncalled or unpaid capital as required in the constitutional documents of the corporate person.

According to Section 295(3) of the Companies Act, 2013 in the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set- off against any subsequent call.

Answer 6A(ii)

Section 249 of the Companies Act, 2013 lays down provision in which a company cannot apply for strike off the name of the company under Section 248(2) of the Act:

The Company shall not make any application for the strike off of the company, if at any time in the previous 3 months, the company has done any of the below mentioned activities:

i. Has changed its name; or

ii. Has shifted its registered office from one State to another; or

iii. Has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business; or

iv. Has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement; or

v. has made an application to the Tribunal for the sanctioning of a scheme of compromise or arrangement and the matter has not been finally concluded; or

vi. is being wound up under Chapter XX of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016.

An application for striking off the name of the company under Section 248(2) of the Companies Act shall be withdrawn by the company or rejected by the ROC as soon as the above stated conditions are brought to notice. In case of violation of the above provision, the company shall be punishable with fine which may extend to one lakh rupees.

Answer 6A(iii)

The functions and obligations of Insolvency Professional has been enumerated under Section 208 (1) of Insolvency and Bankruptcy Code, 2016 are as under:

(1) Where any insolvency resolution, fresh start, liquidation or bankruptcy process has been initiated, it shall be the function of an insolvency professional to take such actions as may be necessary, in the following matters, namely: –

(a) a fresh start order process under Chapter II of Part III;

(b) individual insolvency resolution process under Chapter III of Part III;

(c) corporate insolvency resolution process under Chapter II of Part II;

(a) (ca) pre-packaged insolvency resolution process under Chapter III-A of Part II;

(d) individual bankruptcy process under Chapter IV of Part III; and

(e) liquidation of a corporate debtor firm under Chapter III of Part II.

(1A) Where the name of the insolvency professional proposed to be appointed as a resolution professional, is approved under clause (e) of sub-section (2) of section 54A, it shall be the function of such insolvency professional to take such actions as may be necessary to perform his functions and duties prior to the initiation of the pre-packaged insolvency resolution process under Chapter III-A of Part II.

(2) Every insolvency professional shall abide by the following code of conduct: –

(a) to take reasonable care and diligence while performing his duties;

(b) to comply with all requirements and terms and conditions specified in the bye-laws of the insolvency professional agency of which he is a member;

(c) to allow the insolvency professional agency to inspect his records;

(d) to submit a copy of the records of every proceeding before the Adjudicating Authority to the Board as well as to the insolvency professional agency of which he is a member; and

(e) to perform his functions in such manner and subject to such conditions as may be specified.

Answer 6A(iv)

Summary Procedure for liquidation

These rules allow following classes of companies to close their business by making a winding- up application to Central Government without going to NCLT.

Companies accepting deposit and having total outstanding deposits	up to Rs.25 lacs*
Companies having total outstanding loan including secured loan	up to Rs.50 lacs*
Companies having total turnover	up to Rs.50 crores*
Companies with paid-up capital	up to Rs.1 Crore*

**based on latest audited balance sheet.*

In addition, companies having book value of assets up to Rs.1 Crore [currently specified under section 361(1)(i)] of the Companies Act, 2013, can also approach Central Government for liquidation.

The provisions of the Rules related to filing and audit of the Company Liquidator's accounts and its procedure (rule 91 to 99 of the rules) and disposing of assets (rule 165 to 167 of the rules) shall be applicable to above class of companies with modification that the word 'Tribunal' shall be considered as 'Central Government'.

Other procedural aspects are as under:

- The rules lay down the process for meeting of creditors and contributories of the company, and specify the scenarios in which creditors can vote.
- The rules make it necessary for all the money lying in the bank account of Company liquidator which is not immediately required for the purposes of winding up, to be invested in government securities or in interest bearing deposits in any scheduled bank.
- The rules lay down the procedure for maintenance of registers and books of accounts by the Company liquidator.
- The rules also outline the procedure for creditors to prove their debts and claims against the company and if the proof of such debt gets rejected by the Company liquidator, there is also a provision and process for creditor to make an appeal to Tribunal.

ARBITRATION, MEDIATION AND CONCILIATION

ELECTIVE 2 PAPER 7.1

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART-I

Question 1

Model Public School (MPS) is a very reputed school in Delhi having its branches across all the major cities in India. Praj is engaged in the business of providing transport services and carries on his business under the name and style M/s. Triumphant Transports ('TT'), a proprietorship concern. MPS had floated a tender calling for quotes, for contracting services relating to driving, managing its buses and to provide additional transportation services, as and when needed. Praj had some contact in the senior management of MPS and was able to put in a good word about himself and his track record before the committee of the school. After a detailed evaluation, the management of the school approved TT's proposal and he was empaneled as the transport provider for the school. Accordingly, on April 1, 2018 the parties entered into an Agreement, whereby TT agreed to provide transport services to MPS. The school owned twenty-two buses, which TT agreed to operate and maintain. TT was required to provide conductors, drivers, supervisors, cleaners, full-time mechanics, and other personnel. In addition, TT also agreed to provide additional buses for the purposes of picking up and dropping off the students and the employees of MPS.

The Agreement was for a term of eight years that is, from April 1, 2018 till March 31, 2026 with the first five years as a lock in period. Further, TT agreed to strictly abide by the obligations stipulated in the Agreement such as, adhering to the timing for transportation of students; regular maintenance of the buses, maintaining motorable conditions of the buses; complying with the safety guidelines issued by the Supreme Court of India; limiting the number of students transported in each bus to the permissible limit; and, in the event of breakdown of buses, providing alternate vehicles etc.

For the initial year, the services were provided without any issues and the payments were also received by TT in a timely manner. However, after the first year, there was a considerable delay in payments made to TT and he was having challenges, as the working capital was getting struck. In September 2019, TT sent a communication to the Principal of the school to release the outstanding payments as per terms of the Agreement. He further stated that even though the school was collecting the transportation fee from the students well in advance, the school was making payments to him in small instalments after a substantial delay.

The Principal of MPS responded by an e-mail, alleging deficiencies in the services provided by TT. He also informed that MPS would be compelled to take strict action against TT, if the said deficiencies were not rectified within a period of two weeks. In first week of November 2019, through a communication MPS terminated the Agreement with TT.

Aggrieved by the termination of Agreement, TT invoked the arbitration clause in terms of Clause 36 of the Agreement. Subsequently, the Court, by an order dated April 6, 2020, directed the Delhi International Arbitration Centre (DIAC) to appoint an arbitrator to adjudicate the disputes between the parties. During the arbitration, MPS also produced evidences including the complaints filed by parents of the students against TT.

In the background of above facts, answer the following :

(a) Prepare a draft Statement of Claim, assuming necessary facts.

(b) In the background of a case law, examine whether MPS has any recourse, if there is a delay in filing counter claims.

(c) The Arbitral Tribunal rejected evidence provided by the school including the complaints filed by parents of the students against TT on the ground, that it did not abide by the statutory requirements in an arbitration. With reference to a judicial pronouncement, examine the validity of Arbitral Tribunal's action.

(d) While invoking arbitration clause, TT sent a notice of arbitration to MPS indicating certain claims, however, it did not mention those claims in its statement of claim during arbitration proceedings. Later, during the pendency of the proceedings, TT wanted to include those claims in its claim statement, but the school called it as time barred. Is the contention of the school valid ?

(e) State the course of action available to Arbitral Tribunal, when the school did not appear before the arbitral tribunal or object on service of notices. Also comment, whether an arbitral award is binding on a third party, who is not a singnatory to the arbitration agreement ?

(*5 marks each*)

Answer 1(a)

BEFORE THE SOLE ARBITRATOR

CLAIM PETITION NO: ..... of 2020

Statement of Claim

PART A: Compulsory Information

I. DETAILS OF CLAIMANTS:

M/s Triumphant Transport

Proprietor

through its Mr..... *vide* Power of Attorney

Shri.....

residing at .....

having office at .....

II. DETAILS OF RESPONDENT

through its Mr..... *vide* Power of Attorney

Shri.....

residing at .....

having office at .....

III. STATEMENT OF FACTS:

1. That Respondent has floated a tender for contracting services relating to driving, managing its buses and providing additional transport services on need basis.
2. That the management of the school approved claimant proposal and his firm M/s Triumphant Transports (TT) was empaneled as the transport provider for the respondent.

3. That the parties entered into an Agreement dated 1st April, 2018 whereby claimant agreed to provide transport services to MPS. The claimant was to operate and maintain the twenty two buses of MPS. The Agreement was for a term of eight years that is, from April 1, 2018 till March 31, 2026 with the first five years as a lock in period.
4. That after the first year, there was a considerable delay in payments made to claimant and he faced challenges, as his working capital was plummeted.
5. In September 2019, claimant sent a communication to the Principal of the school to release the outstanding payments as per terms of the Agreement.
6. Instead of releasing the payment, principal of responded by an e-mail, alleged deficiencies in the services which were baseless. The claimant also threatened that defendant would take strict action against claimant if the alleged deficiencies were not rectified.
7. In first week of November 2019, the defendant terminated the Agreement with claimant. Subsequently, Claimant submitted a claim that was repudiated by the Defendant.
8. Therefore, claimant invoked the arbitration clause pursuant to Clause 36 of the Agreement. Subsequently, the Court, by an order dated April 6, 2020, directed the Delhi International Arbitration Centre (DIAC) to appoint an arbitrator to adjudicate this matter.
9. The Sole Arbitrator, directed the parties to submit the Statement of claims and subsequent submissions via a preliminary order within the prescribed timeline.
10. That the claimant hereby submits this statement of claim pursuant to the Arbitral Proceedings commenced by virtue of above said order.

IV. POINTS FOR CONSIDERATION

1. That the Agreement was for a term of eight years that is, from April 1, 2018 till March 31, 2026 with the first five years as a lock in period but the defendant has terminated the contract which is unlawful and material breach of Contract.
2. That there was a considerable delay in payments made to claimant and he faced challenges, as the working capital got struck. Due to which the claimant has suffered heavy losses.

V. GROUND OF CLAIM

Illegal breach of Contract and heavy losses to claimant due to that.

VI. DELAY ANALYSIS

Not Applicable

VII. THE DAMAGES ACCRUED / QUANTUM ANALYSIS

Attached as Annexure A

VII. THE RELIEFS/REMEDIES / PRAYER

The claimant hereby prays that:

The tribunal directs the defendant to pay

1. Damages of Rs…….. along with Interest be paid to the claimant by the defendant. (Lis pendent, post award interest)
2. Damages accrued due to the contractual breaches – loss of profit.

3. The cost of Arbitral Proceedings be imposed on the defendant.
4. Any other remedy as the tribunal deem fit to render justice.

PART B: Documents Annexed

The Statement of claim is accompanied by the following documents:

I. Detailed Chronological List of Dates Annexed.

II. Copy of the following documents:
   1. Copy of the tender
   2. Copy of the Agreement
   3. Copy of the Work Order

III. Copies of all communication between the parties are annexed as annexure B.

PART C: Other Evidence

I. Other Evidences
   - Labour / Staff / Machinery deployment records
   - Proof of Payments made to various stakeholders
   - Insurances for the resources
   - Guarantee / Bonds renewal details
   - Any other submission / approvals

PART D: Service of the Statement of Claim

It is submitted that the statement of claim along with all the documents and annexure have been served on the respondent's counsel on …….. at AM/PM by …….. The counsel has counter signed the claim for proof of the same.

PART E: Additional Information

Signature of the Claimant Date: ……..

PART F: For office use only

Date of filing: Filed by: ……..

Answer 1(b)

The relevant facts given are similar to the case of *Airone Charters Private Limited v. Jetsetgo Aviation Services Private Limited* decided by High Court of Delhi on 12.10.2021.

In this case the Petitioner's counterclaims were struck off before the Arbitral Tribunal (AT) on the ground of being filed at an extremely belated stage.

Thereafter, after attempting several different courses of actions to agitate its counterclaims, the Petitioner finally filed the present Petition under Section 11 of the Arbitration & Conciliation Act, 1996, for referring its counterclaims to arbitration by the already constituted AT (presumably because they already knew the disputes very well).

The Court observed as follows:

1. The Claims of the Petitioner were prima facie appearing to be within limitation. In any case issues of limitation and res-judicata which were raised by the Respondent would be looked into by the Arbitrator once it was in seisin of the dispute.
2. The right to legal redress is a fundamental right and cannot be obliterated altogether. Therefore the right of the Petitioner to raise its counterclaim could not be destroyed altogether, even though initially it had been dismissed by AT being delayed, and as the time period of the arbitration was almost about to expire.
3. The Petitioner has the choice of either raising its disputes as a counterclaim or by serving fresh notice of dispute (State of Goa v. Praveen Enterprises).
4. Simply because the counterclaims were alive at the inception of the first arbitral proceedings and were required to be raised then, it cannot be said that they could not be permitted to be raised later, unless the arbitration clause was specifically worded in that manner.

In view of the above discussion, it can be said that MPS can take recourse in accordance with the observation of the Court in this case.

Answer 1(c)

In light of the Indian Arbitration and Conciliation Act, 1996, and the relevant judicial pronouncements, the action taken by the Arbitral Tribunal in rejecting the evidence provided by Model Public School (MPS) warrants an examination.

Statutory Framework

The Indian Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act"), specifically outlines the framework within which evidence is to be considered in arbitration proceedings. Section 19 of the Act stipulates that the arbitral tribunal is not bound by the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872. Instead, the arbitral tribunal has the discretion to determine the admissibility, relevance, materiality, and weight of any evidence.

Case Laws

1. *Hindustan Shipyard Limited vs. Essar Oil Limited and Ors*:

   The Andhra Pradesh High Court has categorically stated that parties are free to agree on the procedure to be followed by the Arbitral Tribunal. When such procedure is not fixed, the Arbitral Tribunal has to follow the statutory procedure; it means it has to weigh the entire evidence on record properly and that it has to come to a just conclusion within the parameters of the dispute. It has been held that the principles of natural justice, fair play, equal opportunity to both the parties and to pass order, interim or final, based upon the material/ evidence placed by the parties on the record and after due analysis and/or appreciation of the same by giving proper and correct interpretation to the terms of the contract, subject to the provisions of law, just cannot be overlooked. It has been further held that parties, by consent, may adopt their own procedure for conducting arbitration. An Arbitral Tribunal is not a Court. Any lacuna in procedure does not vitiate the Award, unless it is in breach of principle of natural justice, equity or fair play for the aggrieved parties.

2. *Vinayak Vishnu Sahasrabudhe vs. B.G. Gadre*

   This judgment further reinforced the principle that arbitration proceedings are not strictly bound by the procedural and evidentiary norms that apply in court proceedings. The tribunal can adopt procedures that it considers appropriate to ensure a fair and efficient resolution of disputes. The Bombay High Court in this case categorically held that "that though the

Arbitration Act does not provide for the procedure to be followed by the arbitrators, even so, the Arbitrators are bound to apply the principles of natural justice".

Analysis of the Arbitral Tribunal's Action

Given the above statutory provisions and judicial pronouncements, the rejection of evidence by the arbitral tribunal, including the complaints filed by parents against TT, must be analyzed under the principles of the Act.

Justification for Tribunal's Action

- **Discretionary Power**: The tribunal has broad discretionary powers under Section 19 of the Act to determine what evidence is admissible and relevant. It can establish its own procedures to assess the materiality and weight of the evidence presented.
- **Fair Procedure**: The tribunal's decision to reject certain evidence might be rooted in ensuring that the arbitration process remains fair and that all parties are treated equally, as mandated by Section 18 of the Act.
- **Substantial Compliance**: The rejection of evidence may also be due to non-compliance with procedural orders or guidelines set forth by the tribunal during the arbitration proceedings.

Counter arguments

However, the rejection of evidence must be carefully scrutinized to ensure that it does not lead to a miscarriage of justice. The arbitral tribunal's decision should not be arbitrary or capricious. It must have a sound basis and should adhere to the principles of natural justice, ensuring that each party has a fair opportunity to present its case.

Conclusion

In conclusion, the arbitral tribunal's rejection of the evidence provided by MPS, including the complaints filed by parents, appears to be in line with the discretionary powers vested in it by the Indian Arbitration and Conciliation Act, 1996. The tribunal is empowered to decide on the admissibility and relevance of evidence without being bound by the strict rules of the Indian Evidence Act. However, the tribunal's decision must be justifiable, ensuring that it does not undermine the principles of fairness and natural justice.

The cited cases of Hindustan Shipyard Limited vs. Essar Oil Limited and Vinayak Vishnu Sahasrabudhe vs. B.G. Gadre support the tribunal's wide discretion in such matters. Thus, unless there is a clear indication that the tribunal acted arbitrarily or denied a fair hearing, its decision to reject the evidence would be valid and in accordance with the law.

Alternate Answer 1(c)

The matter related to objection with regard to a certificate of Section 65-B of the Indian Evidence Act, 1872, was discussed in the below mentioned case laws :-.

In *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple And Anr.: (2003) 8 SCC 752*, the Supreme Court held that an objection with regard to a certificate of Section 65-B of the Evidence Act is not available if it is not taken at the material time. The court had also explained the distinction regarding evidence that is inherently not admissible and a defect in the manner of proving the same. The requirement of Section 65-B of the Evidence Act relates to the mode and manner of leading evidence and if no objection as to the same is taken at the material time, it would not be open for a party to raise it at a later stage. The relevant extract of the said decision is set out below:

"20. ... Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered

and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient.

In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior court."

In ***Om Prakash v Central Bureau of Investigation: 2017 SCC Online Del 10249,*** a Coordinate Bench of the Delhi High Court Court held as under: -

"25....Thus if a document is admissible in evidence and no objection to the mode of proof is taken thereof at the stage of tendering the same in trial, the party is estopped to challenge the same before the Appellate Court or thereafter, however if the document is per-se inadmissible then even if marked as an exhibit the same cannot be read in evidence."

In view of the above mentioned cases, it can be stated that an objection with regard to a certificate of Section 65- B of the Indian Evidence Act, 1872 is not available if it is not taken at the material time.

Answer 1(d)

The statements made by each party serve as the foundation for their respective arguments. As a result, the parties must appropriately construct their statements. The High Court of Delhi in the case of *M/s. Cinevistaas Ltd. V. M/s. Prasar Bharti, O.M.P. (COMM) 31/2017* held that claims that have already been raised in the notice of arbitration are not time-barred by limitation, even if they are not included in the statement of claim, in a case involving a petition brought under Section 34 of the Arbitration and Conciliation Act, 1996 ("Act") challenging an arbitrator's decision. The analysis of the law regarding arbitral orders that are subject to challenge under Section 34 of the Act, which deals with requests to vacate arbitral judgements, makes the ruling noteworthy as well.

It is also established that if the respondent wished to make changes in the statement of defense, they are permitted to do so *via* section 23(3) of the Arbitration and Conciliation Act, 1996, the Respondent may be permitted to amend the statements, but only under certain conditions, such as: The parties have not set any constraints on themselves regarding the amendment of the statements; The amendment may be permitted by the arbitral tribunal if the request for such amendment/ supplementing has been made without any unreasonable delay; the amendment may be rejected if they fall under the ambit of the arbitration agreement and can be made without manifest and grave justice to the party seeking the amendment; and the amendment will be allowed if the arbitral proceedings are still ongoing.

In view of the above, it can be said that the claim quantified in the letter invoking Arbitration cannot be held to be barred by limitation and the contention of the school is not valid.

Answer 1(e)

When an arbitration is invoked between the parties and respondent do not appear or object upon notices for the reason of non-accepting the venue as feasible, then the party seeking arbitration will have the right to go ahead with the proceedings and the arbitrator can pass the award in absence of the respondent, the same award can be enforced by the appellant in accordance with Section 36 of Arbitration and Conciliation Act, 1996. Later the respondent can challenge the award under Section 34, reasoning the non-appearance to the arbitration proceedings. The Arbitral Tribunal can take necessary course of action accordingly.

Whether an arbitral award is binding on a third party, who is not a signatory to the arbitration agreement?

To resolve this issue and provide the clarity on the Section 35 of the Arbitration and Conciliation Act. 1996, the Supreme Court in the case of *Cheran Properties Limited v. Kasturi and Sons Limited and Ors.10* held that Section 35 of the Arbitration and Conciliation Act, 1996 states that an arbitral award is "binding on the parties and persons claiming under them". The expression "persons claiming under them" is a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person (party not a signatory to the arbitration agreement) whose capacity or position is derived from and is the same as a party to the proceedings. This expression was held to widen the net to include those who claim under the award, irrespective of whether such person was a party to the arbitration agreement or the arbitral proceedings.

In view of above case, it can be said that an arbitral award binds every person even to party (signatory to Arbitration Agreement) not a signatory to the arbitration agreement, whose capacity or position is derived from and is the same as a party to the proceedings.

Question 2

Creative Contractors Ltd (CCL), a listed Company entered into a long-term contract with Mahati Interiors (MI), an architect firm run by Mahati. The contract was finalised on February 15, 2021. As per the terms of the agreement, Mahati was to provide designs as per the specifications by clients of the Company. Whatever may be the negotiations with the Client, the Company needs to pay ₹ 1 Lakh per design, subject to applicable taxes. The terms and conditions including the resolution of any disputed matters, to be settled by way of arbitration was clearly mentioned in the agreement and duly signed off by the parties and witnesses. On an average, annual payout as per the assignments from time to time was in the range of ₹ 60 to ₹ 80 Lakh.

Disputes arose on reductions in payouts due to rejection of certain designs by the clients of the Company, for which Mahati protested for non-receipt of an amount of ₹ 50 Lakh.

Seemingly, the matter was required to be settled through arbitration. The arbitration clause of the

agreement indicated that in case of any dispute, the matter can be settled through arbitration, on appointment of one to three Arbitrators as may be mutually agreed.

Mahati, did not have much of administrative support and was busy preparing designs for clients. In this process, she had misplaced the copy of agreement with the Company. She was also not willing to pay Arbitrator fee, more than ₹ 25,000, irrespective of the number of sittings or the time taken for completing arbitration proceedings, in other words, she wanted to make only one time payment.

A two-member arbitral tribunal was constituted, having been chosen by the Company and Mahati respectively. While petitioning before the Arbitral Tribunal, Mahati quantified her claim of ₹ 50 Lakh together with interest thereon @ 16% per annum and damages of ₹ 50,000, though there was no clause on interest in the agreement.

The Company wanted to change the Arbitrator, if permissible. Mahati was having a second thought if she could approach the Civil Court to claim the unpaid fee and damages, although there was an arbitration clause. The parties were not sure of the contract terms and were relying on communication exchange, work orders and certain oral evidences.

The Company noticed after two hearings, that one of the arbitrators suffers from competence and wants to find grounds for challenging his appointment. Further, they wish to ascertain the competence of the Tribunal in passing any interim measures.

However, both the parties are aware that the Arbitration Tribunal proceedings are not bound by the rules and procedures in terms of Civil Procedure Code, 1908 and Indian Evidence Act, 1872, but bit unsure as to the procedures to be agreed and suggestions to be made in this behalf.

For proper conduct of proceedings, the Company suggested that the suitable place is their meeting room at the registered office for which Mahati agreed. They agreed to get the proceedings conducted on the basis of documents and evidences and to avoid any oral evidences or arguments as far as possible. Both the parties agreed with the Tribunal to appoint experts, as and when necessary.

The arbitration proceedings were continuing for the last one and half year and there is less expectation of its completion within next twelve months. Parties desire to know the consequences for such inordinate delay. Unfortunately, during the pendency of arbitration proceedings, Mahati met with a fatal accident and passed away. She was survived by her husband and two minor children.

In the background of the above facts, answer the following :

(a) Can the Arbitral Tribunal reduce the rate of interest as claimed by Mahati ? With reference to a settled case law, indicate what should the Arbitral Tribunal consider, in absence of specific rate of interest agreed between the parties to the agreement.

(b) Can the Company challenge the appointment of arbitrators on the grounds of competence ? Explain in the background of a judicial pronouncement.

(c) The Company contends that the arbitration agreement is discharged after Mahati's demise. Is the Company's contention justified ?

(5 marks each)

Answer 2(a)

Under the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal has the discretion to determine the rate of interest to be awarded, even if it differs from the rate claimed by the claimant. This discretion is provided to ensure that the interest awarded is fair and just, taking into account the specifics of the case and the conduct of the parties.

Relevant Provisions:

- **Section 31(7)(a)**: Allows the Tribunal to award interest at such rate as it deems reasonable for the period from the date of the cause of action until the date of the award, unless otherwise agreed by the parties.
- **Section 31(7)(b)**: States that if the award does not mention the rate of interest, the awarded sum will carry interest at 18% per annum from the date of the award until payment.

Considerations for Interest Rate in Absence of Agreement:

When the parties have not specified an interest rate in their agreement, the Tribunal should consider the following factors to determine a reasonable rate of interest:

1. Prevailing Commercial Interest Rates: The Tribunal should take into account the current commercial interest rates that are applicable during the period in question.
2. Nature of the Transaction: The specific nature and context of the transaction or contract involved may influence the appropriate rate of interest.
3. Conduct of the Parties: The behavior and actions of the parties throughout the duration of the contract and arbitration may be relevant. This includes considerations of any undue delays or bad faith actions by either party.
4. Equity and Fairness: The Tribunal should strive to achieve an equitable outcome that does not unjustly enrich or unduly penalize either party.

Case Law

In M/s Hyder Consulting (UK) Ltd. v. Governor, State of Orissa (2015) 2 SCC 189, the Supreme Court of India clarified the Tribunal's power to award interest. It was held that the Arbitral Tribunal has broad discretion under Section 31(7) of the Act to award interest and can decide on the rate of interest that it considers just and reasonable, in the absence of any specific agreement between the parties on the rate.

Conclusion

Yes, the Arbitral Tribunal can reduce the rate of interest claimed by the claimant if it deems a lower rate to be reasonable and just under the circumstances of the case. In the absence of a specific rate agreed between the parties, the Tribunal should consider prevailing commercial interest rates, the nature of the transaction, the conduct of the parties, and the principles of equity and fairness.

Alternate Answer 2(a)

The matter related to the given situation was discussed in the case of *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*

The Supreme Court held that the Courts while hearing a challenge on the rate of interest awarded by the Arbitral Tribunal, shall take into consideration several external factors as well while commenting upon the validity of the award passed by the Arbitrator. The Court observed that the interest rate shall take economic conditions into account and shall not be too harsh or exorbitant upon the Debtor.

Brief Facts

On 22-5-2008, Appellant an Indian company and Respondent a Chinese company, entered into interlinked four EPC Contracts (offshore and onshore) for construction of 210 MW co-generation powerplant. All the contracts provide for amicable settlement of disputes failing which parties will refer them to arbitration under Arbitration and Conciliation Act, 1996 with one arbitrator to

be appointed by each party, with two arbitrators to appoint a presiding arbitrator. Place of arbitration will be Mumbai, language of proceedings in English, with governing laws of India and the arbitration award shall be final and binding on the parties. It was agreed that during pendency of the dispute the supplier shall be mandated to carry on its obligations under the contracts. On 25-2-2011 due to dispute between parties the EPC contracts were terminated. Respondent invoked arbitration vide a notice dated 18-4-2012 and referred disputes to three member Arbitral Tribunal. On 17-10-2012 in the 1st sitting the parties changed venue from Mumbai to New Delhi. Claimant/Respondent raised claims in multiple currencies viz INR-EURO-USD with *pendente lite* and future interest @18% to be decided by the Arbitral Tribunal. On 9-11-2017 a detailed award passed granting Rs 50 lakhs consolidated amount to claimant / respondent with pre-award interest @ 9% PA to be scaled upto 18% PA if the decretal amount is not realised in initial 120 days. Appellant moved application under Section 34 with Delhi High Court which was rejected on 12-2-2018. An appeal under Section 37 was filed which was quashed on 30-8- 2018. Thus, the Civil Appeal was filed in Supreme Court.

Rulings of Supreme Court

The key takeaways from the judgment are :

1) In international commercial agreement, in absence of an agreement between parties on payment of interest the rate of interest shall be governed by the law of the seat of arbitration; the currency of the award; in conformity with the prevailing laws (*lex fori*); the party held as debtor in the award shall not be liable to pay *pendente lite* interest during the appeal period to which he is entitled.
2) Challenges of multi currencies when parties are geographically dispersed shall be considered having a bearing on the interest rate.
3) The Courts are empowered to reduce interest rate awarded by Arbitral Tribunal when such rates are not reflective of the system of that country.
4) The doctrine of reasonability will be a strong factor.

The Court decided that the flat rate of 9% PA be applicable to the claim in INR and for Euro claims Libor plus 3 basis points will be allowed. The Court disallowed the higher rate of 15% PA applicable after initial 120 days.

> "On the one hand, the rate of interest must be compensatory as it is a form of reparation granted to the award-holder; while on the other it must not be punitive, unconscionable or usurious in nature".
>
> "Courts may reduce the interest rate awarded by an arbitral tribunal where such interest rate does not reflect the prevailing economic conditions. [*Indian Oil Corpn.* v. *Lloyds Steel Industries Ltd.[(2007) 4 Arb LR 84 at p.103*] to or where it is not found reasonable {*Manalal Prabhudayal* v. *Oriental Insurance Co. Ltd., [(2009) 17 SCC 296]*}, or promotes the interests of justice {*Food Corporation of India v. A.M. Ahmed and Co and ors. [(2006) 13 SCC 779: AIR 2007 SC 829]*}.

In view of the above discussion, it can be said that Arbitral Tribunal can reduce rate of interest as claimed by Mahati.

Answer 2(b)

At the core of the principle of Competence-competence is the power to determine jurisdiction. If there is no challenge to the arbitral tribunal's Competence-competence decision, it takes effect within the state of the seat, and the resulting award is recognized under the New York Convention in the same way as an award from an arbitral tribunal whose Competence-competence was challenged before the courts of the seat but upheld.

Any limitation of Competence-competence over a question for which jurisdiction may potentially be exercised will be used by respondents to delay and complicate the proceedings. Relying solely on the will of the parties is logically insufficient to encompass Competence-competence determinations on the operability of such will and to give effect to arbitral decisions denying jurisdiction due to the inoperability of party will.

Regarding the principle of Competence-competence in India, it is important to consider the extent of powers exercised by a judicial authority when appointing an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996(the Act). This scope has been subject to constant changes over time.

Before the Arbitration and Conciliation (Amendment) Act, 2015, the section's wording did not provide much clarity on the matters that could be reviewed when granting or denying an application under Section 11.

The scope of powers exercised by a judicial authority appointing an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, which has been constantly evolving, is relevant in the context of the principle of competence-competence.

The scope of power exercised under Section 11 - case of *SBP & Co. v. Patel Engineering Ltd.*, as follows:

(a) determining whether there is a valid arbitration agreement between the parties;

(b) determining whether the party which has made the request under Section 11, is a party to the arbitration agreement; and

(c) whether the party making the motion had approached the appropriate High Court.

The court pointed out that the Competence-competence principle would only apply if the parties had gone to the Arbitral Tribunal without recourse to Section 8 or 11 of the Act. If jurisdictional issues are decided under these sections before a reference is made, Section 16 cannot be used by the Arbitral Tribunal to ignore the decision given by the judicial authority. The court held that the finality conferred on an order passed prior to the reference by the statute that creates it cannot be reopened by the arbitrator during the proceeding before the tribunal. Therefore, the case undermined the importance of the Competence-competence principle enshrined in Section 16 of the Act.

As a result of this case, the Law Commission in its 246th report recommended that the scope of judicial intervention under Section 11 should be restricted to only examining the existence of the arbitration agreement. This recommendation was incorporated through the insertion of Section 11(6A) by the 2015 amendment.

The purpose of this doctrine - minimize judicial interference in disputes submitted to the tribunal by parties. Case of *Duro Felguera S.A. v. Gangavaram Port Ltd*. also upheld the same.

When there is a jurisdictional issue and a determination of competence, the question of limitation often arises. Hon'ble Supreme Court held in *Pandurang Dhoni Chougule v. Maruti Hari Jadhav* that "a plea of limitation is a plea of law which concerns the jurisdiction of the court which tries the proceedings, as a finding on these pleas in favour of the party raising them would oust the jurisdiction of the concerned court."

The Supreme Court in *Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd*. has ruled that if an application under Section 11 is rejected on the grounds of limitation, the issue should be left for determination by the arbitrator.

However, there are exceptions to this doctrine, such as when the arbitration agreement is procured by fraud or deception, or when parties have only entered into a draft agreement as a proposal to arbitrate.

Conclusion

Therefore, in light of the above mentioned judicial pronouncement, the following can be concluded: Yes, a company can challenge the appointment of arbitrators on the grounds of competence under the Arbitration and Conciliation Act, 1996. The grounds and procedure for such a challenge are outlined in Sections 12 and 13 of the Act.

Relevant Provisions:

- **Section 12**: This section specifies the grounds for challenging an arbitrator, including circumstances that give rise to justifiable doubts about the arbitrator's independence or impartiality, and lack of the necessary qualifications agreed upon by the parties.
- **Section 13**: This section outlines the procedure for challenging an arbitrator. The party must send a written statement of the reasons for the challenge to the arbitral tribunal within 15 days after becoming aware of the constitution of the tribunal or after becoming aware of the circumstances leading to the challenge.

When a company seeks to challenge the competence of an arbitrator, it can do so on grounds such as:

- The arbitrator not possessing the qualifications required by the arbitration agreement.
- There being justifiable doubts regarding the arbitrator's independence or impartiality.
- The arbitrator's conduct demonstrating a lack of requisite expertise or competence to handle the arbitration.

Therefore, taking into consideration the Arbitration and Conciliation Act, 1996, a company can challenge the appointment of arbitrators on the grounds of competence by adhering to the provisions of Sections 12 and 13. The judicial pronouncement in Perkins Eastman Architects DPC v. HSCC (India) Ltd. underscores the importance of impartiality and independence in the arbitration process. Therefore, if the arbitrator does not meet the agreed qualifications or there are valid concerns about their competence or impartiality, the company can legitimately challenge their appointment to ensure a fair and just arbitration process.

Answer 2(c)

Under the Arbitration and Conciliation Act, 1996, the contention that an arbitration agreement is discharged after the claimant's demise is not justified. The Act provides for the continuation of arbitration proceedings even after the death of a party.

According to section 40 of the Arbitration and Conciliation Act, 1996(the Act), an arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event been forceable by or against the legal representative of the deceased. The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

Also, nothing in section 40, shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

The Respondent Company's contention that the arbitration agreement is discharged after the claimant's demise is not justified. According to Section 40 of the Arbitration and Conciliation Act, 1996, the arbitration agreement remains valid and enforceable by or against the legal representatives of the deceased claimant. Consequently, the arbitration proceedings should continue with the legal representatives of the deceased claimant stepping into their role.

Question 3

Versov Industries Ltd (VIL) was awarded a contract for mobile air compressor for a period of five years in a tender floated by Dragon Drill Ltd (DDL). However, DDL shortly after entering into the contract, terminated the same on the ground that some part of the equipment was not new and was defective. This position was disputed by the VIL and on the very next day, the vendor code of the VIL was blocked, thereby, disabling VIL to bid for any other further bids floated by DDL. A Show Cause Notice was issued by DDL to VIL asking why it should not be black listed for a period of two years. Since disputes had arisen between the parties, VIL invoked the arbitration clause contained in the contract. This notice was the subject-matter of dispute before the Arbitrator as well as before the Court. Pursuant to the notice, Srimaan (Retd. High Court Judge) was appointed as a Sole Arbitrator to decide the disputes between the parties. A claim petition was filed by VIL before the learned Arbitrator in which the termination of the contract/show cause notice was challenged and damages claimed. After this claim petition was filed, VIL was blacklisted by an order passed by the DDL for a period of two years. Meanwhile, a Section 17 application was also moved before the learned Arbitrator. Applications were then moved by VIL to amend both the petition as well as the Section 17 application to challenge this order, the amendements for which, were granted by the learned Arbitrator.

Subsequently, an appeal against the Section 17 Order was filed and disposed of by the jurisdictional City Civil Court, by which the learned Arbitrator's order was upheld. Consequently, the first appeal filed under Section 37 was dismissed. At this stage, a Special Civil Application was filed under Article 227 of the Constitution of India before the State High Court in whcih the City Civil Court's order was challenged. The High Court referred to a preliminary contention that the petition filed under Article 227 should be dismissed at the threshold, as it did not raise any jurisdictional issue. It was also held on a reading of the notice for arbitration that the notice did not raise the issue of ban for two years and was confined only to illegal termination. The High Court finally held that no stay could possibly have been granted under Section 17 of the ban order as an injunction cannot be granted in cases where the party can be compensated later in damages. Meanwhile, one of the consultants of VIL, in a meeting with the management, indicated that instead of taking the legal route and complicating the matter, they could have opted for online dispute resolution (ODR), which would have saved time and cost involved.

In the background of above facts, answer the following :

(a) With reference to a judicial pronouncement, comment whether High Court can exercise jurisdiction in such matters ? If yes, will it impact the speedy disposal of such cases ?

(b) 'If petitions were to be filed under Article 226 of the Constitution against the orders passed in appeals under Section 37, the entire arbitration would be derailed'. Elucidate.

(c) 'ODR can address delays and provide faster resolution of disputes.' Explain.

(*5 marks each*)

Answer 3(a)

The facts of the given situation appears similar to the matter of *Deep Industries Limited Vs. Oil & Natural Gas Corporation Limited and Ors. decided* by the Hon'ble Supreme Court of India. In this case, it was noted that the appeal raises important questions relating to the High Court's exercise of jurisdiction under Article 227 of the Constitution of India.

It has been further observed that question of writ jurisdiction is not in tandem with the matters that are decided under the Arbitration and Conciliation Act, 1996 ('Act' for short). Thus, the Apex Court expressed displeasure and remanded back to the Court below.

Taking into account the statutory policy as adumbrated by the Apex Court in the instant matter so that interference is restricted to orders that are passed which are patently lacking inherent jurisdiction.

Thus, the Apex Court reiterated that the policy of the Act is speedy disposal of arbitration cases. The Arbitration Act is a Special Act and self-contained Code dealing with arbitrations.

The Hon'ble Supreme Court took a serious view on the judgement of the High Court and remanded the case back to the Trial Court.

In the given circumstances, the petitions may be filed under Article 227 against judgements allowing or dismissing first appeals under Section 37, yet the High Courts needs to be extremely circumspect in interfering.

Answer 3(b)

The facts of the given situation appears similar to the matter of *Deep Industries Limited Vs. Oil & Natural Gas Corporation Limited and Ors. decided* by Hon'ble Supreme Court of India.

In this case, she Court *inter alia* decided that there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution of India against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years.

At the same time, Courts should not forget that Article 227 is a constitutional provision which remains untouched by the non-obstante clause of Section 5 of the Arbitration and Conciliation Act, 1996.

In the given circumstances, what is important to note is that petitions can be filed under Article 227 against judgements allowing or dismissing first appeals under Section 37, yet the High Courts needs to be extremely circumspect in interfering.

Answer 3(c)

Online Dispute Resolution (ODR) is the use of internet technology to resolve the disputes between the parties outside of the public court system. In its most basic sense, ODR is the use of technology to 'resolve' disputes. It is not just any form of technology integration (such as electronically scheduling a session), but its active use to help resolve the dispute (such as video conferencing for hearings or electronic document sharing for filing).

Though derived from ADR, ODR's benefit extends beyond just e-ADR or ADR that is enabled through technology. ODR can use technology tools that are powered by AI/ML in the form of automated dispute resolution, script based solution and curated platforms that cater to specific categories of disputes.

It is cost effective, convenient, efficient, allows for customizable processes to be developed and can limit unconscious bias that results from human interactions. In terms of layers of justice, ODR can help in dispute avoidance, dispute containment and dispute resolution. Its widespread use can improve the legal health of the society, ensure increased enforcement of contracts and thereby improve the Ease of Doing Business Ranking for India. Over time, the benefits of ODR and Digital Courts (technology in the public court system) together can transform the legal paradigm as a whole. The key benefits are:

- Cost effective
- Quick and robust
- Ease of document management

- Environment friendly
- Convenient and quick
- Encourages dispute resolution
- Limits implicit bias caused by human judgment

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

Question 4

(a) Anima Technology Ltd, was looking for consultants who would help to develop technology, for tracking the time spent by the employees on various tasks. The Company had published an advertisement and it had received many responses. After detailed evaluation, the Company finalized the proposal given by Ketan, a freelancing IT specialist. The Company had finalized the work order which included various terms like the nature of services, amount to be paid, milestones and the resolution mechanism in case of any disputes. As a part of the transaction, Ketan was requested to provide a bank guarantee of ₹ 5 Lakh, towards execution of the agreement. The terms were agreed by both the parties and the work order was executed. After few months, the management noticed that the services provided by Ketan were not as per expectation and the concerns were communicated to him. However, Ketan did not respond and the Company encashed the bank guarnatee given by Ketan. Aggrieved by this act of the Company, Ketan wanted to initiate arbitration proceedings. The matter was referred to arbitration. The Company contended that the arbitration agreement was not enforceable as the work order was not stamped as per the Indian Stamp Act, 1899.

In the background of a judicial pronouncement, comment whether the Company's contention is appropriate.

(*5 marks*)

(b) Mani Mekhala, a retired government employee had invested in large stocks with an intent to supplement her retirement income. As most of her investments were in physical form, she had compiled all the documents meticulously and used to track the dividend received from her investments. Many years ago, she had invested in the IPO of Alma Tech Ltd, in which she was allotted 100 equity shares. The Company used to pay dividends regularly and Mani was very happy with her investment. However, since last two years, she had not received any dividends and had written several letters to the Company, for which she did not get any reply. She was not sure if she can complain about non-receipt of dividend at any forum. She reaches out to you, a Company Secretary, to help her in this matter.

Advise Mani, whether she can file a complaint for non-receipt of dividend and the process of filing a complaint online with SEBI.

(*5 marks*)

(c) The management of Drupad Ltd, was planning to set up a plant near the coastal region in Tamil Nadu. The Company was simultaneously, finalising multiple agreements with various service providers and vendors. Aadesh, the CFO of the Company suggests that, with so many agreements being executed, it would be in better interest of the Company to get them reviewed by an external consultant who can also provide recommendations and suggest changes, if any. The management concurs with Aadesh's view and asks him to empanel a consultant who would not only help them with these agreements and arbitration matters but also support them in ensuring compliance with the applicable laws and regulations. Aadesh recommends the name of Akhshaj, a Practising Company Secretary for supporting them on

the matters relating to agreements and compliance aspects. In this background, explain the role of a Company Secretary in the arbitration and conciliation matters.

(5 marks)

Or (Alternate to Q. No. 4)

Question 4A

(*i*) Thiru Industries Ltd (TIL) had floated a tender calling for contractors to lay cable in the plant located near a village in Nashik district. Many bids were received, as TIL was a reputed name in the market and many vendors wanted to be associated with it. TIL finalised the bid and it was awarded to Meru Ltd for execution. Later, dispute arose between TIL and Meru Ltd regarding the approval of the milestones and payments. TIL was forced to termiante the contract as per the tender document. The matter was referred to arbitration as per the terms of agreement. Now, Tej, a Senior Manager of TIL Ltd was asked to produce evidence by way of affidavit before the arbitrator. The Director of TIL was dicussing this matter with Biju, a Senior Lawyer, who said 'though the Evidence Act, 1872 is not strictly followed in arbitration, production of evidence by way of affidavit forms an inevitable part of arbitration.' In this background, draft an affidavit assuming necessary facts.

(6 marks)

(ii) Charan Ltd (CL) was having a contract with Kalipur Toys Ltd (KTL) for the supply for the raw materials and other products for manufacturing of toys. However, in recent times, CL was supplying defective/faulty materials to the company. After repeated communications and raising concerns, KTL terminated the contract with CL. The matter was referred to arbitration as per terms of the agreement. KTL obtained an award through Arbitral Proceedings for an amount of ₹ 25 Lakh as a loss suffered due to CL. However, CL denied to make the payment. KTL wanted to approach the Court, for enforcement of the arbitral award. In this context and in the light of various provisions of the Arbitration and Conciliation Act, 1996, draft a petition for enforcement of Arbitral Awards, assuming necessary facts.

(6 marks)

(iii) Saadar Ltd (SL), a Company providing IT and ITES services was planning to enter into an agreement with Technko Tip Inc., based in Canada. The draft agreement was prepared by a consultant and shared with the management of SL. It was also shared with the Company Secretary for his review and inputs. Indicate the key points to be considered while drafting an International Commercial Contract with a party in Canada ?

(3 marks)

Answer 4(a)

The facts of the given situation are similar to the case of *N.N. Global Mercantile Private Limited vs. M/s. Indo Unique Flame Ltd. & Ors. Decided* by the Supreme Court.

Fact

The first respondent, who was awarded the Work Order, entered into a sub-contract with the appellant. Clause 10 of the Work Order, constituting the subcontract, provided for an Arbitration Clause. The appellant had furnished a bank guarantee in terms of Clause 9. The invocation of the said guarantee led to a Suit by the appellant against the encashment of the bank guarantee. The first respondent applied under Section 8 of the Arbitration and Conciliation Act, 1996 (the Act) seeking Reference. A Writ Petition was filed by the first respondent challenging the Order of the Commercial Court rejecting the Application under Section 8 of the Act. One of the contentions

raised was that the Arbitration Agreement became unenforceable as the Work Order was unstamped. The High Court, however, allowed the Writ Petition filed by the first respondent. The issue relevant to this Bench was, whether the Arbitration Agreement would be enforceable and acted upon, even if the Work Order is unstamped and unenforceable under the Indian Stamp Act, 1899 ('the Stamp Act').

Decision

It said, Justice K. M. Joseph, after explaining as to how the expression 'certified copy' must be understood, held that the Court exercising the power under Section 11 (6) has to exercise the power under Section 33 of the Indian Stamp Act when the original is produced before the Court. In other words, according to me, it is rightfully held that when the original document carrying the arbitration clause is produced and if it is found that it is unstamped or insufficiently stamped, the Court acting under Section 11 is duty bound to act under Section 33 of the Indian Stamp Act as held in the draft judgment.

I am also concurring with the view that what is permissible to be produced as secondary evidence i.e., other than the original document in terms of Section 2(a) of the scheme framed under Section 11(10) of the Act, is nothing but certified copy as mentioned earlier. But such a certified copy, would not be available to be proceeded with under Section 33 of the Stamp Act if it is unstamped or insufficiently stamped. In such circumstances, such certified copy shall not be acted upon. It cannot be presumed that despite the conspicuous difference in the said expressions, under paragraph 2 (a) 'certified copy' alone was permitted to be appended along with the application under Section 11 of the Act, unintentionally. I am of the considered view that it was so prescribed, fully understanding the nature of exercise of power under Section 11 (6) of the Act and also the presumption of genuineness and correctness of 'certified copy' available by virtue of Section 79 of the Evidence Act. *It can be said that unstamped/insufficiently stamped document does not affect the enforceability of a document nor does it render a document invalid.* A plain reading of the provisions would also make it clear that a document can be "acted upon" at a later stage. It is therefore a curable defect.

In view of the above case, it can be said that the contention of the company is not correct.

Answer 4(b)

Factors to decide whether the complaint falls under SEBI - Complaints NOT coming under the purview of SEBI

- Complaint not pertaining to investment in securities market
- Anonymous Complaints (except whistle blower complaints)
- Incomplete or un-specific complaints
- Allegations without supporting documents
- Suggestions or seeking guidance /explanation
- Not satisfied with trading price of the shares of the companies
- Non-listing of shares of private offer
- Disputes arising out of private agreement with companies/intermediaries
- Matter involving fake/forged documents
- Complaints on matters not in SEBI purview
- Complaints about any unregistered/un-regulated activity.

In view of the above, it can be said that Mani can file a complaint for non-receipt of dividend with SEBI.

The complainant is advised to adhere the following Process of filing complaint with SEBI

- Visit the SCORES portal
- Complete the User registration and
- Login to SCORES and click on 'complaint registration'
- Select the nature of complaint
- Update the details
- Explain the complaint in brief
- Update the supporting document
- Submit the complaint
- A complaint registration number is generated and sent to email id and to mobile number of the complainant.

Answer 4(c)

Company secretaries are not only corporate legal experts but due to the very nature of profession, their knowledge is far superior in respect of commercial understanding. They have an edge in the sense that they understand the underlying commercial transaction or the legal framework in a more effective manner. Since they are exposed to various facets of law and the management, they can formulate a better strategy in arbitral proceedings while advising to the client. Thus company secretaries in practice can act as strategist and authorized representative in arbitral proceedings. Presently company secretaries in practice render Arbitration and Conciliation Services such as advising on arbitration, negotiation and conciliation in commercial disputes between the parties, acting as arbitration/conciliator in domestic and international commercial disputes and drafting Arbitration/ Conciliation Agreement/Clause.

Or Alternate Answer 4(c)

Role of a Company Secretary in Arbitration and Conciliation Matters

A Company Secretary plays a crucial role in arbitration and conciliation matters under the Indian Arbitration and Conciliation Act, 1996, and within the broader framework of ADR mechanisms in India. Here are the key responsibilities:

1. Advisory Role:
   - Advises the company's board and management on the legal implications of entering into arbitration agreements.
   - Guides on selecting appropriate arbitration or conciliation mechanisms based on the nature of disputes and company policies.
2. Drafting and Review:
   - Drafts and reviews arbitration clauses in contracts to ensure clarity and enforceability.
   - Prepares and reviews notices, submissions, and other documentation required during arbitration and conciliation proceedings.
3. Liaison and Coordination:
   - Acts as a liaison between the company and legal counsel, arbitrators, or mediators.

- Coordinates the collection and presentation of evidence and other necessary information for the proceedings.

4. Compliance and Governance:
   - Ensures compliance with statutory requirements under the Arbitration and Conciliation Act, 1996.
   - Maintains records of arbitration proceedings and outcomes for corporate governance and audit purposes.
5. Dispute Management:
   - Manages the dispute resolution process, ensuring timely and effective resolution.
   - Monitors and implements the decisions or awards from arbitration or conciliation, ensuring adherence to the agreed terms.

By performing these roles, a Company Secretary ensures that the company navigates arbitration and conciliation processes effectively, minimizing legal risks and fostering a culture of compliance and sound corporate governance.

OR (Alternate to Q. No. 4)

Answer 4A(i)

BEFORE SOLE ARBITRATOR

In the matter of Arbitration between:

M/s Meru Ltd. .....Claimant

And

M/s Tiru Industries Ltd. .... Respondent

EVIDENCE BY WAY OF AFFIDAVIT

I, Tej … son Of Sh. A S/o Late Shri B, Aged ….. years, C/o …… (Address). I, the above named deponent, do hereby solemnly affirm and state as hereunder:-

1. I am presently working as Senior Manager in the respondent company. I have been working with the respondent company since ……..(date). I have been involved in the Project, which is subject matter of the present Arbitration. As such, I am conversant with the facts which is based upon my personal knowledge as well as on the basis of the records maintained by the respondent company in its regular course of business.
2. I state that the Claimant was awarded the work …… (detail of work) under the scope of Tender No. ……
3. The claimant was, awarded the duct laying work for not only the remaining ….. kms. which is clearly provided in the tender document as well as the letter of award.
4. I state that as per the tender, the Claimant was, therefore, required to undertake the work of ……. for a total sum of ……..(Amount). Tender documents pertaining to the projected is marked as Exhibit RW-1. The Letter of Award dated ……. is marked as Exhibit RW-2 and Bill Quantities is marked as Exhibit RW-3.
5. I state that as per the award letter dt……., the claimant was to furnish the Performance Bank Guarantee and sign the formal agreement within 7 days from the date of receipt of

the award letter. However, the claimant signed the agreement only on .....(date). A copy of the letter dt..... written by the respondent in this regard which led to signing of the agreement dt. ..... is exhibited as Exhibit RW4. The Agreement dated ..... is exhibited as Exhibit RW5 and a copy of the bank guarantee furnished by the claimant is exhibited as Exhibit RW6.

6. I state that the Claimant started work from .....(place) crossing and could complete a total of work to the extent of only ..... Km only and that too limited only to duct laying, which also was done in patches and not in continuation. Pertinently, even this was done in a period of around ..... months, whereas the award letter stipulated that the work had to be done within a period of .... days. Therefore, the letter dt..... written by the respondent to the claimant is marked as Exhibit RW-8. Numerous other letters dated ....., ..., ..., ... & ..... were also written by the Respondent in this regard. The said letters are marked as Exhibit RW-9, RW-10, RW-11, RW-12 & RW-13 respectively.

7. I state that even the work carried on by the claimant suffered from defects and complaints. The cable which was to be laid at a minimum distance of ..... from the centre line of the National Highway, which was not followed by the Claimant.

8. I state that the Claimant was not giving any attention to the instructions given by the Respondent from time to time for execution of the work. The instructions were given by the Respondent keeping in view the specifications as per the Tender Terms. I state that the Claimant wanted to execute the work at his own convenience and without meeting any specifications as mentioned in the Tender Documents. Further, the Claimant did not deploy sufficient manpower and other resources for completion of the work and was therefore, looking for an escape route to somehow abandon the work.

9. I state that the Claimant instead of improving the work stopped the execution of the work from .....(date) for its own reasons and did not resume work despite payment of the 1st running bill and numerous requests by the respondent. Despite the claimant stopping the work, the respondent due to requests from the claimant released the 1st running bill. I state that the Claimant was asked several times to resume the work. However since the Claimant failed to resume the work a final notice dated ..... was served on it a copy of which is marked as Exhibit R17. Despite the said final notice, the respondent issued a last opportunity to the claimant to resume the work vide its letter dt....., copy of which is marked as Exhibit R18. The Respondent was thereafter constrained to terminate the contract vide its letter dt.29.8.05, copy of which is marked as Exhibit R19.

10. I state that even after the termination, the claimant miserably failed in its contractual duty and obligation to return back the material of approximately more than Rs..... lacs, into the stores of the respondent. In this regard, letter dt. ..... was issued, a copy of which is marked as Exhibit R-20. I state that the Claimant replied to this letter sent by the Respondent, in which it has confirmed that it is in the process of material reconciliation. A copy of the said Reply date 06.08.2005 is marked as Exhibit R-21. However, no such reconciliation was done by the claimant.

11. I state that the Claimant was issued various materials for the execution of the work. The Claimant left the site without performing the contractual store reconciliation and without intimation to the Respondent. The material issued to the Claimant was left at two places without any guard for which the claimant is responsible.

12. I state that the claimant failed to complete the work in the stipulated time, the respondent entitled for the Liquidated damages @ 10%.

13. I state that due to non-performance of contract by the Claimant, the left out work was carried out by the Respondent at the risk and cost of the Claimant, therefore an amount of Rs. ..... is recoverable from the claimant as per details marked as Exhibit R-24.
14. I state that due to non-performance of the Claimant, the Respondent had to incur extra expenditure to regulate the work towards additional establishment/ service costs for which an amount of ..... is recoverable from the Claimant as per details marked as Exhibit R-25 .
15. I state that an amount of Rs. ..... is recoverable from the Claimant towards the cost of arbitration.

DEPONENT

VERIFICATION

Verified on this day of February, 2010 that the contents of paras 1 to 15 of my aforesaid affidavit are true and correct to the best of my knowledge and are based upon the records maintained in regular course of business by the respondent company which I believe to be true and correct and no material facts have been concealed therefrom.

DEPONENT

Answer 4A(ii)

Specimen Format for Plaint under CPC for enforcement of Award

IN THE COURT OF .....

Kalipur Toys Ltd. ..... (add description and residence) .....Plaintiff.

vs.

Charan Ltd. ..... (add description and residence) .....Defendant.

Kalipur Toys Ltd., the above-named plaintiff, states as follows:

1. On the..... day of ....., 20...., the plaintiff and defendant, having a difference between them concerning a demand of the plaintiff for the price of the raw materials and other products for manufacturing of toys which the defendant refused to pay; agreed in writing to submit the difference to the arbitration of E. F and G. H. and the original document is annexed hereto.
2. On the..... day of ....., 20...., the arbitrators awarded that the defendant should pay the plaintiff 25 Lakh rupees for the losses suffered by the plaintiff. Arbitration award is annexed herein (Annexure 1).
3. The defendant has not paid the money till the time of the petition.
4. Facts showing when the cause of action arose and that the Court has jurisdiction.
5. The Value of the subject-matter of the suit for the purpose of jurisdiction is and for the purpose of court-fees is....
6. The Plaintiff Prays:
   (i) Execution of the arbitration award by either directing the respondent to pay the money immediately or his assets are attached or arrest orders are pursued.
   (ii) .....

Deponent

Verification

I, …….. s/o …….. r/o …….. Doe hereby verify that the contents of this application are true to my knowledge and belief.

Place:

Dated:

(Signatures)

Through

(Signature)

Advocates

Answer 4A(iii)

Traders from different countries undertake international business transactions, commonly known as international trade, chances of disputes are high. Because there exists different countries, different standards and different law. Arbitration plays a vital role in this as dispute resolution process.

The parties must focus on drafting of contract, by including all such conventions which are necessary for conducting the trade. The rights and duties of the parties to international trade must be very clear without any ambiguity. It must cover all important points and contingencies in clear and unambiguous terms. Arbitration clause need to be specifically stated. Thus, the following need to be included:

Essential points which must be considered while drafting cross border contracts

- The term sheet
- Does the Memorandum of Understanding/Letter of Intent bind the parties?
  - Canada
  - India
- Definitions clause
- Payment terms
- securities / bonds
- Risk transfer clauses
- Insurances
- Time and date formats
- Product description
- Force Majeure
- Other boilerplates
  - Severability
  - Non-compete clauses
- Governing law, jurisdiction and dispute resolution
  - Governing law and jurisdiction - substantive laws to apply
  - Dispute resolution – pre arbitral steps / arbitration laws / rules / seat of arbitration.

- Language clause
- Exit obligations

PART–II

Question 5

Case Study :

Varenya group, was a well-known group in Kerala dealing in gold, diamond jewellery and related products. The group was founded by Vipul Varenya, who had three children, Vardhan, Viraj and Veena. All his children were well educated and gradually, Vipul handed over the businesses to his children and enjoyed retirement life. However, he was always available for any advice, but refrained from interfering in the business matters. Vardhan, being the eldest one had a different attitude. He wanted things to happend his way and was very ambitious. On the contrary, Viraj was calmer and believed in expanding the business gradually. Veena was supportive of her brothers and always gave them suggestions when needed. However, all was not well within the family. There seemed to be a cold war between the brothers and Veena was troubled with this. It was no more a happy family. With Vardhan intending to reorganize the companies and expand the business to US and South Asia, there was a conflict between the brothers. Situation was such that both the brothers could not stand each other. Veena was very concerned and discussed the same with her father. Vipul, was thinking if the property/ business needs to be distributed between his children to avoid further conflicts. He consulted his close friend and confidante Har, a Company Secretary and Senior Partner of Har & Co. LLP, Company Secretaries. Har was known to all the members of Varenya family and they trusted him for his insights. Veena wanted to appoint Har to mediate the issue between Vardhan and Viraj. Vipul, was also in agreement with Veena's proposal. However, he was unsure if the mediation settlement so concluded would hold validity in Court of law, considering the conflict between Vardhan and Viraj.

In this background, answer the following :

(a) Draft a mediated settlement agreement, assuming necessary facts.

(b) Indicate the key ethical principles, which Har should adhere to as a mediator.

(c) Can the mediated settlement agreement be enforced ? Explain with reference to the provisions of Arbitration and Conciliation Act, 1996 ?

(*5 marks each*)

Answer 5(a)

Mediated Settlement Agreement

This agreement made this ….. day of ……., 20…. at ……...

BETWEEN

…… (Full description and address of the Party to be given) of the ONE PART

AND

……(full description and address of the Party to be given) of the OTHER PART.

WHEREAS certain disputes and differences have arisen and are subsisting between the aforesaid parties relating to ……..(details of contract to be given).

AND WHEREAS the Parties submitted their dispute(s) for an amicable settlement in accordance with the ..... Mediation Rules;

AND WHEREAS the parties agreed to settle the dispute on mutually acceptable terms as finalised during the course of mediation.

NOW IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. The undersigned parties agree to the terms and conditions of this Mediation Settlement Agreement ("Agreement"), in full settlement of any and all claims which have been or could have been asserted in this action.
2. First party agrees to provide all the raw materials to the second party in exchange for the sum of Rs. 10 lacs ("Settlement Sum").
3. Second party agrees to make the full payment of Settlement Sum by 02ndAugust, 2023(the "Settlement Date").
4. Simultaneous with payment of the Settlement Sum in full at the Settlement Date, the parties shall execute and exchange mutual general releases.
5. Simultaneous with payment of the Settlement Sum in full, the First party shall execute and deliver any documents necessary to effectuate the transfer of raw materials.
6. The parties mutually agree that neither of them shall solicit financial advisors or employees of the other for a period of two years from the date of this Agreement.
7. Each party shall bear its own fees and costs for this action.
8. .....
9. .....
10. ..... etc.
11. In order to carry out the terms and circumstances of this mediation settlement agreement, the parties shall execute and exchange any further documents that may be deemed appropriate.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands and seals the day and year first hereinabove written.

....

Signed by the above named 1st party Signed by the above named 2nd party

(Name, Signature and Details) (Name, Signature and Details)

Witnesses

1. .....

(Name, Signature and Details)

2. ....

(Name, Signature and Details) Authenticated by Mediator

Answer 5(b)

Mediators are expected to adhere to a set of ethical principles in order to maintain their impartiality and promote fairness in the mediation process. Some of the key ethical principles for mediators include:

i. **Impartiality:** Mediators should remain neutral and not take sides in the dispute. They should treat all parties fairly and ensure that each party has an equal opportunity to be heard.

ii. **Disclosure –** Conflict related to the matter in dispute, parties , counsels or with the outcome of the Mediation, shall be disclosed.

iii. **Confidentiality:** Mediators should keep all information related to the mediation process confidential, unless required by law or with the explicit consent of the parties involved.

iv. **Informed Consent:** Mediators should ensure that all parties understand the mediation process and voluntarily agree to participate.

v. **Competence:** Mediators should possess the necessary skills and knowledge to facilitate the mediation process effectively.

vi. **Conflict of Interest:** Mediators should disclose any conflicts of interest and recuse themselves from the process if they have a personal or professional relationship with one of the parties involved.

vii. **Respect:** Mediators should treat all parties with respect and dignity, and create an environment that is conducive to open communication and productive problem-solving.

viii. **Professionalism:** Mediators should conduct themselves in a professional manner at all times, and avoid any behavior that could undermine the integrity of the mediation process.

The above mentioned key ethical principles, Har should adhere to as a Mediator.

Answer 5(c)

Depending upon the nature of mediation, settlement agreement can be enforced as:

i. Contract in Private mediation.

ii. Arbitral decree when settlement agreement is entered while using section 30 of the A&C Act, 1996.

iii. Arbitral decree when settlement agreement is under section 74 of the Arbitration & Conciliation Act, 1996 (A&C Act) (applicable to conciliation).

iv. Decree of civil court in court annexed mediation or compulsory pre-litigation mediation.

A settlement agreement in mediation is a legally binding contract, and the parties are obligated to comply with its terms. If either party fails to comply with the terms of the settlement agreement, the other party may be able to enforce the agreement through legal action.

The settlement agreement must be signed. Also, the mediation process and the settlement agreement reached through mediation are confidential, and the mediator and the parties are prohibited from disclosing any information about the mediation proceedings or the settlement agreement without the consent of the other party.

In the case of a settlement arrived at in a court-annexed mediation, the same should be reduced to writing and presented to the court, which will pass an order or decree on the terms thereof.

In mediation settlement agreements arising out of arbitral proceedings, parties may by consent file the same with the arbitrator and request the arbitrator to take the same on record and pass an award in terms thereof or request the Tribunal to just make reference to the mediation settlement agreement and state that as the arbitration is settled in terms of the mediation settlement agreement, the proceedings stand terminated.

As regards the court, a similar process may be followed by consent of parties where the court may be informed of and shown the mediation settlement agreement and requested to dispose of the proceedings in terms of the same. Parties may request the court to refer to the same but may not file the same in the court. If filed in the court, a request may be made to the court to place the agreement in a sealed envelope due to the nature of its confidentiality.

Section 74 of the Arbitration and Conciliation Act 1996 provides that a settlement agreement has the same effect as an arbitral award on agreed terms. The position in the Commercial Courts Act is also the same as a settlement in a pre-institution mediation proceeding under the Act and is given the same status as that of an arbitral award under the ACA. Such an arbitral award is enforceable as a decree of court as per section 36 of the ACA.

The Delhi High Court while interpreting section 74 of the A&C Act 1996 held, "The said provisions fall in Part III of the said Act dealing with conciliation. Conciliation proceedings had to be initiated in terms of Section 62 of the said Act. The settlement agreement envisaged under Section 73 of the said Act has to be one which is in pursuance to a duly constituted conciliation proceedings as per Section 62 of the said Act. If such a settlement comes about then that settlement is enforceable as an arbitral award in terms of Section 74 of the said Act.

Therefore, section 74 can't be used to enforce private mediation settlement agreements. For such private mediation settlement agreements to be enforceable they must qualify as a contract as defined in Section 2(h) of the Contract Act, 1872.

However, after the enactment of Mediation Act, 2023, as per section 27(1), a mediated settlement agreement resulting from a mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties and persons claiming under them respectively and enforceable as per the provisions of section 27(2) i.e. in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court. It is to be noted that section 27 of Mediation Act, 2023 has not been notified yet.

Attempt all parts of either Q 6. or Q 6.A.

Question 6

(a) Dhanik lodged an instrument for transmission of equity shares of Mayurika Constructions Private Ltd. The Company refused to register transmission due to certain discrepancies like non-execution of proper instrument, etc, noticed while processing the request from Dhanik. Within twelve days of receipt of the instrument, the Company sent notice of refusal to him. Dhanik was sure of the documentation he had filed with the Company and was alleging that there was a wrong doing within the Company, for refusing the transmission of shares. Dhanik has filed an appeal before NCLT under the Companies Act, 2013 to resolve the matter. Considering the time and cost involved, both the parties agreed to initiate Mediation and Conciliation Proceedings. In this background, Dhanik reached out to you, to help him with the procedure. Advise Dhanik on this matter.

(*5 marks*)

(b) Kolhar India Private Ltd (KIPL) and Oswaj Private Ltd (OPL), were both registered under Micro, Small and Medium Enterprises Development Act, 2006. The Companies, entered into an agreement for providing raw materials and related job works. The agreement between the companies was robust and also included a clause on dispute resolution mechanism. The transactions between the companies were taking place smoothly. However, OPL, suffered a major loss when one of its key customers went bankrupt and a large amount of receivable was written off. The Company had tough time managing its working capital requirements

and could not honor many of its commitments. After giving sufficient time KIPL, raised a dispute with OPL and the matter was referred to arbitration. KIPL was planning to approach the Facilitation Council. In the background of a judicial pronouncement, comment whether KIPL will succeed.

(*5 marks*)

(c) Sheru, was the leader of the information-technology vertical of Ignite Techno Ltd, a company providing software services. The Company had approached Suko Inc., a Taiwanese company with a proposal to implement accounting software for its global entities. This proposal was a prestigious one for the Company and Sheru was working on this since last two months. However, they seemed to have a challenge with Kungo, the Senior Director of Suko Inc., as it was very difficult to convince him on certain aspects of the agreement and to negotiate with him to finalise the deal. In this context, advise how effective negotiation plays a critical role in getting the desired outcome, considering the various elements of negotiation.

(*5 marks*)

Or (Alternate to Q. No. 6)

Question 6A

(*i*) Krupa & Co., a partnership firm dealing with supply of perfumes and essential oils enters into an agreement with Glassko Private Ltd (GPL). Pursuant to this agreement GPL was supposed to provide glass bottles for packaging the products manufactured by Krupa & Co. The agreement between the two parties spelt out all the key clauses, including mediation as the mode of alternate dispute resolution, in case of any disputes. Both the parties were supportive of each other for their business. However, there was a change in GPL's management and the equation between the two parties also changed. There were concerns relating to equality of goods supplied by GPL. Krupa & Co., was evaluating to invoke the alternate dispute resolution mechanism as per the terms of the agreement. The matter was referred to mediation and the proceedings were taking place. However, during the pendency of the matter, GPL made the news of mediation public in one of Glass Association Forum's meeting, which impacted Krupa & Co. In the background of a case law, comment whether GPL's action is justified ?

(*5 marks*)

(*ii*) Pranjal Kare Labs Ltd (PKLL), is a Hyderabad based pharmaceutical company with large supply chain network. PKLL procures the materials and other chemicals required for manufacturing pharmaceutical products from Hiro Industries Ltd (HIL). PKLL and HIL had a commercial agreement for the purposes of supplying raw materials. However, dispute arose over supply of materials in a consignment which was destroyed on the way to PKLL's factory due to flood. PKLL contended that it was not going to bear the loss, as HIL should have insured the goods in transit. However, HIL denies the claim. The matter was escalated and the management of PKLL concludes that it would be appropriate to resolve the matter through mediation. In this background, draft a mediation application form for commercial disputes, assuming necessary facts.

(*5 marks*)

(*iii*) Narath was a Senior Partner, in Narath & Co. LLP, Company Secretaries. The firm was specializing in mediation and conciliation matters. Mina, one of Narath's assistant, was discussing about Singapore Convention on mediation. While discussing various aspects of the convention, Narath mentions that there are some instances wherein the convention

does not apply. Explain in brief Singapore Convention on mediations and also indicate the instances where it does not apply.

(*5 marks*)

Answer 6(a)

Dhanik and the Company may agree on the name of the sole mediator or conciliator for Mediation or conciliation between them. Further, the application to the Central Government or the NCLT or NCLAT for referring the matter pertaining to any proceeding pending before it for mediation or conciliation can be made in Form MDC-2 with a fee of one thousand rupees.

According to rule 11 of the Companies (Mediation and Conciliation) Rules, 2016, for the purposes of mediation and conciliation, the mediator or conciliator shall follow the following procedure, namely:-

(i) he shall fix, in consultation with the parties, the dates and the time of each mediation or conciliation session, where all parties have to be present;

(ii) he shall hold the mediation or conciliation at the place decided by the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, or such other place where the parties and the mediator or conciliator jointly agree;

(iii) he may conduct joint or separate meetings with the parties;

(iv) each party shall, ten days before a session, provide to the mediator or conciliator a brief memorandum setting forth the issues, which need to be resolved, and his position in respect of those issues and all information reasonably required for the mediator or conciliator to understand the issue and a copy of such memorandum shall also be given to the opposite party or parties: Provided that in suitable or appropriate cases, the above mentioned period may be reduced at the discretion of the mediator or conciliator;

(v) each party shall furnish to the mediator or conciliator such other information as may be required by him in connection with the issues to be resolved.

Answer 6(b)

The Legislature has passed several laws mandating disputing parties to go through mandatory conciliation or mediation processes before starting arbitration or going to court as a result of the growing pressure on civil courts. With the intention of relieving the Civil Courts of some of their workload by weeding out issues that can be settled through conciliation or mediation, these regulations act as a necessary prerequisite to initiating arbitration or court procedures. One of the most important sectors for India's economic growth is the Micro, Small, and Medium-Sized Enterprises (MSMEs) sector, especially in light of the COVID-19 pandemic's difficult circumstances, which led to the Central Government's implementation of specific financial stimulus programs for this industry.

The Micro, Small and Medium Enterprises Development Act of 2006 (the "Act") governs MSMEs which increases the scope of Mediation for resolution of disputes under MSMEs. However in case of *BSNL vs. Maharashtra Micro and Small Enterprises*, the Bombay High Court found that Section 18 (1) of the Act, in terms allows any party to a dispute relating to the amount due under Section 17 i.e. an amount due and payable by buyer to seller; to approach the facilitation Council. It is rightly contended by the learned Addl. Government Pleader, that there can be variety of disputes between the parties such as about the date of acceptance of the goods or the deemed day of acceptance, about schedule of supplies etc. because of which a buyer may have a strong objection to the bills raised by the supplier in which case a buyer must be

considered eligible to approach the Council. Further, the Court found that we find that Section 18(1) clearly allows any party to a dispute namely a buyer and a supplier to make reference to the Council. However, the question is; what would be the next step after such a reference is made, when an arbitration agreement exists between the parties or not. The court found that there is no provision in the Act, which negates or renders an arbitration agreement entered into between the parties ineffective. Moreover, Section 24 of the Act, which is enacted to give an overriding effect to the provisions of Section 15 to 23-including section 18, which provides for forum for resolution of the dispute under the Act-would not have the effect of negating an arbitration agreement since that section overrides only such things that are inconsistent with Section 15 to 23 including Section 18 notwithstanding anything contained in any other law for the time being in force. Section 18(3) of the Act in terms provides that where conciliation before the Council is not successful, the Council may itself take the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution and that the provisions of the Arbitration and Conciliation Act, 1996 shall thus apply to the disputes as an arbitration in pursuance of arbitration agreement referred to in Section 7 (1) of the Arbitration and Conciliation Act, 1996. This procedure for arbitration and conciliation is precisely the procedure under which all arbitration agreements are dealt with. The court, thus found that it cannot be said that because Section 18 provides for a forum of arbitration an independent arbitration agreement entered into between the parties will cease to have effect.

In view of the above, it can be said that KIPL will likely succeed in approaching the Facilitation Council despite having an arbitration agreement with OPL. The judicial pronouncement in BSNL vs. Maharashtra Micro and Small Enterprises indicates that Section 18(1) of the Micro, Small And Meduim Enterprises Development Act, 2006 allows any party to a dispute to approach the Council, and this does not negate an existing arbitration agreement. Therefore, KIPL's recourse to the Facilitation Council is valid.

Answer 6(c)

Negotiation is a process which focusses on protection of interests of the parties through adjustment. This is in contrast to the approach of the judiciary which tries to protect the right of an individual by enforcing it or ordering compensation for it. Negotiation concentrates on protection of relationship between the parties.

- For a successful negotiation process, it is important that various principles must be followed to eliminate selfish bargain by replacing it with principled bargain.
- Negotiation is "back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed".
- The outcomes of the negotiation depend upon how well a negotiator prepares for it. A negotiation starts when the intention of the parties gets to "problem solving" and not holding onto their ego and clashes. When the parties take a step for resolving their disputes through negotiation, the responsibility of the negotiator to resolve their dispute increases.
- While negotiation are going on different styles and strategies are adopted by the negotiators to reach the settlement and they depend upon the way parties act during the negotiation.
- The most essential part of Mediation and Negotiation process is communication. Mediation or Negotiation cannot succeed without effective communication. The purpose of communication in negotiation is transfer of Information.

    I. Communication - The parties must talk to each other while negotiating as the success of negotiation depends upon communication choices. Miscommunication or vague

communication may lead to misunderstandings. This misunderstanding may prejudice the relationship between the parties. Therefore it is important to communicate effectively.

II. Relationship - Parties must deal with one another while negotiating, even if this is a one-time transaction and they have no past or ongoing relation. The relationship can be strengthened by building rapport with the parties. Remove people from the problem. The emphasis should be on how to resolve the dispute without destroying the relationship.

III. Interests - Concerns, objectives, needs, desires or fears must be addressed and satisfied in some way if the parties are to reach a negotiated agreement. The interests are often hidden and unspoken. A good negotiator always addresses the fears of the other party, thereby building a rapport which is essential for a successful negotiation.

IV. Options - The various possible ways the parties could work together so their interests are included and satisfied to some degree in a negotiated agreement are called options. The success of negotiation depends upon the number of options the parties propose. Options come from brainstorming. While brainstorming all the ideas must be recorded. Once the ideas are recorded they must be evaluated in terms of feasibility and thereafter they must be proceeded in negotiation.

V. Legitimacy - Objective standards (e.g. market value, precedents, industry practices) and fair procedures (e.g., appraisals, bidding, split-the-difference) that can be used to evaluate options. The success of the negotiation depends upon the fact that the negotiator follows a fair procedure. Being fair is not enough. The fairness has to be rather manifested in the negotiator's approach and dealing.

VI. Alternatives - The range of possible things a party can take from the table are the alternatives. As a lawyer does not depend on single argument, similarly, a negotiator should also not depend upon a single alternative. This helps in making a decision as to whether to agree to the proposal given by the opposite party or not. If there are no alternatives a person will be forced to settle in the negotiation. The attempt to settle the dispute depends upon BATNA.

BATNA (Best Alternative to a Negotiated Agreement) - In simple words it means what the party to the settlement actually wants and how far they want to go for settling it. It is important to know the BATNA, as, the better BATNA, the greater is the power to negotiate. It protects the negotiator from agreeing to unfavorable terms.

WATNA (Worst Alternative to a Negotiated Agreement) - It is the settlement that the parties to the dispute don't want to choose and would never settle for.

MLATNA (Most Likely Alternative to a Negotiated Agreement) - It is the most likely alternative in case of a dispute if the BATNA is not achieved. This is known as the second best alternative that the parties to the dispute would resort to settle.

VII. Commitment - Any preconditions of the parties that must be met in order to negotiate and reach a final, binding agreement. A commitment can range from meeting at a particular place at a particular time.

OR (Alternate to Q. No. 6)

Answer 6A(i)

Confidentiality is crucial in mediation because it allows for open and honest communication between parties, ensures fairness to all parties involved, and maintains the mediator's neutrality. Privacy is also a significant reason why many choose mediation as a form of dispute resolution. Confidentiality laws protect mediators and programs from distractions, harassment, and misuse of limited resources. Section 75 of the Arbitration and Conciliation Act, 1996 talks about confidentiality in conciliation proceedings.

The case of *Moti Ram Thr. L.Rs. and Anr. v. Ashok Kumar and Anr.* established that mediation proceedings should be kept confidential. Prior to this case, parties had the option to choose whether or not to maintain confidentiality in their mediation proceedings. In this case, the Supreme Court directed that successful mediation results should be presented to the court in the form of a settlement agreement, signed by both parties, without mentioning any communication between them. If mediation is unsuccessful, the mediator should only report the result to the court without discussing the proceedings. In the Salem Bar Association v. Union of India case, a committee was formed to regulate mediation proceedings, and the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2003 were introduced, which provide non-binding guidelines for court-referred mediation. Rule 20 of these rules establishes all aspects of mediation as confidential, and the Supreme Court recommended that all High courts adopt these rules with certain modifications.

Mediation proceedings are typically kept confidential, and it is considered unethical to disclose any communication that takes place during mediation sessions. This confidentiality has been upheld by courts in various cases, and it is generally not permissible to seek information regarding mediation proceedings through the Right to Information Act, 2005. However, in the Perry Kansagra case, an exception was made to the confidentiality rule for the first time.

In view of the above discussion, it can be said that GPL's action is unjustified. Disclosing the details of mediation proceedings violates the principle of confidentiality as per the case law such as *Moti Ram Thr. L.Rs. and Anr. v. Ashok Kumar and Anr.* and *Salem Bar Association v. Union of India*.

Answer 6A(ii)

Mediation Application Form for Commercial Disputes

Details of Parties:

1. **Name of applicant:** Pranjal Kare Labs Ltd (PKLL)
2. **Address and contact details of applicant:**

   Address: [Insert Address Here], Hyderabad

   Telephone No.: [Insert Telephone No.]

   Mobile: [Insert Mobile No.]

   E-mail ID: [Insert E-mail ID]
3. **Name of opposite party:** Hiro Industries Ltd (HIL)
4. **Address and contact details of opposite party:**

   Address: [Insert Address Here]

   Telephone No.: [Insert Telephone No.]

Mobile: [Insert Mobile No.]

E-mail ID: [Insert E-mail ID]

Details of Dispute:

1. **Nature of dispute as per section 2 (1)(c) of the Commercial Courts Act 2015 (4 of 2016):**

   Dispute arising out of a commercial agreement for the supply of raw materials.

2. **Quantum of claim:**

   INR [Insert Amount Here]

3. **Territorial jurisdiction of the competent court:**

   Hyderabad, Telangana

4. **Brief synopsis of commercial dispute (not to exceed 5000 words):**

   Pranjal Kare Labs Ltd (PKLL) and Hiro Industries Ltd (HIL) entered into a commercial agreement for the supply of raw materials necessary for the manufacturing of pharmaceutical products. A dispute arose when a consignment of materials, which was in transit to PKLL's factory, was destroyed due to a flood. PKLL contends that HIL is liable for the loss as HIL should have insured the goods in transit. However, HIL denies this claim. The disagreement has led to escalated tensions between the two parties, and PKLL now seeks to resolve this matter through mediation.

5. **Additional points of relevance:**

   - The consignment was valued at INR [Insert Amount Here].
   - PKLL had informed HIL about the need for insurance coverage for goods in transit.
   - HIL maintains that the insurance responsibility was not specified in the agreement.
   - PKLL has suffered operational delays due to the loss of materials.

Details of Fee Paid:

Fee paid by DD No. [Insert DD No.] dated [Insert Date].

Name of Bank and branch [Insert Bank and Branch Name].

Online transaction No. [Insert Transaction No.] dated [Insert Date].

Date: [Insert Date]

Signature of Authority:

[Authorized Signatory's Name]

[Designation]

Pranjal Kare Labs Ltd (PKLL)

Answer 6A(iii)

The Singapore Convention on Mediation, also known as the United Nations Convention on International Settlement Agreements Resulting from Mediation, is a multilateral treaty that aims to facilitate the enforcement of international commercial settlement agreements reached through mediation. The convention was signed in Singapore on August 7, 2019, and entered into force on September 12, 2020.

The convention is the first global treaty to focus on the enforcement of settlement agreements resulting from mediation, and it aims to provide a harmonized legal framework for the recognition and enforcement of such agreements across different countries. It applies to settlement agreements resulting from mediation of commercial disputes, regardless of the country in which the mediation took place.

Under the convention, parties to a settlement agreement can request its enforcement in a country that has ratified the convention. The requesting party must provide evidence that the settlement agreement resulted from mediation and that it is in writing and signed by the parties. Once the settlement agreement is deemed enforceable, it can be enforced in the same way as a court judgment in that country.

The Singapore Convention on Mediation applies to settlement agreements resulting from mediation of commercial disputes, regardless of the country in which the mediation took place. However, there are some instances when the convention does not apply. Here are a few examples:

- **Settlement agreements not resulting from mediation**: The convention only applies to settlement agreements that result from mediation. It does not apply to settlement agreements that result from other forms of alternative dispute resolution, such as arbitration or conciliation.
- **Non-commercial disputes**: The convention only applies to settlement agreements resulting from mediation of commercial disputes. It does not apply to settlement agreements resulting from mediation of non-commercial disputes, such as family disputes or labor disputes.
- **Settlement agreements that are not in writing**: To be enforceable under the convention, a settlement agreement must be in writing and signed by the parties. If a settlement agreement is not in writing, it cannot be enforced under the convention.
- **Settlement agreements that are not final and binding:** The convention only applies to settlement agreements that are final and binding. If a settlement agreement is not final and binding, it cannot be enforced under the convention.
- **Countries that have not ratified the convention:** The convention only applies to settlement agreements in countries that have ratified the convention. If a country has not ratified the convention, the settlement agreement cannot be enforced under the convention in that country.

GST AND CORPORATE TAX PLANNING

ELECTIVE 2 Paper 7.2

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *(i) Answer All Questions.*

(ii) All the references to sections in Part II 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

(*a*) Explain on the following situations supporting your answers with reference to the recent amendments to GST laws :

(*i*) Raman, the recipient of service paid the invoice amount to his supplier within 180 days from the date of invoice being 1st October, 2022 but failed to settle the GST amount as charged in the invoice and could not pay the same till 30th September, 2023 due to dispute with the supplier and claimed ITC for the same in his periodic returns. GST Officer asked him to reverse full amount of ITC before the end of 30th November, 2023.

(*ii*) M/s TVR Cineplex Private Limited sells cinema hall tickets of ₹ 150 each including GST @ 18%. It also supplies food and beverages as a separate service charging GST @ 5%. During the month of August, 2023, it offered ticket price combined with the supply of food and beverages of ₹ 250 each plus GST. The company is of the opinion that it needs to pay GST on food and beverages supplied during offers @ 5% only.

(*iii*) During the month of July, 2023, GST Office, Mumbai conducted search into the premises of M/s NTR Private Limited and found issue of fake invoices without any supply of goods or services involving a fake ITC claim of ₹ 2.25 Crore. The company desires to pay the compounding fees to avoid court proceedings being a time-consuming and expensive process and wants to know the maximum amount of fee to be paid as such.

(*iv*) M/s VRM Estates Private Limited, the owner of a Metro Mall in Delhi rented out 10 shops spaces to retail shopkeepers with the supply of electricity bundled with renting of shops and/or maintenance of premises. The electricity is charged 20% higher than the actual rate of electricity per unit paid by the company. The company contends that it is not liable to pay GST on supply of electricity.

(*v*) R, a retail garment shopkeeper applied for and was granted a regular registration under GST on 1st April, 2022. Due to the increasing trend of customers shopping online and heavy rentals, her shop was shut on 30th June, 2022. She later received continuous mails from GST alerting for cancellation of registration due to non-filing of periodic returns. She did not respond or reply to the mails timely and her registration was finally cancelled by Ward Officer on 31st March, 2023.

On 5th January, 2023, she again planned to start online reselling of garments and sought your advice for the possibility of revocation of cancelled registration.

(*5×2=10 marks*)

(*b*) Shyam Sundar booked a Banquet Hall for his daughter's marriage on 10th April, 2023 with an agreed sum of ₹ 3,00,000 and paid an advance of ₹ 30,000. The Marriage Function was held in Banquet Hall on 12th August, 2023. The Banquet Hall owner issued invoice on 18th September, 2023 for ₹ 3,00,000, indicating pending amount of ₹ 2,70,000. The balance payment of

₹ 2,70,000 received 6th October, 2023. Determine the time of supply in the context of CGST Act, 2017.

(*5 marks*)

(c) Determine the eligibility of input tax credit for the following cases as per sec 17(5) of CGST Act, 2017 :

(*i*) M/s NTC Private Limited, a registered taxable person is in business of information technology. The company buys a motor vehicle for use of its Executive Directors. Can it avail the ITC in respect of GST paid on purchase of such motor vehicle ?

(*ii*) M/s DFL Private Limited conducted its 12th Annual General General Meeting at its head office in Bengaluru and availed services of M/s Sitaram Caterers for the occasion. M/s Sitaram Caterers charged ₹ 4,75,000 plus GST @ 18% for supply of outdoor catering services. Determine whether M/s DFL Private Limited can avail input tax credit of GST paid on outdoor catering service.

(*iii*) M/s Hans Logistics Private Ltd. is a registered person engaged in passenger transport services. It purchased a luxury bus for ₹ 22,30,000 plus GST @ 28% for its business as on 12.09.2023. Determine whether the company can avail the benefit of input tax credit of the GST paid by it on motor vehicles.

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

(*d*) Meenakshi, Executive Director of M/s CTC Private Limited provided the following services and supplies to the company during the financial year ending 31.03.2024 :

(*i*) Directors Sitting Fees received ₹ 55,000 subject to TDS under section 194J of Income Tax, 1961.

(*ii*) A 3 BHK Flat provided on rent @ ₹ 75,000 per month to be used by the company as a guest house.

(*iii*) Consideration of ₹ 1,25,000 received against her personal residential property offered as a collateral security to the bank for availing a CC Limit of ₹ 5 Crore by the company.

The company has approached CS Laxman, Legal advisor of the company to advise on the applicability of Forward or Reverse Charge in the above cases. Elucidate.

(*5 marks*)

Answer 1(a)

(i) As per recent notification 26/2022 dated 26.12.2022, the rule 37, sub-rule (1) of CGST Rules regarding the reversal of input tax credit in the case of non-payment of consideration has been amended. A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply whether wholly or partly along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay or reverse an amount equal to the input tax credit availed in respect of such supply proportionate to the amount not paid to the supplier along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice.

Thus, the GST Officer is wrong and can reverse only the proportionate amount of ITC equal to the amount not paid to the supplier which is the amount of disputed GST charged in the Invoice.

Here it is also required to be mentioned that as per newly introduced Rule 37A, if the supplier of Raman does not file his return GSTR 3B till 30th September, 2023, Mr. Raman needs to reverse in FORM GSTR-3B on or before the 30th day of November following the end of such financial year. In case ITC has not been reversed in FORM GSTR-3B on or before the 30th day of November following the end of such financial year such ITC shall be paid along with interest thereon under section 50. However, the supplier subsequently furnishes the return in FORM GSTR-3B may re-avail the ITC for a tax period thereafter.

(ii) As per recent CBIC Clarification Circular No. 201/13/2023 dated 01.08.2023 was issued with reference to the Explanation at Para 4 (xxxii) to notification No. 11/2017-CTR dated 28.06.2017, which states as under:

It is hereby clarified that:

(a) supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:

- the food or beverages are supplied by way of or as part of a service, and
- supplied independent of the cinema exhibition service.

(b) where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Thus, as per the clarification above, the opinion of TVR Cineplex Limited is incorrect and it would be required to pay GST @ 18% instead of 5% on the food and beverages combined with the cinema ticket, being the principal supply, which amounts to = Rs. 45 per ticket [250*18%]

(iii) As per the recent changes introduced through The Finance Act, 2023 With effect from 1st October, 2023, there has been a change in the monetary limits for prosecution and compounding (except in the cases involving fake invoicing) the prosecution threshold has been amended from Rs 1 crore to 2 Crore. Also, the prescribed fees for compounding of GST offences have been reduced to the range of 25% to 100% of the tax amount involved (as opposed to the earlier 50 to 150%). However, option of compounding has been taken away for cases of fake invoicing.

Thus, as per above changes introduced, M/s NTR Private Limited now would not be entitled to avail the benefit of compounding of offences involving fake invoicing and resulting in fake ITC claims.

(iv) As per recent CBIC Circular No. 206/18/2023-GST dated October 31, 2023 for clarification regarding applicability of GST on certain services, it has been clarified that when electricity is being supplied bundled with renting of immovable property, it will constitute composite supply. Consequently, GST rate applicable to renting of immovable property would be applied to entire transaction.

Thus, in the given case, the contention of M/s VRM Estates Private Limited that it is not liable to pay GST on supply of electricity is incorrect and will be required to pay GST at the rate of its principal supply, renting of immovable property and/or maintenance of premise, as the case may be.

(v) As per the recent CBIC Notification No. 38/2023 CT dated 04.08.2023, the time limit for making an application for revocation of cancellation of registration has been raised from 30 days to 90 days and Commissioner or an officer authorized by him in this behalf can further extend this time period for a further period not exceeding 180 days on sufficient reason being shown.

In order to carry out this amendment, section 30(1) has been accordingly amended to remove the earlier time limit provided to apply for revocation as well as for extension of said time limit and gave power to prescribe the same through the rules. Simultaneously, rule 23(1) has also been amended to provide the revised new time limits to apply for revocation of cancellation of registration as well as extension of the same.

Amended portion of rule 23(1) provides as follows:

A registered person, whose registration is cancelled by the proper officer on its own motion, may, subject to the provisions of rule 10B, submit an application for revocation of cancellation of registration, in prescribed form, to such proper officer, within a period of 90 days from the date of the service of the order of cancellation of registration.

However, such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended by the Commissioner or an officer authorized by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding 180 days.

Thus, in the given case, although the time limit of 90 days to apply for the revocation of cancellation of registration has been completed on 29th June, 2023 from the date of cancellation of registration being 31st March, 2023, still R would be entitled to apply for the same for a further period not exceeding 180 days, on sufficient cause being shown for the delay.

Answer 1(b)

As per section 31 (2) read with rule 47 of CGST Rules, the tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit.

As per section 13(2)(b), in a case where the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Therefore, the time of supply of service to the extent of Rs, 30,000 is 10th April, 2023 as the date of payment of Rs. 30,000 as advance is earlier than the date of provision of service.

The time of supply of service to the extent of the balance Rs. 2,70,000 is 12th August, 2023 which is the date of provision of service being earlier than date of receipt of payment.

Answer 1(c)

(i) No. as per section 17(5)(a) of CGST Act, 2017 Input Tax on motor vehicles is not available. It inter-alia can be availed only if the taxable person is in the business of transport of passenger or is providing the services of imparting training on such motor vehicles.

(ii) As per section 17(5)(b), input tax credit shall not be available in respect of supply of outdoor catering service. Thus, DFL Limited is not entitled to avail input tax credit of GST paid on outdoor catering services availed form Sitaram caterers.

Note: Section 17(5) has an overriding effect on provisions of section 16(1) and 18(1) of the CGST Act, 2017 i.e. even if the goods/services as mentioned in section 17(5) have been used in course or furtherance of business, ITC shall be blocked. Hence, even if Outdoor catering services have been used by DFL Pvt. Ltd. for conduct of its AGM, ITC of GST paid on the same shall not be allowed.

(iii) As per section 17(5) (a), input tax credit shall not be available in respect of motor vehicles but as per exception given, input tax credit shall be available if inter-alia it is used for making taxable supplies of transportation of passengers, as in the given case Hans Logistics Private Ltd is engaged in transportation of passengers it will be entitled to take credit of GST amounting to Rs. 6,24,400 i.e. (Rs. 22,30,000 * 28%)

Answer 1(d)

(i) As per CBIC Circular No. 140/10/2020 dated 10.06.2020 it is clarified that the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the Income Tax Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore taxable. Further, in terms of Entry 6 of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

(ii) As per recent clarification issued by GST Department for the Entry 6 of Notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017 via Circular No. 201/13/2023-GST, GSTN has stated that services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017.

Here it is also to be mentioned that as per Notification No. 04/2022 -Central Tax (Rate) dated 13th July 2022 amending Notification No 11/2017- Central Tax (Rate) dated 28.06.2017 - Serial No. 12, Exemption for Services by way of renting of dwelling for use as a residence will now be available except where the dwelling is rented to a registered person w.e.f. 18.07.2022. Consequently, amendment was also made to Notification No. 13/2017 by inserting Entry 5AA "Service by way of renting of residential dwelling to a registered person".

So, the company will need to pay tax under reverse charge as per Entry 5AA instead of Entry 6 of this notification amendment.

(iii) Circular - 204/16/2023-GST dated 27th October, 2023 "Clarification on issues pertaining to taxability of personal guarantee and corporate guarantee in GST"

As per Explanation (a) to section 15 of CGST Act, the director and the company are to be treated as related persons. As per clause (c) of sub-section (1) of section 7 of the CGST Act, 2017, read with S. No. 2 of Schedule I of CGST Act, supply of goods or services or both between related persons, when made in the course or furtherance of business, shall be treated as supply even if made without consideration and thus would be covered in Schedule I and under section 7(1)(c) of the CGST Act.

Accordingly, the amount received 1,25,000 for activity of providing personal guarantee by the Meenakshi to the banks/ financial institutions for securing credit facilities is taxable under Forward Charge.

Question 2

(a) M/s Tarun Apparels Pvt. Ltd., registered dealer, purchased readymade garments from M/s Arun Fashion for the purposes of further sale. The purchasing dealer claimed the ITC on such sale.

The Assessing Officer disallowed the ITC claim for the 2022-23 on the ground that the dealers from whom M/s Tarun Apparels Pvt. Ltd. have purchased the readymade garments have either got their registration cancelled or have filed 'NIL' returns. Thus, the Assessing Officer doubted the sale and the payment of tax on such sale of which the ITC was claimed.

An Appeal was filed by the purchasing dealer. The Appellate Authority dismissed the same on the following grounds that :

(*i*) such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC.

(*ii*) onus lies on the buyer/dealer/purchaser to establish the genuineness of the transaction to claim ITC.

Discuss whether the dismissal of refund application on the above grounds by the Appellate Authority is justified with reference to the GST law. You may support your answer by giving the references of decided case laws, if any ?

(*5 marks*)

(*b*) Explain the "Revisional Authority" with its powers as per the provisions of CGST Act, 2017. Also List out three instances where authority cannot revise the order.

(*5 marks*)

(*c*) M/s Sagar Electronics Private Ltd., located at Haridwar, Uttarakhand and registered under the Composition Scheme furnishes the following break up of its total value of supplies including inward supplies taxed under reverse charge basis for the financial year 2023-24 :

		(Amounts in ₹)
(*i*)	Intra-state supply of MCB Panels chargeable to 1% GST	42,00,000
(*ii*)	Intra-state supply of repair of Conductors & Chips chargeable to 6% GST	6,50,000
(*iii*)	Inward supply on which tax payable under RCM (GST Rate 12%)	4,15,000
(*iv*)	Intra-state supply wholly exempt under section 11 of CGST Act	5,78,000
(*v*)	Export of goods to SEZ at Nil rated	8,36,000

Determine the aggregate turnover of the company for the eligibility under composition scheme. Compute the tax liability of the company under the scheme along with total tax liability for the financial year 2023-24, if the turnover of the company in the previous financial year was 72,50,000.

(*5 marks*)

Answer 2(a)

On the similar facts of the question, as per the judgment of the Hon'ble Kerala High Court in the case of Diya Agencies vs. State Tax Officer, WP(C) No. 29769 of 2023 dated 12.09.2023 held that where the ITC claimed by the petitioner is bona fide and genuine, the same cannot be denied merely because of the fact that the amount was not reflected in Form GSTR-2A of the petitioner. If the supplier does not remit the amount paid to him by the petitioner, the petitioner cannot be held responsible.

In another case decision by Hon'ble Calcutta High Court in the matter of Gargo Traders vs. Joint Commissioner Commercial Taxes (State Tax) [2023]), held that input tax credit cannot be denied to the recipient of goods merely due to retrospective cancellation of the supplier's registration where the recipient is in possession of the relevant tax paying documents and all other conditions for claiming ITC are satisfied. The High Court noted that, at time of transaction, the name of the supplier was already available with the Government's record as a registered taxable person and the petitioner had paid the amount of purchased articles as well as tax on same through bank

and not in cash. Consequently, the Court concluded that there was no failure on the part of the petitioner to comply with any statutory obligations before entering into the transactions without proper verification.

Hence the dismissal by The Appellate Authority is not justified in the light of case decisions as above.

Answer 2(b)

Section 2(99) defines "Revisional Authority" as an authority appointed or authorized under the CGST Act for revision of decision or orders referred to in section 108.

Section 108 of the Act authorizes such "revisional authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the notice. The "revisional authority" can also stay the operation of any order passed by his subordinates pending such revision.

The 'Revisional Authority" shall not revise any order if-

(a) The order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or

(b) The period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.

(c) The order has already been taken up for revision under this section at any earlier stage.

(d) The order is a revisional order.

Answer 2(c)

The composite tax liability of M/s Sagar Electronics Pvt. Ltd. shall be as under:

1. Computation of Aggregate Turnover under composition for financial year 2023-2024

S. No	Particulars	Amount (In Rs.)
1	Intra state supply of MCB Panels chargeable to 1% GST	42,00,000
2	Intra state supply of repair of Conductors & Chips chargeable to 6% GST *Note:* a composition dealer can supply services to an extent of 10% of turnover in the preceding financial year or Rs.5 lakhs, whichever is higher. Thus, maximum supply of service allowed is 10% of Rs. 72,50,000 or Rs. 500,000 as higher = Rs. 7,25,000	6,50,000
3	Inward supply on which tax payable under RCM (GST Rate 12%) (Excluded for calculation of aggregate turnover)	Nil
4	Intra state supply wholly exempt under section 11 of CGST Act	5,78,000
5	Export of goods to SEZ at Nil rated	8,36,000
	Total Aggregate Turnover	62,64,000

2. Computation of tax liability for financial year 2023-2024:
   - Supply of Manufacturing (42,00,000 * 1%) = Rs. 42,000
   - Repair Services of conductor & chips (6,50,000 x 6%): Rs. 39,000
   - Intra-state supply which are wholly exempt - Nil
   - Export of goods to SEZ at Nil Rate

   Total tax liability = Rs. 81,000

3. Tax payable under Reverse Charge Basis:

Sr. No.	Particulars	Amount (In Rs.)
1	Inward supplies on which tax payable under RCM	4,15,000
2	Rate of GST	12%
3	Tax payable under RCM	49,800

Therefore, total tax payable by M/s Sagar Electronics Pvt. Ltd. is Rs. 81,000 - 49,800 = Rs. 1,30,800

Note: As per section 10(2) of the CGST Act, 2017, a registered person is eligible to opt for composition levy of section 10(1) only if inter-alia he is not engaged in inter-state outward supply of goods/services. In given case, the registered person is engaged in Export of goods to SEZ which is an Inter-state supply and therefore, M/s Sagar Electronics Private Limited is **NOT ELIGIBLE FOR COMPOSITION LEVY** in Financial Year 2023-24. Accordingly, tax is payable as per normal rate.

Question 3

(*a*) Kabir & Sons reduced the amount pertaining to an ineligible ITC credit of ₹ 2,56,000 from the output tax liability in contravention of the provision of section 42(10) of CGST Act, 2017 in the month of December, 2023 and filed GSTR3B on the due date 20th January, 2024.

In response to the above, a show cause notice was issued by GST Department under section 74 of CGST Act along with interest. The firm paid the tax and interest on 08.02.2024.

Calculate the interest liability payable, if any in the context the CGST Act, 2017.

(*3 marks*)

(*b*) Shriram, registered in Delhi hired a truck from a Goods Transport Agency (GTA), being unregistered person. Accordingly, Tax amounting to ₹ 6,500/- is payable under Reverse charge basis by Shriram and he is having ₹ 15,000 in his electronic credit ledger.

State whether he can utilize the same for payment of tax under Reverse Charge

Mechanism (RCM) basis ? Also explain which document is to be issued by Shriram to GTA ? Support your answer with correct legal provision.

(*3 marks*)

(*c*) Sanjeev intends to start a new manufacturing business in Raipur, Chhattisgarh. However, he is not able to determine the classification of the goods proposed to be manufactured and supplied by him since the classification of said goods has been contentious. Ravi, a friend of Sanjeev, suggested that he should apply for advance ruling so as to avoid litigation later.

Raj Kishore, nephew of Sanjeev, is also engaged in the supply of goods similar to which Sanjeev proposes to manufacture and Raj Kishore advised him to apply the same classification as of his, since he has already taken advance ruling order regarding classification of the said goods.

Sanjeev also thought it to be a good decision since he was unregistered and thought that he needed to be registered to apply for advance ruling in his name.

You are required to advice Sanjeev with respect to the following :

(*i*) Whether Sanjeev is correct in classifying the goods proposed to be manufactured by him on the basis of his nephew Raj Kishore's advance ruling order ?

(*ii*) Whether Sanjeev needs to get registered to apply for advance ruling ?

(*2+1=3 marks*)

(*d*) M/s Accurate Testing Services, a registered supplier tests and certifies each batch of machine tools before its dispatch by Zeal Tools Pvt. Ltd., engaged in supply to SEZ Units. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable.

The CFO of M/s Zeal Tools Pvt. Ltd. approached his company tax expert to know whether they need to carry out reversal of ITC paid on the testing services received from M/s Accurate Testing Services to the extent attributable to the SEZ supplies.

Explain the correct legal provision in context of IGST Act, 2017.

(*3 marks*)

(*e*) (*i*) Prateek received a legal advice for his family issues and paid 1500 USD dollars as a legal fee to Ms. Pratibha of New York. Whether the above activity of import of service would amount to supply u/s 7 of the CGST Act, 2017 ?

(*ii*) If in above case both of them are real brother and sister & no consideration is paid, will it change your answer ?

(*iii*) Further in the above case, if both of them are real brother and sister & Prateek receives legal advice for his business & he doesn't pay any consideration, what will be your answer ?

(*3 marks*)

Answer 3(a)

As per section 42(10) read with section 50(3) of the CGST Act, 2017 amount reduced from the output tax liability in contravention of the provision of section 42(7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in section 50(3) of CGST Act 2017.

Therefore, applicable rate of interest is @ 18% per annum.

Due date for December month return is 20th January 2024.

Delay period: From 21st January, 2024 to 8th February, 2024=19 days

Interest = Rs. 2399 (Rs. 2,56,000 * 18% * 19 / 365 Days)

Note: Section 42 of the CGST Act, 2017 has been Omitted (w.e.f. 01.10.2022 vide Notification No. 18/2022 – C.T., dated 28.09.2022) by s.107 of the Finance Act, 2022 (No. 6 of 2022).

Answer 3(b)

Rule 85 of the CGST Rules, 2017 provides that the liability payable under RCM shall be paid by way of debiting the electronic cash ledger only. Also, the tax paid under RCM will be available for ITC.

Hence Shriram is not entitled to adjust the liability of RCM of Rs. 6,500 against credit ledger.

Section 31(3)(f) provides that a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

In case, the supplier of service or goods or both is a registered person, no invoice is required to be issued by the recipient of such supply. Section 31(3)(g) requires such recipient /registered person to issue a payment voucher at the time of making payment to the supplier.

Thus, since GTA is an unregistered person, Shriram will issue an invoice on the date of receipt of goods or services or both. Further, he shall issue a payment voucher at the time of making payment to the supplier.

Answer 3(c)

(i) An advance ruling is binding only on the applicant who has sought it and on the concerned officer. An advance ruling is not applicable to similarly placed other taxable person in the state.

Thus, Sanjeev cannot classify the goods to be manufactured by him on the basis of his nephew Raj Kishore's advance ruling order.

(ii) No, Sanjeev need not register to apply for advance ruling since advance ruling can be sought by a registered person or person desirous of obtaining registration. It is not mandatory for a person seeking advance ruling to be registered.

Answer 3 (d)

Under section 16(2) of the IGST Act, credit of input tax is allowed to be taken for inward supplies used to make zero rated supplies. Under section 17 of the CGST Act also, ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of section 16(1) of IGST Act.

Thus, full ITC is allowed on inward supplies of Zeal Tools Ltd. used for effecting supplies to the unit in the SEZ.

Answer 3(e)

(i) Section 7(1)(b) - Supply includes import of services for a consideration even if it is not in the course or furtherance of business.

Thus, although the import of service for consideration by Prateek is not in course or furtherance of business, it would amount to supply.

(ii) Para 4 of Schedule-I & Section 7(1)(c) - Import of services by a person from a related person or his other establishments outside India, in the course or furtherance of business without consideration , is deemed supply.

In the given case, import of service without consideration by Prateek from his real sister (Ms. Pratibha, being member of the same family, is a related person] will not be treated as supply as it is not in course or furtherance of business.

(iii) However, import of service by Prateek without consideration from his sister — Ms. Pratibha (related person) will be treated as supply if she receives legal advice for her business, i.e. in course or furtherance of business Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

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

Question 4

(*a*) M/s STR Sales Private Limited having its registered office at Gurugram (Haryana), carried on the following supplies with their respective turnovers during the financial year ending on 31.03.2024 :

Particulars	*Amounts in* ₹
Supply of Compressed Natural Gas (CNG) at Gurugram	55,00,000
Value of inward supplies on which tax is payable on reverse charge basis	12,00,000
Supply of Aviation Turbine Fuel at Gurugram	3,50,000
Value of transfer from Gurugram to Branch at Lucknow (U.P.) without payment of consideration	6,50,000
Value of taxable supplies of Branch at Lucknow (U.P.)	32,30,000

Compute the aggregate turnover of M/s STR Sales Private Limited from the above information in the context of CGST Act, 2017.

(*5 marks*)

(*b*) M/s DX Logistics Private Limited having its head office at Pune, is registered as Input Service Distributor (ISD). It has three offices in different cities situated in Nagpur, Bhopal, Kanpur which are operational in the current year. The company furnished the following information for the month of May, 2023 :

Particulars	₹ *(Amount)*
CGST paid on services used only for Nagpur office	₹ 2,50,000
IGST, CGST and SGST paid on services used for all offices	₹ 9,65,000
Total turnover of the unit for the financial year is as follows :	
Total turnover of three offices	₹ 15,00,00,000
Turnover of Nagpur office	₹ 7,50,00,000
Turnover of Bhopal office	₹ 2,50,00,000

Compute the credits to be distributed by the company to each of three branches in the context of CGST Act, 2017. Also explain about which Form or Return is to be used by the company to show and claim this distribution of above ITC.

(*5 marks*)

(*c*) In the light of provisions of CGST Act, 2017 and IGST Act, 2017, determine the Place of Supply (POS) in the following independent cases :

(*i*) Aryan Kapoor of Mumbai purchased a bungalow in USA. He hired Bengaluru based architect to design the structure for his bungalow.

(*ii*) Amit buys shares from a MF broking Limited, a stock broker in Delhi. Amit resides in Noida (U.P.)

(*iii*) Neeta booked a special holiday train which runs from Jaipur to Kanyakumari and provides fooding, sight-seeing and other entertainment services. She also booked a return ticket at the same time for the same train.

(*5 marks*)

OR (Alternate question to Q No. 4)

Question 4A.

(*i*) Padma Enterprises, a franchisee distributor and supplier of a branded ice cream is engaged in the supply of ice cream to wholesalers in the outskirts of the state of Delhi. Determine the eligibility of opting for the composition scheme in the above case.

Would your answer be different, if he later plans to supply it to retail customers using online platforms through electronic commerce operator ?

(5 marks)

(*ii*) Vimal, a small trader engaged in supply of pan masala & aerated waters in Dehradun, Uttrakhand made the following supply of goods and services during the financial year 2023-24 :

- Outward supply of pan masala ₹ 65,00,000
- Renting of adjacent two commercial shops ₹ 7,30,000
- Interest income on advances ₹ 1,75,000

From the above information, determine his aggregate turnover to decide the eligibility under composition scheme, if his turnover in the previous financial year was ₹ 68,00,000.

(*5 marks*)

(*iii*) M/s Dexton Supply Private Limited has the following tax liabilities for the financial year 2023-24 :

S. No.	*Particulars*	*Amount in (₹)*
1.	Tax liability of CGST, SGST/UGST, IGST for supplies made during May 2023	1,25,000
2.	Interest & Penalty on delayed payment and filing of returns belonging to June, 2023	16,000
3.	Tax liability of CGST, SGST/UGST, IGST for supplies made during June, 2023	1,28,000
4.	Interest & Penalty on delayed payment and filing of returns belonging to July, 2023.	14,500
5.	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to June, 2022	6,48,000
6.	Demand raised as per the old provisions of Indirect Tax	94,000

The company has the balance of ₹ 5,05,000 in Electronic Cash Ledger. Suggest the company in discharging its the tax liability.

Answer 4(a)

Computation of the aggregate turnover of STR Sales Private Limited

Particulars	Rs.
Supply of Compressed Natural Gas (CNG) at Gurugram [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover vide section 2(6) of the CGST Act, 2017]	55,00,000
Value of inward supplies on which tax is payable on reverse charge basis	Nil
Supply of Aviation Turbine Fuel at Gurugram [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover vide section 2(6) of the CGST Act, 2017]	3,50,000
Value of transfer from Gurugram to Branch at Lucknow (U.P.) without payment of consideration [Being a taxable supply, it is includible in aggregate turnover]	6,50,000
Value of taxable supplies of Branch at Lucknow (U.P.)	32,30,000
Aggregate turnover	97,30,000

Answer 4(b)

Input Tax Credit to be distributed by DX Logistics Private Limited for May, 2023 is detailed as below:

(Amounts in Rs.)

Particulars	Total Credit	Credits to be Distributed		
		Nagpur	Bhopal	Kanpur
CGST paid on the services used for Nagpur Office only	2,50,000	2,50,000	-	
IGST, CGST and SGST paid on services used for all offices	9,65,000	4,82,500	1,60,833	3,21,667
Total	**12,15,000**	**7,32,500**	**1,60,833**	**3,21,667**

Note: Section 20 of the CGST Act, 2017 provides mechanism for the distribution of Input tax credit by the Input Service Distributor (ISD). Input Tax Credit has been distributed on all the offices on the pro-rata basis of the turnover of each of the office.

Form GSTR- 6 is a monthly return that has to be filed by an Input Service Distributor. It contains details of ITC received by an Input Service Distributor and distribution of ITC. There are a total of 11 sections in this return. GSTR- 6 also contains details of all the documents issued for distribution of ITC and the manner of distribution of credit and tax invoice on which credit is received. GSTR- 6 has to be filed by every ISD even if it is a nil return.

Answer 4(c)

(i) Since the immovable property is located outside India, therefore, as per proviso to section 12(3) of the IGST Act, 2017, the place of supply will be Mumbai, being the location of recipient.

(ii) As per the provisions of section 12(12) of CGST Act, the place of supply of banking and other financial services, including stock broking services to any person is the location of the recipient of services on the records of the supplier of services.

However, if the location of recipient of services is not on the records of the supplier, the place of supply is the location of the supplier of services. Hence the place of supply Noida (U.P.). [Assumed that location of recipient of supply is on the records of supplier]

(iii) As per section 12(10) of CGST Act, in case of service supplied on board a conveyance, the place of supply is the location of the first scheduled point of departure of that conveyance for the journey. For determining the place of supply of both goods and services supplied on board a conveyance, no distinction is made between registered and unregistered recipients.

Hence the place of supply for services on board a conveyance shall be Jaipur for outward journey and it will be Kanyakumari for return Journey.

Further, for passenger transportation services, the place of supply as per section 12(9) of IGST Act shall be the place where passenger embarks on the conveyance for a continuous journey {assuming that the service is given to an unregistered person}. Further, as per the explanation, the onward journey and return journey are to be treated as separate journey. Therefore, in given case for passenger transport service, place of supply shall be "Jaipur" for Jaipur to Kanyakumari journey and "Kanyakumari" for Kanyakumari to Jaipur journey.

OR (ALTERNATE TO Q. NO. 4)

Answer 4A(i)

As per the provisions of section 10(1) of the CGST Act, 207 A person is not eligible for composition scheme for goods, if he is Manufacturer of ice cream, pan masala, tobacco, and aerated waters.

Thus, since Padma Enterprises is engaged in the distribution of ice cream, so it will be eligible for the composition scheme assuming the current year turnover does not exceed 1.5 Crore for the state of Delhi, not being out of 8 specified states.

Further, if he in future sells online to retail customers using online platforms through Electronic Commerce Operator (ECO), still he can continue to be under composition levy. Prior to 1.10.2023, there was a restriction on availing composition levy for a registered person who was engaged in providing goods or services through an ECO. However, w.e.f. 01.08.2023, this restriction has been omitted.

Answer 4A(ii)

The Calculation of Aggregate Turnover is as follows:

Particulars	Amounts in Rs.
Outward taxable supply of pan masala	65,00,000
Renting of adjacent two commercial shops	7,30,000

Interest Income on advances Note: Under the second proviso to section 10(1) of CGST Act, 2017, while computing the value of services [other than restaurant services] as referred to in this proviso, interest on loans/deposits/advances will not be taken into account.	NIL
Total Aggregate Turnover	72,30,000

The registered person is ineligible for composition levy of section 10(1) of the CGST Act if quantum of services given in the current year exceeds higher of the following:

- 10% of turnover of the preceding financial year

  = 10% of ₹68,00,000

  = ₹6,80,000

  or;

- ₹5,00,000

{Second proviso to section 10(1) of CGST Act &; section 10(2)(a) of CGST Act}

Since, in given case, services provided in current financial year i.e. 2023-24 is of ₹7,30,000 i.e. it exceeds ₹6,80,000, it is ineligible to opt for composition levy in the current financial year i.e. 2023-24. It is irrespective of the fact that it's aggregate turnover in the preceding Financial Year does not exceed ₹75,00,000 in state of Uttarakhand.

Note: Aggregate Turnover of the Financial Year 2023-24 amounting ₹72,30,000 shall be checked to determine eligibility to composition levy in the subsequent Financial Year i.e. F.Y. 2024-25.

Answer 4A(iii)

Balance in Electronic cash ledger can be used in the following manner to discharge tax liability by M/s Dexton Supply Private Limited:

Particulars	Amount in Rs.
Balance available in electronic cash ledger	5,05,000
Less:	
Tax liability of CGST, SGST/UGST, IGST for supplies made during May, 2023	1,25,000
Interest & Penalty on delayed payment and filing of returns belonging to June, 2023	16,000
Tax liability of CGST, SGST/USGST, IGST for supplies made during June, 2023	1,28,000
Interest & Penalty on delayed payment and filing of returns belonging to July, 2023	14,500
Balance available towards Demand raised as per section 73 or section 74 under CGST Act, 2017	2,21,500

Balance in electronic cash ledger	Nil
Note: The balance amount of Rs. 4,26,500 (6,48,000 - 2,21,500) towards demand raised under section 73 or section 74 under CGST Act, 2017 to be discharged before discharging liability of demand raised under old provisions of Indirect Taxes.	

PART–II

Question 5

(*a*) M/s Guru Transport Co., a partnership firm is engaged in the business of playing, hiring and leasing of goods carriage owning 8 vehicles. The firm furnishes the following information for the previous year ending on 31.03.20024 :

(**Amounts in ₹**)

– Receipts from 6 Vehicles	50,50,000
(Capacity 18MT) bought for ₹ 15 Lakh each in April, 2023	
– Receipts from 4 Vehicles	20,50,000
(Capacity 10MT) bought for ₹ 5 Lakh each in October, 2023	
Expenses incurred :	
Diesel	8,24,000
Drivers Salary	12,00,000
Repair & Maintenance	4,22,000
Interest to partners @ 12%	40,000
Salary to Partners	3,50,000

From the above information, compute the taxable income of the firm for the A. Y. 2024-25 as per the section 44AE and as per normal provision (ignore new tax regime) and find out which option will be better in terms of tax saving ? Assume depreciation on vehicles as allowed under income tax is @ 30%.

(*b*) M/s DLF Ventures LLP incorporated on 01-04-2023 has following three business plans for 10 years as alternatives to start with a capital investment of ₹ 100 Crore with an expected rate of return (net profits) of 5% every year and is thinking to start the commercial operations from the financial year 2023-24 :

(*i*) Set up a startup company engaged in smart, supply chain management holding a certificate of eligibility from Inter-ministerial board of certification.

(*ii*) Set up a Cold Chain facility for refrigeration, storage, and transportation of dairy products.

(*iii*) Purchase of tea gardens for growing and manufacturing tea in India.

The entity has approached its company secretary for advising on the best business plan keeping in view of the various tax deductions allowed under the Income Tax Act, 1961, assuming all other conditions having been fulfilled by the entity.

(*5 marks*)

(c) Determine with reasons whether the following are the acts of (*i*) tax planning (*ii*) tax evasion (*iii*) tax avoidance :

(*i*) Sumit, a retail garments trader claims lavish travelling expenses incurred of ₹ 45,000 and personal laptop repair expenses of ₹ 18,000 as business expenses, when filing his ITR.

(*ii*) Ravi, a regular income tax return filer transferred a sum of ₹ 5 lakhs from his bank account to his wife's bank account and thus made a fixed deposit of the same amount in wife's name earning interest @ 7.5% per annum. His wife does not file any ITR due to being a house wife and having no any taxable income.

(*iii*) M/s ACE Private Limited, an existing manufacturing company having two units named X and Y split up both the units into two separate companies as X Limited and Y Limited under a demerger drive. Further M/s X Limited setup an establishment in SEZ to enjoy tax holiday under section 10AA of Income Tax Act. For this, the used plant & machinery of Unit Y were sold and transferred to M/s X Limited to compensate the 30% requirement of the total cost of Plant & Machinery in X Limited.

(*5 marks*)

Answer 5(a)

Option 1: Computation of Income for the Assessment Year 2024-25 as per section 44AE of the Income Tax Act, 1961

Particulars	Amount (Rs.)
6 Vehicles (6 vehicle *18MT*Rs. 1000 per ton * 12 month) Considered heavy goods vehicle > 12 MT)	12,96,000
4 Vehicles (4 vehicle * Rs. 7500 per month * 6 month) Considered other than heavy goods vehicle < 12 MT)	1,80,000
Total Income	14,76,000
Less:	
Interest to partners @12%	(40,000)
Salary to Partners (maximum allowed u/s 40(b)(v)	(3,50,000)
Presumptive Income 44AE (14,76,000-3,90,000)	10,86,000

Option 2: Computation of Income for the Assessment Year 2024-25 as per income tax normal provision

Particulars	Amount (Rs.)
Total Receipts from 10 Vehicles (50,50,000+20,50,000)	71,00,000
Less: Expenses Allowed:	
Diesel	8,24,000
Driver Salary	12,00,000

Repair & Maintenance	4,22,000
Depreciation (15 Lakh * 6 * 30%) + (5 Lakhs * 4 * 15%)	30,00,000
Interest to partners @12%	40,000
Book Profit as per section 40(b)(v)	16,14,000
Salary to Partners (maximum allowed u/s 40(b)(v)	
-(150000 or 90% of 3,00,000 as higher = 2,70,000	
-60% of (16,14,000 – 3,00,000) = 7,88,400 (270000 + 788400 = 1058400)	
Or Actual Salary i.e. 3,50,000 whichever is lower is allowed	(3,50,000)
Net Profit	12,64,000

Conclusion: Since Presumptive Income 10,86,000 is lower as compared to the Net Profit 12,64,000 so it would be preferable to opt to pay tax under presumptive income.

Note: Since 44AE is a deemed income provision, the firm can choose to declare lower income, even if its net profit is higher than the presumptive income.

Answer 5(b)

(i) As per the provisions of section 80-IAC of the Income Tax Act, 1961, M/s DLF Ventures LLP is an eligible start-up and the total amount of quantum of deductions allowed for the entity will be 100% of the profit and gains derived from such business for any three consecutives AY out of 10 years.

Thus, the total deductions allowed will be Rs. 100 Crore*5% for 3 years starting from A.Y. 2024-25 to 2026-27 totalling to 5 crore * 3 = 15 crores.

(ii) As per the provisions of section 35AD of the Income Tax Act, 1961, all assessee who are engaged in specified business (setting up and operating a cold chain facility) will be entitled to 100% deduction of capital expenditure incurred in the previous year as entirely devoted to said business shall be deducted from business income.

Where for any assessment year any loss computed in respect of the specified business referred to in section 35AD(1) has not been wholly set off, so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business shall be carried forward to the following assessment year, and:

- it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and
- if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

Thus, the total capital expenditure of the entity Rs. 100 Crore as incurred during financial year 2023-24 will be allowed to the extent of profits earned which is 5 Crore and is available to carried forward and set-off in next assessment year and so on. So total deductions in a period of 10 years will be 5 Crore * 10 year = 50 crore.

(iii) As per the provisions of section 33AB of the Income Tax Act, 1961, all assessee who are

engaged in the business of growing and manufacturing tea/coffee/rubber in India will be allowed a deduction of 40% of the profits of such business subject to the amount as deposited with NABARD or in the Deposit Account as per scheme framed by Tea, Coffee or Rubber Boards.

Here assuming all other mandatory conditions being satisfied by the entity, the amount of deduction will be 40% of 5 Crore (100 Crore*5%) every year during next 10 years.

So total deductions come to 2 Crore*10 years=20 crore.

Advise: As per the analysis of all three deductions as above, the summery of deductions during 10 years is as under:

- Start up 15 Crore
- Cold chain facility 50 Crore
- Tea Garden 20 Crore

The business plan of Set up a Cold chain facility for refrigeration, storage and transportation of dairy product will be the best tax saving plan for the entity.

Answer 5(c)

(i) Tax Evasion: As per the provision of Income Tax Act, those expenses as directly or indirectly pertaining to the business of the assessee are the allowable expenses. Thus, claiming personal expenses with respect to travel and laptop repair expenses as business expenses will be a case of tax evasion due to the use of dishonest and unethical means having an element of deceit and thus have the possibility of penalties and prosecutions as per law.

(ii) Tax Avoidance: Interest earned on fixed deposit is a taxable income under the head income from other sources of Income Tax Act. Making fixed deposit by Ravi in wife's name out of his own funds will be an act to avoid the tax liability on such income in his own hands by using the loophole of basic exemption threshold limit for mandatory filing of ITR.

(iii) Tax Evasion: Among the essential conditions of for claiming deduction of respect of newly established units in Free Trade Zones/Special Economic Zones under section 10AA of the Income Tax, Act, 1961, one condition is that the new unit must not be constituted by the transfer of old machines previously used for any purpose whatsoever with an exception that only such old used machines are allowed as does not exceed 20 percent of the total value of the machinery or plant used in the new unit.

Thus, on the basis of above provision, since M/s ACE Private Limited transferred the old machine for value exceeding the limit of 20%, it clearly refers to the case of availing the tax holiday by dishonest and unethical means having an element of deceit and thus have the possibility of penalties and prosecutions as per law.

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

Question 6

(a) M/s DTA Private Limited, an existing manufacturing company having two units named X and Y split up both units into two separate companies through a demerger drive as X Limited and Y Limited in the month of December, 2023. The relevant information of both units is given hereunder :

(Amounts in ₹)

Losses remaining for set off	*Since A.Y.*	*Unit X*	*Unit Y*	*Common*
Unabsorbed Capital Expenditure Scientific Research	2017-18	—	—	3,50,000
Speculation Business Loss	2016-17	27,500	56,200	—
Unabsorbed Depreciation	2014-15	3,15,000	2,28,000	—
Preliminary Expenses (remaining for 3 years)	—	—	—	36,000
Accumulated Business Losses	2018-19	12,50,000	8,26,500	—
Expenses of demerger	—	75,000	35,000	—
Book Values of Net Assets on demerger	—	72,00,000	24,00,000	—

Further following information are furnished for the newly demerged companies :

Particulars	*X Limited*	*Y Limited*
Business Profits earned during F.Y. 2023-24	22,75,000	17,26,300
Speculation Profits earned F.Y. 2023-24	22,000	26,500

Compute the taxable profits of the resulting companies X Limited and Y Limited.

(*5 marks*)

(*b*) M/s DFC Private Limited, a closely held non-banking financial company engaged in the business of money lending having equity share capital of ₹ 50 Crore divided into 5 Crore equity shares of ₹ 10 each fully paid up and also having accumulated profits of ₹ 1.25 Crore, disbursed the following amounts to different stakeholders of the company during the F.Y. 2023-24 :

(*i*) Granted an interest free loan of ₹ 25 Lakh to a partnership firm in whcih Nitin, being equity shareholder holding 5% equity shares of the company, is a partner having 25% share of profit in the firm.

(*ii*) Granted an interest-bearing loan of ₹ 20 Lakh to M/s EXL Private Limited in which Mrs. Riya, wife of Nitin is the equity shareholder holding 25% equity shares of M/s EXL Private Limited.

(*iii*) Granted an interest free loan of 5 Lakh on 31.05.2023 to Mr. Kapil, an individual who l ater bought 12% equ ity shares of the company on 05-09-2023.

(*iv*) Paid an amount of ₹ 2 Lakh as Security Deposit to M/s DHF Private Limited, 100% subsidiary of M/s DFC Limited in terms of agreement for leasing out of office premises. M/s DHF Private Limited has also provided inter corporate loans of ₹ 50 lakhs to M/s DFC Private Limited.

(v) Granted an interest free loan of 5 Lakh on 04-08-2023 to Meena, an individual holding 15% equity shares of the company. She repaid the loan in full to the company on 15-02-2024.

Determine whether above outflows by the company constitute deemed dividends under section 2(22)(e) of the Income Tax Act, 1961. Support your reasons for the decided case laws, if any.

(5 marks)

(c) M/s GTP Private Ltd, a widely held company is considering a major expansion of its production facilities and the following alternatives are available :

Particulars	*Alternatives (₹ lakhs)*		
	A	*B*	*C*
Share Capital (₹ 10 each)	50	20	10
14% Debentures	—	20	15
Loan from financial Institution @ 15%	—	10	25

The expected rate of return before tax is 25%. The rate of dividend of the company is not less than 20%. The company at present has low debt. Corporate tax is 30%. Which of the alternatives you would choose ?

(5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

(i) M/s Excel Private Limited, sold one of its two plants under a slump sale to M/s. Pixel Private Limited on 31-10-2023 for a sales consideration of ₹ 45 lakhs due to continuous losses being occurred. The balance sheet of the plant sold as on 31-10-2023 is given hereunder :

Particulars	*(Amounts in ₹)*
Liabilities :	
Paid up Capital (2,00,000 equity shares of ₹ 10 each fully paid up)	20,00,000
Revluation Reserves	82,000
Bank Loan	7,42,000
Current Liabilities	14,72,800
Total	**42,96,800**
Assets :	
Fixed Assets less accumulated depreciation	21,70,000
Current Assets	4,08,000

Goodwill	6,12,000
Reserves and Surplus	10,23,600
Deferred Revenue Expenditure	28,000
Income Tax refund claimed for AY 2023-24	55,200
Total	**42,96,800**

Further the information provided are as under :

(1) Fair market value of 15,000 debentures on the date of sale was 1,26,500. and of equity shares was 78,500.

(2) Revaluation reserves pertain to the land purchased in 2016-17 at a cost of 7,52,000. The value adopted of land for payment of stamp duty is ₹ 12,00,000 on the date of slump sale.

You are required to compute the Net Worth, Fair Value of Capital Assets and Capital gains or loss on slump sale of the plant for the purpose of section 50B of the Income Tax Act, 1961.

(8 marks)

(ii) M/s EBM Infotech Private Limited, engaged in the export of notified goods established a Unit in SEZ, Noida and started services from 1st April, 2012. During the previous year ending 31-03-2024, it has received consideration in respect of export of ₹ 45 Lakh apart from domestic supply of ₹ 15 Lakh. The export proceeds include the following expenses incurred for the delivery of export as charged in the bill of supply :

Particulars	(Amounts in ₹)
Packing Charges	68,000
Freight Paid	1,25,000
Custom House Agent Commission	37,000
Insurance Charges	62,500

From the above given information, you are required to compute the amount of Export Turnover, profit eligible for deduction and the deduction allowed, if any under Income Tax, Act as eligible for the assessment year 2024-25 of the company, assuming that the company earned total profits of ₹ 7.5 Lakh during the year and 75% of this profit earned was debited to the profit and loss account and credited to the "Special Economic Zone Re-investment Reserve Account".

(7 marks)

Answer 6(a)

Computation of Taxable Profits of the Resulting Companies

Particulars	X Limited	Y Limited
Business Profits earned during F.Y. 2023-24	22,75,000	17,26,300
Speculation Profits earned F.Y. 2023-24	22,000	26,500

Less:		
Unabsorbed Depreciation	(3,15,000)	(2,28,000)
Accumulated Business Losses	(12,50,000)	(8,26,500)
Preliminary Expenses (remaining for 3 years)	(9000)	(3000)
Expenses of demerger (1/5th allowed as per section 35DD)	(15,000)	(7,000)
Total Deductions	15,89,000	10,64,500
Balance Taxable Profit	7,08,000	6,88,300

Note.

1. Unabsorbed Capital Expenditure Scientific Research cannot be brought forward by demerged companies. (ITO vs. Mahyco Vegetable Seeds Ltd (2009) 308 ITR(AT) 205, Mumbai
2. Accumulated loss as per section 72A of Income Tax Act, does not include speculation business loss. So, these are not eligible for carry forward and set off by resulting companies.
3. Preliminary expenses remaining for write off will be apportioned in the ratio of respective book values of the demerging units at the time of demerger and will be written off for the remaining period in the same manner as would have been allowed to the demerged company. Same is calculated hereunder:

   Total books values of both units: 72,00,000+24,00,000=96,00,000

   Apportionment of Preliminary Expenses:

   X Limited=36,000*72,00,000/96,00,000=27,000

   Y Limited= 36,000*24,00,000/96,00,000=9,000

   Preliminary Expenses allowed to be written off during the F.Y. 2023-24:

   X Limited = 27,000 / 3 = 9000

   Y Limited = 9,000 / 3 = 3000

Answer 6(b)

(i) As per section 2(22)(e) of the Income tax Act, 1961 'the Act' any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits shall be considered as deemed dividend.

In this case, the company provided interest free loan, being not in the normal course of business to a firm. However, Nitin, **holding only 5% of the voting power of the company** is substantially interested having more than 20% share in the firm i.e. 25%. As, the shareholding of Nitin in the Company is only 5% i.e. not 10% or more, the loan given here by the company to the firm would not considered as deemed dividend u/s 2(22)(e) of the Act.

(ii) As per the provisions of section 2(22)(e) of the Act, Since Nitin is not a member having substantially interested of atleast 20% share of M/s EXL Pvt. Limited and further the loan was provided in the normal course of business, therefore, it cannot be treated as deemed dividend u/s 2(22)(e) of the Act.

(iii) As decided in the case of Sagar Sahil Investment (P) Limited 120 TTJ 925, loan received by the assessee before becoming a registered shareholder of the lender company cannot be treated as deemed dividend u/s 2(22)(e) of the Act. Hence it cannot be treated as deemed dividend.

(iv) Any advance received as a deposit by the company in connection out of property cannot be treated as deemed dividend. Refer to ACIT vs. Madras Madura Properties Pvt Limited and Bombay Oil Industries Ltd. 28 SOT 383. Hence security deposit of Rs. 2 Lakh is not taxable as deemed dividend.

(v) As decided in the case of Tarulata Shyam vs. CIT (1977) 108 IT R 345(SC), that even if a loan is repaid before the end of the previous year, the section will be attracted. Hence interest free loan given to Meena not being in the normal course of business of the company will be treated as deemed dividend.

Answer 6(c)

Evaluation of financial alternative (Rs. Lakhs)

Particulars	A	B	C
(EBIT) Earnings before Interest & Taxes (25% of Rs. 50 lakhs)	12.50	12.50	12.50
Less: (i) Interest on Debentures	-	(2.80)	(2.10)
(ii) Interest on Loan	-	(1.50)	(3.75)
EBT (Profit Before Taxes)	12.50	8.20	6.65
Less: Taxes @30%	3.75	2.46	2.00
PAT (Profit After Taxes)	8.75	5.74	4.65
Number of Shares (In Lakh)	5.00	2.00	1.00
EPS (Earning per shares)	1.75	2.87	4.65
Alternative (C) is more profitable because shareholders will be benefited more. Therefore alternative (C) should be chosen.			

OR (ALTERNATE TO Q. NO. 6)

Answer 6A(i)

For the purpose of section 50B of Income Tax Act, 1961, the profit or gains on slump sale will be difference of Full value of consideration less Cost of acquisition and cost of improvement. Where full value of consideration is the fair market value of the capital assets computed as per Rule 10 UAE and the cost of acquisition and cost of improvement will be the "net worth" of the undertaking or division sold.

For the purpose of Rule 11 UAE read with section 50B(2)(ii) of income Tax Act, the fair market value of the capital assets shall be FMV 1 (determined under sub section 2) or FMV2 (determined under sub section 3) whichever is higher.

1. **Computation of Net Worth of the plant [Section 50B(2)]**

Particulars	Amount	Amount
Book value of fixed assets	21,70,000	
Less: Revaluation reserve	(82,000)	20,88,000
Book value of current assets		4,08,000
Goodwill		Nil
Deferred Revenue Expenditure		Nil
Income Tax refund claimed for AY 2023-24		55,200
Aggregate value of assets (A)		25,51,200
Book value of all liabilities:		
Bank Loan	7,42,000	
Current Liabilities	14,72,800	
Book value of all liabilities (B)		22,14,800
Net Worth (A-B)		3,36,400

2. **Computation of Fair Market Value of capital assets of the plant (Rule 11 UAE):**

Particulars	Amount
FMV 1: Book value of assets reduced by book value of liabilities:	
Book value of assets:	
Stamp duty value of land	12,00,000
Book value of other Fixed Assets (Rs. 21,70,000 less cost of land Rs. 7,52,000	14,18,000
Book value of Current assets	4,08,000
IT Refund due	55,200
Total (A)	30,81,200
Book value of all liabilities:	
Bank Loan	7,42,000
Current Liabilities	14,72,800
Total (B)	22,14,800
FMV 1 (A-B)	8,66,400

FMV2: Value of the Monetary Consideration Received = Rs. 45,00,000

3. Computation of Capital Gains on slump sale of the plant [Section 50B(1)]

Higher of FMV 1 or FMV 2 (8,66,400 or 45,00,000)	= 45,00,000
Less: Net worth	= 3,36,400
Long term Capital Gains on Slump Sale	= 41,63,600

Since the land was purchased in 2016-17, it can be inferred that the unit which is transferred in slump sale was in existence for more than 36 months and therefore, the resultant capital gains is Long Term Capital Gains. However, benefit of indexation is not available while computing Long Term Capital Gains under section 50B of the Income Tax Act.

Answer 6A(ii)

As per the provisions of Explanation 1 of section 10AA of Income Tax Act, 1961 states that:

For the purposes of this section,

"Export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee in convertible foreign exchange but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;

A. Calculation of Export Turnover of Unit	(Amounts in Rs.)
Consideration from Export of goods	45,00,000
Less: Freight Paid	(1,25,000)
Insurance Charges	(62,500)
Eligible Export Turnover	43,12,500

Note: Packing charges and C&HA commission as expenses and charged in the bill of supply are not expressly excluded as per above explanation, hence will be part of export turnover.

B. Calculation of Profit eligible for deduction:

Total Turnover (Rs. 43,12,500 + Rs. 15,00,000) = Rs. 58,12,500

$$\text{Profit of the Unit in SEZ} * \frac{\text{Export Turnover of Unit}}{\text{Total Turnover of SEZ Unit}}$$

Rs. 7,50,000 * Rs. 43,12,500 / Rs.58,12,500 = Rs.5,56,452

C. Amount of deduction allowed under section 10AA for AY 2024-25:

Maximum amount of deduction allowed as per section 10AA (1) (ii) of the Income tax Act will be 50% of the profit eligible for deduction as debited to P&L Account and credited to the "Special Economic Zone Re-Investment Reserve Account" which comes to:

Amount credited to Reserve Account.

Profit of the Unit in SEZ 7,50,000 * 75% = Rs. 5,62,500

Thus, Maximum Deduction allowed is:

50% of Profit eligible for deduction 5,56,452 * 50 % = Rs. 2,78,226 which is within the limit of above Rs. 5,62,500

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LABOUR LAWS & PRACTICE

ELECTIVE 2 PAPER 7.3

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

Question 1

Aviary Metal Limited (AML) is a Maharatna PSU under the Ministry of Defence, Government of India, which gives progressed items and framework to military and government for manufacturing units. AML is one of the top Maharatna PSUs.

The company has grown significantly in turnover and is consistently giving sufficient profit. AML is focusing on solid development of 12-15% during 2022-23. Radar and Missile Systems, Communication, Network-Centric Systems and other areas will continue to drive the company's growth in the years ahead.

In spite of being one of the top industries, total 1000 workers are employed and the working condition of most of the contractual workers are not good. Therefore, Aviary Metal Limited (AML) workers union decided to amalgamate to have effective collective bargaining as there were two registered trade unions and they all were demanding 7th pay Commission and better working conditions in AML. The contractual workers comprising 60 percent of the AML strength, which are continuously working for the last 5 years and still they are on contract employment. Now after 5 years of service, the licence of the contractor has expired to engage the contract labor or the contractor has not applied for the renewal of the licence but the workmen were still employed with the company and not given the status of regular employees. There were frequent strikes with respect to it. Now to have effective collective bargaining with the management, those two registered trade unions have amalgamated to become a strong trade union with the name of Hind Mazdoor Sangh.

Hind Mazdoor Sangh were in negotiations with the management for implementation of 7th Pay Commission and to notify permanent positions for several months. Despite several round of discussions, no agreement has been reached. The industrial peace got disturbed which led to frequent strikes affecting the production and target delivery of products causing financial loss to the company. The union after giving notice to management decided to go on hunger strike for 10 days.

The management of AML claims that this strike is illegal under the Industrial Disputes Act, 1947, as it has not followed the prescribed procedure for calling a strike. The management has decided to deduct 10 days wages of workers who resorted to hunger strike and initiated disciplinary proceedings against them as they turned violent, they damaged the property of the company as well.

In the meanwhile, due to some dispute with the officers of AML, one worker named Rakesh has been suspended who was active member of the Union. In response to the above action, Hind Mazdoor Sangh filed the case before the Labour Court against the AML. Whereas Court decided the case in favour of Management along with compensation of ` 2 Lakh for the loss suffered by management.

Based on the above facts, answer the following questions, with relevant provisions :

(i) Whether the employer is bound to pay the wages as per the 7th pay commission to the

contractual employees and also liable to provide them better working conditions being contract employees under the Contract Labour (Regulation & Abolition Act), 1970.

(ii) Are contract employees eligible to form a trade union ? Are workmen entitled to go for civil or criminal immunities under the Trade Union Act ?

(iii) Who will be responsible for renewal of license for registration contract employees ? Explain the procedure with regard to renewal licence.

(iv) Is it necessary for the principal employer to register the establishment for engaging contract employees ? What are the effects of non-registration ?

(v) Can licence be revoked by the licencing officer for non-fulfilment of certain conditions ? Cite those conditions under The Contract Labour (Regulation and Abolition Act), 1970.

(*5 marks each*)

Answer 1(i)

Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 makes a contractor statutorily responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

The employer is not bound to pay the wages as per 7th Pay Commission to the contractual employees but the employer is bound to pay them the minimum rates of wages under the Minimum Wages Act, 1948 and as per the Payment of Wages Act, 1936.

Yes, the employer is responsible to provide them better working conditions, such as welfare and health of contract labour as given from Section 16 to 20 of the Contract Labour (Regulation and Abolition Act), 1970.

Section16 provides the facility of canteen.

Section 17 provides the amenities of rest-room.

Section 18 provides other essential benefits.

Section 19 provides first aid facilities.

Section 20 provides the liability of principal employer in certain cases.

If any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed.

All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Answer 1(ii)

Trade Union means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions. [Section 2 (h) of the Trade Unions Act, 1926]

Contract Employees can form a trade union as per the Trade Unions Act, 1926 as Section 4 of the Act does not make any difference between the contractual or permanent employees with respect

to forming a trade union, or Section 4 does not define or do not prohibit the contractual employees to form a trade union. As they can form a trade union or become a member of the trade union.

Section 17 of the Trade Unions Act, 1926 provides that no office-bearer or member of a registered Trade Union shall be liable to punishment under sub-section (2) of section 120B of the Indian Penal Code, in respect of any agreement made between the members for the purpose of furthering any such object of the Trade Union as is specified in section 15, unless the agreement is an agreement to commit an offence.

As the workers can form a trade union or become a member of the trade union, but they are not entitled for criminal immunity because the moment they turned violent, and damage the property of the company, no immunity will be granted to them as defined under Section 17 of the Trade Unions Act, 1926.

Section 18 of the Trade Unions Act, 1926 provides that no suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

A registered Trade Union shall not be liable in any suit or other legal proceeding in any Civil Court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the Trade Union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the Trade Union.

Answer 1(iii)

Renewal of the licence is the responsibility of the contractor.

The contractor has to apply under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 to the licensing officer by providing all details and such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

According to section 13 of the Contract Labour (Regulation and Abolition) Act, 1970 every application for the grant of a licence under sub-section (1) of Section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

The licensing officer may make such investigation in respect of the application received and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

A licence granted shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

Under Rule 25 of the Contract Labour (Regulation & Abolition) Central Rules, 1971, every licence granted under section 12 shall be "in Form VI annexed to the Rationalisation of Forms and Reports under Certain Labour Laws Rules, 2017" and every licence granted under sub-rule (1) or renewed under Rule 29 shall be subject to the following conditions, namely-

(i) the licence shall be nontransferable;

(ii) the number of workmen employed as contract labour in the establishment shall not, on any day, exceed the maximum number specified in the licence.

According to Rule 27 of the Contract Labour (Regulation & Abolition) Central Rules, 1971, every licence granted under Rule 25 or renewed under Rule 29 shall remain in force for twelve months from the date it is granted or renewed.

In accordance with Rule 29 of the Contract Labour (Regulation & Abolition) Central Rules, 1971-

1. Every contractor shall apply to the licensing officer for renewal of the licence.
2. Every such application shall be in Form VII in triplicate and shall be made not less then thirty days before the date on which the licence expires, and if the application is so made, the licence shall be deemed to have been renewed until such date when the renewed licence is issued.
3. The fees chargeable for renewal of the licence shall be the same as for the grant thereof.

Provided that if the application for renewal is not received within the time specified in sub-rule (2) a fee of 25 per cent in excess of the fee ordinarily payable for the licence shall be payable for such renewal. Provided further that in case where the licensing officer is satisfied that the delay in submission of the application is due to unavoidable circumstances beyond the control of the contractor, he may reduce or remit as he thinks fit the payment of such excess fee.

Answer 1(iv)

Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 makes it mandatory for every principal employer of an establishment to which this Act applies to make an application to the registering office in the prescribed manner for registration of the establishment. If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed. So, the Act mandates the principal employer to be registered.

As per Section 7, the principal employer is required to obtain certificate of registration. [*Food Corporation of India Workers Union vs. Food Corporation of India & Ors. 192 LLJ (Guj.)]*.

According to Section 9 of the Contract Labour (Regulation and Abolition) Act, 1970, no principal employer of an establishment, to which this Act applies, shall employ contract labour in the establishment after the expiry of the period under Section 7 in the case of the establishment which is required to be registered under Section 7. The principal employer shall also not employ contract labour in the establishment after the revocation of registration of such establishment under Section 8 of the Act.

Answer 1(v)

A licence can be revoked by the licencing officer as mentioned under Section 14 of the Contract Labour (Regulation and Abolition) Act, 1970 that if the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that:

a) A licence granted under Section 12 has been obtained by misrepresentation or suppression of any material fact, or

b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder, then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or

forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

Question 2

Rahul (appellant) was working as a Clerk in a Nationalised Bank posted at MG Road Branch, Panipat. He joined the branch on 1st November, 2016 and was assigned the duties of cashier. As per appellant he attended the duty on 10th and 11th November, 2018 and his attendance was marked on the muster roll for both days. But according to the Bank authorities the appellant absented from duties on both days without permission. The case of the Bank further was that the appellant on 10th November, 2018 entered the Bank with about 15 persons in the morning and went to the office of the Chief Manager and thereafter left the office. Again, on 11th November, 2018 he worked up to 2.30 pm and absented himself from duty thereafter. The bank deducted two days wages of appellant treating him absent from duty. As a reason of this, Appellant went on strike, later he provoked other bank employees as well and they all went on strike for first four hours on 13th November, 2018 without complying the notice period. Hence, the bank issued an administrative circular as per their Standing Orders, the employees cannot go on strike for first four hours, warning the employees that they would be committing a breach of their contract of service if they participate in the strike. By ignoring the order, they have participated in the strike from the beginning of the working hours on 13th November, 2018. The employees however, resumed work on that day after the strike hours and the bank did not prevent them from doing so. The bank had already made it clear in advance, that if they will go on strike for first four hours, they would not be entitled to the wages for the whole day and hence they need not report for work thereafter. On 16th November, 2018, the Bank issued a circular directing the managers to deduct the full day's wages of those employees who had participated in the strike. The employees requested to the Chief Manager not to make deduction from wages, but the bank deducted their wages, hence the employees referred the matter to the Labour Court.

On the basis of above facts, answer the following questions :

(i) Was appellant entitled for full day's wages for both days 11th and 12th November 2018, when he attended duty only for few hours ? Was the strike legal and justified, indicate the legal provisions of strike as per Industrial Disputes Act, 1947.

(*5 marks*)

(ii) The Bank Authorities made the deduction of wages for full day's salary for 13th November, 2018 from the employees' salary, was it justified ?

(*5 marks*)

(iii) Are bank employees bound to follow the Industrial Standing Orders of the Bank or the strike notice be complied ?

(*5 marks*)

(iv) Discuss the various authorities for the settlement of disputes between Bank and their employees under the Industrial Disputes Act, 1947.

(*5 marks*)

(v) What are the consequences of illegal strike, explain it, whether the Banking Industry come under the category of Public Utility Services ?

(*5 marks*)

Answer 2(i)

Section 7 of the Payment of Wages Act, 1936 allows deductions from the wages of an employee on the account of absence from duty. Further, a Section 9 (1) of the Payment of Wages Act, 1936, provides for deductions for absence from duty. It states that the deductions may be made under clause (b) of sub section 7 only on account of the absence of an employed person from place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of which he is required to work.

So, appellant is not entitled for both days' wages, as it is based on the well-known principle of Payment of Wages Act "No work no pay". Hence appellant had not worked at all during the period of his absence. It is abundantly clear that the person who has not left his desk but also office' premises is certainly one who is absent form duty and makes himself liable for deduction of wages. *(Prakash Chandra Johri Vs. Indian Overseas Bank, 1984 sec)*.

Since the question is silent about the 12th November, 2018, hence, if appellant was absent from the duty on 12th November, 2018, he is not entitled to be paid or if he was not absent, he will be entitled to be paid the wages.

The strike was not legal and justified as they did not comply the provisions of Section 22 of the Industrial Disputes Act, 1947, which are mentioned here:

1) No person employed in a public utility service shall go on strike in breach of contract-
   a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
   b) within fourteen days of giving such notice; or
   c) before the expiry of the date of strike specified in any such notice as aforesaid; or
   d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

A strike or lock-out shall be illegal if it is commenced or declared in contravention of Section 22 or Section 23. So, in the given case, the strike is in contravention of the above provisions of Section 22 of the Industrial Disputes Act, 1947, hence it is an illegal strike.

In the case of Indian General Navigation and Rly. Co. Ltd. v. Their Workmen, (1960) I L.L.J. 13, the Supreme Court held that the law has made a distinction between a strike which is illegal and one which is not, but it has not made distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act and is wholly misconceived, specially in the case of employees in a public utility service. Therefore, an illegal strike is always unjustified.

Answer 2(ii)

Section 7 of the Payment of Wages Act, 1936 allows deductions from the wages of an employee on the account of absence from duty. Further, a Section 9 (1) of the Payment of Wages Act, 1936, provides for deductions for absence from duty. It states that the deductions may be made under clause (b) of sub section 7 only on account of the absence of an employed person from place or places where, by the terms of his employment, he is required to work, such absence being for the whole or any part of which he is required to work.

In the case of Crompton Greaves Ltd. v. The Workmen, AIR 1978 S.C. 1489, it was observed that for entitlement of wages for the strike period, the strike should be legal and justified.

Supreme Court in Bank of India v. T.S. Kelawala (1990 II LLJ S.C. 39) decided, that where

employees are going on a strike for a portion of the day or for whole day and there was no provision in the contract of employment or service rules or regulations for deducting wages for the period for which the employees refused to work although work was offered to them, and such deduction is not covered by any other provision, employer is entitled to deduct wages proportionately for the period of absence or for the whole day depending upon the circumstances.

It was justified on the part of bank authorities to deduct full day's wages for 13th November. 2018 from the employees' salary, as the strike was illegal and not justified. On 13th November, 2018 the employees were absent from duty for the first essential four hours and they went on strike even after warned by the bank, as they will not be entitled to the wages for the whole day even the pro rata salary for the hours of work that the employees remained in the Bank premises without doing any work.

Answer 2(iii)

Standing Orders' defines the conditions of recruitment, discharge, disciplinary action, holidays, leave, etc., go a long way towards minimising friction between the management and workers in industrial undertakings. The Industrial Employment (Standing Orders) Act requires employers in industrial establishments to clearly define the conditions of employment by issuing standing orders duly certified. Banking employees are bound to follow the Industrial Employment (Standing Orders) over the Strike notice, as strike notice was also not legally served and they have not complied with the provisions of the Industrial Disputes Act, 1947 as mentioned under Section 22 of the Industrial Disputes Act, 1947.

As the object of the standing orders is-

- First to enforce uniformity in the conditions of services under the different employers in different industrial establishments.
- The employer once having made the conditions of employment known to his employed workmen cannot change them to their detriment or to the prejudice of their right stand interests.
- For maintaining industrial peace and continued productivity, the significance of the express written conditions of employment cannot be minimised or exaggerated.

Answer 2(iv)

The various Authorities for the settlement of industrial disputes are mentioned under Section 3 to 7 of the Industrial Disputes Act, 1947 which are applicable to Bank and their employees.

Works Committee (Section 3) - In the case of any industrial establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee. It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

Conciliation Officers (Section 4) - The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of mediating in and promoting the settlement of industrial disputes.

(2) A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.

Board of Conciliation (Section 5) - The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Board of Conciliation for promoting the settlement of an industrial dispute.

Courts of Inquiry (Section 6) - The appropriate Government may as occasion arises by notification in the Official Gazette constitute a Court of Inquiry for inquiring into any matter appearing to be connected with or relevant to an industrial dispute.

Labour Courts (Section 7) - The appropriate Government is empowered to constitute one or more Labour Courts for adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under the Act.

Tribunals (Section 7A) - The appropriate Government may by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

National Tribunals (7B) - The Central Government alone has been empowered to constitute one or more National Tribunals for the adjudication of industrial disputes which (a) involve questions of national importance or (b) are of such a nature that industrial establishments situated in more than one State are likely to be interested in or affected by such disputes.

Answer 2(v)

In the case of Express Newspaper (P) Ltd. v. Michael Mark, (1962) II L.L.J. 220 (S.C.), the Supreme Court held that where the workmen who had participated in an illegal strike, did not join their duties which resulted in their dismissal under the Standing Orders, participation in strike means that they have abandoned their employment. However, the employer can take disciplinary action against the employees under the Standing Orders and dismiss them.

Any workman who commences, continues or otherwise acts in furtherance of a strike which is illegal under the Industrial Disputes Act, 1947, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees or with both. [Section 26(1)].

In the case of Vijay Kumar Oil Mills v. Their Workmen, it was held that the act of a workman to participate in an illegal strike gives the employer certain rights against the workman, which are not the creation of the Statute but are based on policy, and the employer has every right to waive such rights. In a dispute before the Tribunal, waiver can be a valid defence by the workman. However, waiver by the employer cannot be a defence against prosecution under Section 26 and something which is illegal by Statute cannot be made legal by waiver (*Punjab National Bank v. Their Workmen*).

Section 2(n) of the Industrial Disputes Act, 1947 defines the term "**Public Utility Service**" which means-

(i) any railway service or any transport service for the carriage of passengers or goods by air,

(ia) any service in, or in connection with the working of, any major port or dock;

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official

Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification.

The nationalised bank come under the Public Utility Services as defined in Section 2 (n)(vi) of the Industrial Disputes Act, 1947.

Question 3

The new technology has rapidly changed the nature of work and labour relations. A new type of workers 'the Gig Workers' as unorganised workers employed in unorganised sector have emerged in all the countries. Though there has been a significant increase in the number of Gig workers in India, but serious concerns have been expressed about the availability of jobs and income security to them. A mismatch of skills have also become a common phenomenon. Proper planning to reduce the mismatch and upskilling is thus required. State intervention has also become important to provide social security to these workers. These Gig workers as unorganised workers protest and demand for all social security laws and want the protection under Indian Labour Laws and the Constitution of India. These unorganised workers as Gig workers are educated youth and plays a significant share of growth in European countries. They provide skill intensive professional services such as legal, accounting services, software development and translation. They are demanding the status and the protection as given by the developed countries. As per these workers, they contribute majorly in the Indian economy. In the light of above, answer the following questions :

(i) Define the unorganised workers including Gig workers and their legal rights as per the Unorganised Workers' Social Security Act, 2008.

(ii) Do we have any new labour codes which provide the protection to the unorganised workers ? Explain. What are the initiatives proposed by the Indian Government for the protection of their legal rights ?

(iii) Why do we employ unorganised workers in India ? Is there any advantage to employ them ? Explain.

(iv) Are unorganised workers including Gig workers entifled for the regular status of the employee ? Explain.

(v) Which are the directive principles of our constitution for protecting and promoting the interest of weaker sections ? Explain.

(*5 marks each*)

Answer 3(i)

The term Unorganised workers is defined under section 2(m) of the Unorganised Workers' Social Security Act, 2008 which means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II of the Unorganised Workers' Social Security Act, 2008.

Regarding gig workers, they are classified into two categories - Platform workers and non-platforms workers, where they use online algorithmic matching platforms i.e. websites or apps like Amazon, Zomato, ola, blinkit or Uber to connect with customers, they are known as platform workers. The workers who work outside of these platforms are non-platform workers. These mainly include construction workers, day job workers and non-technology based temporary workers.

The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to-

a. life and disability cover;

b. health and maternity benefits;

c. old age protection; and

d. any other benefit as may be determined by the Central Government.

The schemes included in the Schedule 1 of the Unorganised Workers' Social Security Act, 2008 shall be deemed to be the welfare schemes which includes:

1. Indira Gandhi National Old Age Pension Scheme.
2. National Family Benefit Scheme.
3. Janani Suraksha Yojana.
4. Handloom Weavers' Comprehensive Welfare Scheme.
5. Handicraft Artisans' Comprehensive Welfare Scheme.
6. Pension to Master craft persons.
7. National Scheme for Welfare of Fishermen and Training and Extension.
8. Janshree Bima Yojana.
9. Aam Admi Bima Yojana.
10. Rashtriya Swasthya Bima Yojana.

Unorganised workers have limited recognition under the current Indian Labour laws. The other home based and self-employed workers are recognised by the Unorganised Workers' Social Security Act 2008 but not getting any of the benefit of statutory labour legislations. The welfare of migrant workers, building and construction workers and unorganized workers is regulated to an extent under the Contract Labour (Regulation & Abolition) Act, 1970, the Unorganised Workers' Social Security Act, 2008 and the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996.

Answer 3(ii)

The Indian Ministry of Labour and Employment suggested a new labour Code Social Security Code, 2020 recognizing the new category of gig workers along with unorganised workers with access to social security benefits, that social security would be provided to all employees and workers, either in the organized, unorganized, or any other sector. The code has provisions for a social security system that would give to these workers advantage including health coverage, maternity leave, and pensions.

The Code further requires the Central Government to establish a social security fund for these unorganised workers. The Code also mandates the registration of all unorganised workers to avail the benefits of the Schemes.

The following are the provisions under Social Security Code, 2020:

- New Definition of the gig worker introduced under the Code of Social Security.
- National Social Security Board and (State) Unorganized Workers' Board to be formed by persons of eminence in the fields of labour welfare, management, finance, law and administration. It will also administer schemes for the welfare of gig workers and platform workers. (Section 6 of the Code)
- Employees State Insurance benefits to unorganized workers, gig workers and platform workers and their families. (Section 45 of the Code)

- Set up a toll free call centre or helpline to promulgate information on available social security schemes, process to file application for registration, to assist unorganized workers, gig workers and platform workers to obtain registration etc. (Section 112 of the Code)

Further, on 24 July 2023, the Government of Rajasthan passed the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, becoming the first state to regulate platform based gig workers at the legislative level. The Act ensures labour rights, social security and welfare programmes for platform workers.

Answer 3(iii)

We employ unorganised workers in India because of the following advantages:

Flexibility: Unorganised workers allow you more freedom in terms of working hours, location, and preferred work settings. This is especially helpful for those who must juggle job with obligations to their families, studies, or health.

Opportunities for employment: Unorganised workers gives people a way to make money without having to rely on regular employment. This is crucial in India, where there is a high unemployment rate and a lack of employment opportunities for many.

Increases entrepreneurship: By enabling people to launch their own businesses with little financial commitment, gig employment can contribute to the rise of entrepreneurship.

Job creation: Job creation and economic expansion may result from this.

Efficiency gains: Unorganised workers give businesses access to a larger talent and skill pool, boosting efficiency and production.

Answer 3(iv)

The new Social Security Code 2020 is based on Unorganised Workers' Social Security Act, 2008 which recognizes unorganised workers, such as home workers, gig workers, and self-employed workers. It distinguishes between regular employees and temporary workers. The temporary workers are unable to get the status of regular employee, as they are hired only for a particular purpose on temporary basis and certain benefits can be given to them like the social security Code provide for mandatory provision of gratuity, employee compensation, insurance, provident fund, and maternity benefit to employees. On the other hand, it has provided for framing of suitable social security schemes by the Central and State Governments for them on matters relating to life and disability cover, accident insurance, health and maternity benefits, old age protection, etc. If the regular status will be given to them then the object of the temporary workers will be defeated.

Answer 3(v)

The directive principles of our constitution reflect the concern of the state to protect and promote the interests of weaker sections of our population.

a) **Article 38:** The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life.

b) **Article 39A:** The operation of a legal system shall be secured by the state which promotes justice on the basis of equal opportunity and shall in particular provide free legal aid by suitable legislation of schemes or in any other way, to ensure that opportunities for securing justice are denied to any citizen by reason of economic or other disabilities.

c) **Article 42:** The state shall make provisions for securing just and humane conditions of work and for maternity relief.

d) **Article 43:** The state shall endeavour to secure by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social opportunities and in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.

Question 4

(*i*) The United Nations Agency has published a report on profits and poverty. The profits through forced labour is generated by the exploitation of the labour. Elaborate the role of International Labour Organisation to protect the forced labour from exploitation.

(*5 marks*)

(ii) Solutia Company is engaged in the cotton mill business. It has challenged the revision and fixation of minimum wages done by the State Government. Decide whether the said notification is within the intra vires of Minimum Wages Act, 1948 based on the following contentions and facts.

(a) The present revision has been made after three years of previous revision.

(b) The cotton mill gives employment to not more than 950 people in the entire state.

(c) The revision was made adopting the committee method. However, no representative from the Solutia company's employee was taken. Among the representatives from employer, Mr. Pranav, the Chairman of Solutia Company was a member of the committee.

(d) Solutia Ltd. is not expected to earn any profit in next ten years. The State Government did not consider this aspect while revising wages.

(e) The State Government fixed dearness allowance in excess of the amount required to neutralize the effect of inflation.

(*5 marks*)

(iii) Neither the desire of the members, nor registration or any other formality, but the principles object of the union or combination is the only test to ascertain as to whether the combination is a trade union or not.

Who among the following can be registered as trade union ? Justify your answer with appropriate reasoning :

(a) A resident welfare association

(b) The Delhi Automobile Manufactures' Association

(c) Teachers' Association

(d) All India Bank Employees' Association

(e) Delhi Union Journalist.

(*5 marks*)

(iv) A jeep driver of the Bank took the officers of the Bank to a village in connection with recovery proceedings conducted by the Bank. He rested the jeep in the rest house and went to the market, where he was assaulted by some unknown persons. Subsequently he was found dead. Is the employer liable to pay compensation ? Explain.

(*5 marks*)

(v) A workman when he was on his way to the place of work, was murdered in a communal riot. Whether the widow of the deceased workman will succeed in getting compensation ? Explain.

(5 marks)

Answer 4 (i)

International Labour Organisation (ILO) is a nodal agency coming under the ambit of the United Nations (UN). Its primary objective is to deal with issues related to labour, namely, maintaining international labour standards, ensuring social protection and providing work opportunities to all.

The ILO, the only tripartite united nation agency to promote social justice and internationally recognized human and labour rights pursuing its founding mission that social justice is essential to universal and lasting peace. The main aim of the ILO is to grant social protection and to promote rights at work, encourage decent employment opportunities and to protect from exploitation and forced labour. It has been closely reflected in labour standards and in shaping policies and programmes. India and ILO have an enduring and vibrant relationship which is marked by close and dynamic cooperation over the years.

Its primary objective is to deal with issues related to setting up labour standards, developing policies and chalking out programmes promoting decent work for all men and women. It is based upon social justice whereas conditions of labour exist involving such injustice, hardship and privation to large number of people as to produce unrest so great that the peace and harmony of the world are imperilled and improvement of those conditions is urgently required.

The ILO works towards providing such a decent work and productive employment to the labour force worldwide. This is towards achieving globalisation throughout. To achieve this task, ILO looks at methods for job creation, providing rights at work, ensuring social protection, enabling channels for dialogue all this with a basic objective of maintaining gender equality. These all are integral elements of the UN General Assembly's 2030 agenda for sustainable development.

The role of ILO also helped through the declaration of Philadelphia.

Answer 4 (ii)

a. According to Section 3(1)(b) of the Minimum Wages Act, 1948 the appropriate Government shall review the minimum rates of wages so fixed and revise the minimum rates, if necessary, at such intervals not exceeding five years. This means that minimum wages can be revised earlier than five years also. In the given case the revision has been made after three years of previous revision. Thus, this is an intra vires of the Minimum Wages Act, 1948, as the maximum time period for review of wages is 5 years.

b. Section 3(1)(a) the Minimum Wages Act, 1948 lays down that the appropriate Government shall fix the minimum rates of wages, payable to employees employed in an employment specified in Part I or Part II of the Schedule, and in an employment added to either part by notification under Section 27. Notwithstanding with the provisions of Section 3(1)(a), the appropriate Government may not fix minimum rates of wages in respect of any scheduled employment in which less than 1000 employees in the whole State are engaged. But when it comes to its knowledge after a finding that this number of employees has increased to 1,000 or more in such employment, it shall fix minimum wage rate. In the given situation, there are not more than 950 people in the employment in the entire state. Thus, it is an ultra virus of the Minimum Wages Act, 1948.

c. As per Section 9 of the Minimum Wages Act, 1948, each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate

Government representing employers and employees in the scheduled employments, who shall be equal in number, and independent persons not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government. In the given case, no representative from the Solutia company's employee was taken which was ultra vires of the Minimum Wages Act, 1948.

d. It is an intra vires of the Minimum Wages Act, 1948, as while fixing or revising the minimum wages the profit factor is irrelevant, it is based on the cost of living. [Section 4 of the Minimum Wages Act, 1948]

e. It is ultra vires of the Minimum Wages Act, 1948 as the state government cannot fix dearness allowance in excess of the amount required to neutralize the effect of inflation.

Answer 4(iii)

The term Trade Union is defined under section 2(h) of the Trade Unions Act, 1926 which means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions. In light of this provision the answer is provided below:

a. A resident welfare association cannot be registered as trade union because neither trade nor industry is involved.

b. The Delhi Automobile Manufacturers' Association can be registered as trade union because it is a combination of employers.

c. Teachers' Association cannot form a trade union, as there is no trade or industry involved.

d. All India Bank Employees' Association can be registered as a trade union because it is an association of employees working in banks which is commercial undertaking.

e. Delhi Union Journalists can be registered as a trade union because it is a combination of employees working in a trade or industry.

Answer 4(iv)

Section 3 of the Employees Compensation Act, 1923 provides that if personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation.

In the given case, the risk incurred by the driver for going to the market was incidental to his employment of taking the jeep to the village. The jeep driver, in this case, was on duty in the village, therefore, the accident must be taken to be arising out of the course of employment. The death caused was a result of an accident out of and during the course of his employment, and as such, the respondents were liable to pay the compensation. The relevant case in this regard is, *Salama Begum v/s. District Branch Manager, 1990 1" LLJ. 112 (Born)*.

In the case of Mackenzie v. I.M. Issak, it was observed that the words arising out of employment means that injury has resulted from risk incidental to the duties of the service which unless engaged in the duty owing to the master, it is reasonable to believe that the workman would not otherwise have suffered. There must be a casual relationship between the accident and the employment. If the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed unless of course the workman has exposed himself to do an added peril by his own imprudence.

Answer 4(v)

It is well settled that the concept of "duty" is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment [*Weaver v. Tradegar Iron and Coal Co. Ltd., (1940) 3 All, ER 15*]. It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

In the given case, the widow will succeed, as the employer is liable to pay compensation. The theory of 'notional extension is applicable in this case. There are reasonable extensions in both time and place and the workman is regarded as in the place of work or had left his employer's premises. In this case, the workman was murdered when he was on his way to the place of work. The accident must be taken to be arising out of and in the course of employment. If the deceased had not left the house for work on that date, he would not have been murdered in the communal riot. Death was caused in relation to his employment and it was caused in the course of-employment. Therefore, his widow will succeed in getting compensation from the employer. The citation relevant in this regard is *TNSC Corp. LtdV/SPoomalai1995 1 LLJ 378 (Madras)*.

BANKING & INSURANCE – LAWS & PRACTICE

ELECTIVE 2 PAPER 7.4

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART-I

Question 1

Deposit Insurance and Credit Guarantee Corporation-DICGC

Deposit Insurance and Credit Guarantee Corporation (DICGC) is a wholly-owned subsidiary of the Reserve Bank of India (RBI). It provides deposit insurance that works as a protection cover for bank deposit holders when the bank fails to pay its depositors.

The functions of the DICGC are governed by the provisions of 'The Deposit Insurance and Credit Guarantee Corporation Act, l96l' (DICGC Act) and 'The Deposit Insurance and Credit Guarantee Corporation General Regulations, l96l' framed by the Reserve Bank of India in exercise of the powers conferred by sub-section (3) of Section 50 of the said Act.

The authorized capital of the Corporation is ₹ 50 crores, which is fully issued and subscribed by the Reserve Bank of India (RBI). 'The management of the Corporation vests with its Board of Directors, of which a Deputy Governor of the RBI is the Chairman. As per the DICGC Act, the Board shall consist of, besides the Chairman, (*i*) one Officer (normally in the rank of Executive Director) of the RBI, (*ii*) one Officer from the Central Government, (*iii*) five Directors nominated by the Central Government in consultation with the RBI, three of whom are persons having special knowledge of commercial banking, insurance, commerce, industry or finance and two of whom shall be persons having special knowledge of, or experience in cooperative banking or co-operative movement and none of the directors should be an employee of the Central Government, or the RBI or the Corporation or a director or an employee of a banking company or a co-operative bank, or otherwise actively connected with a banking company or a co-operative bank, and (*iv*) four Directors, nominated by the Central Government in consultation with the RBI, having special knowledge or practical experience in respect of accountancy, agriculture and rural economy, banking, co-operation, economics, finance, law or small scale industry or any other matter which may be considered to be useful to the Corporation.

The Head Office of the Corporation is at Mumbai. An Executive Director is in overall charge of its day-to-day operations. It has four Departments, viz. Accounts, Deposit Insurance, Credit Guarantee and Administration, under the supervision of other Senior Officers. The Corporation had four branches, situated at Kolkata, Chennai, Nagpur and New Delhi. Out of these, the branches situated at Kolkata, Chennai and Nagpur were closed with effect from Novernber 30, 2000, since almost all the banks have opted out of the Credit Guarantee Schemes, and most of the pending claims have been settled. While major items of work of these three branches were taken over by the Head Office of the Corporation, some residual items of work are vested with the DICGC Cells specially created in the Rural Planning & Credit Department of the Reserve Bank of India at the respective centres.

The preamble of the Deposit Insurance and Credit Guarantee Corporation Act, l96l states that it is an Act to provide for the establishment of a corporation for the purpose of insurance of deposits and guaranteeing of credit facilities and for other matters connected therewith or incidental thereto.

The Agency insures all kinds of deposit accounts of a bank, such as savings, current, recurring, and fixed deposits up to a limit of ₹ 5 lakh per account holder per bank. In case an individual's deposit amount exceeds ₹ 5 lakh in a single bank, only ₹ 5 lakh, including the principal and interest, will be paid by DICGC if the bank becomes bankrupt.

DICGC protects depositors' money kept in all Commercial and Foreign Banks Located in India; Central, State, and Urban Co-operative Banks; Regional Rural Banks; and Local Banks, provided that the bank has opted for DICGC cover.

The agency's operations are performed as per The Deposit Insurance and Credit Guarantee Corporation Act, l96l and The Deposit Insurance and Credit Guarantee Corporation General Regulations, 1961, framed by RBI under the provisions of sub-section (3) of Section 50 of the act. The act states that the establishment of this corporation is with the aim of insuring deposits' guaranteeing credit facilities, and other related matters.

The following account are not covered under DICGC :

- Deposits of state or Central governments.
- Deposits from Foreign Governments.
- State land development banks depositing with the state co-operative bank.
- Inter-bank deposits.
- Funds that are due on account of India and deposits received outside India.
- Funds exempted by the corporation with the previous approval from RBI.

When banks register with DICGC, the agency grants a printed certificate to the bank that displays information regarding the protection offered by DICGC to depositors of the insured bank.

On the basis of the above facts, answer the following questions :

(a) Which banks are insured by the DICGC ? When is DICGC liable to Pay ?

(b) Can the DICGC withdraw deposit insurance coverage from any bank ?

(c) Does the DICGC insure just the principal on an account or both principal and accrued interest ? Whether the DICGC directly deal with the depositors of failed banks ?

(d) Can deposit insurance be increased by depositing funds into several different accounts all at the same bank ? Who pays the cost of deposits insurance ? Whether the bank can deduct the amount of dues payable by the depositor ?

(*5 marks each*)

Answer 1(a)

The Banks insured by the DICGC are as under:

(i) **Commercial Bank:** All commercial banks including branches of foreign banks functioning in India, local area banks and Regional rural banks are insured by the DICGC.

(ii) **Co-operative Banks**: All State, Central and Primary co-operative banks, also called urban co-operative banks, functioning in States / Union Territories which have amended the local Co-operative Societies Act empowering the Reserve Bank of India (RBI) to order the Registrar of Co-operative Societies of the State / Union Territory to wind up a cooperative bank or to supersede its committee of management and requiring the Registrar not to take any action regarding winding up, amalgamation or reconstruction of a co-operative bank without prior sanction in writing from the RBI are covered under the Deposit Insurance Scheme. At present

all co-operative banks are covered by the DICGC. Primary co-operative societies are not insured by the DICGC.

DICGC liable to pay:

(i) **If a bank goes into liquidation**:, DICGC is liable to pay to the liquidator the claim amount of each depositor up to Rupees five lakhs within two months from the date of receipt of claim list from the liquidator. The liquidator has to disburse the claim amount to each insured depositor corresponding to their claim amount.

(ii) **If a bank is reconstructed or amalgamated/merged with another bank:** The DICGC pays the bank concerned, the difference between the full amount of deposit or the limit of insurance cover in force at the time, whichever is less and the amount received by it under the reconstruction/amalgamation scheme within two months from the date of receipt of claim list from the transferee bank / Chief Executive Officer of the insured bank/transferee bank as the case may be.

Answer 1(b)

The Corporation may cancel the registration of an insured bank if it fails to pay the premium for three consecutive periods. In the event of the DICGC withdrawing its coverage from any bank for default in the payment of premium, the public will be notified through newspapers.

Registration of an insured bank stands cancelled:

- if the bank is prohibited from receiving fresh deposits, or
- if its licence is cancelled or a licence is refused to it by the RBI, or it is wound up either voluntarily or compulsorily; or
- if it ceases to be a banking company or a co-operative bank within the meaning of Section 36A(2) of the Banking Regulation Act, 1949; or
- if it has transferred all its deposit liabilities to any other institution, or
- if it is amalgamated with any other bank or a scheme of compromise or arrangement or of reconstruction has been sanctioned by a competent authority and the said scheme does not permit acceptance of fresh deposits.

In the event of the cancellation of registration of a bank, deposits of the bank remain covered by the insurance till the date of the cancellation.

Answer 1(c)

The DICGC insures principal and interest up to a maximum amount of Rs. 5,00,000/-.

For example, if an individual had an account with a principal amount of Rs. 4,95,000/- plus accrued interest of Rs. 4,000/- the total amount insured by the DICGC would be Rs. 4,99,000/-. However, if the principal amount in that account was Rs. 5,00,000/-, the accrued interest would not be insured, not because it was interest but because that was the amount over the insurance limit.

No, DICGC does not deal directly with the depositors of failed bank. In the event of a bank's liquidation, the liquidator prepares a depositor-wise claim list and sends it to the DICGC for scrutiny and payment. The DICGC pays the money to the liquidator who is liable to pay to the depositors. In the case of amalgamation/merger of banks, the amount due to each depositor is paid to the transferee bank.

Answer 1(d)

All funds held in the same type of ownership at the same bank are added together before deposit insurance is determined. If the funds are in different types of ownership or are deposited into separate banks, they would then be separately insured.

Deposit insurance premium is borne entirely by the insured bank.

Yes, Banks have the right to set off their dues from the amount of deposits as on cut-off date. The deposit insurance is available after netting of such dues.

Question 2

(a) Explain the entire process in Cheque Truncation System (CTS).

(*6 marks*)

(b) What is a ''Payment System ' under the Payment and Settlement Systems Act, 2007 ? What is the objective of the Payment and Settlement Systems Act, 2007 ?

(*6 marks*)

(c) ''Risk-based Internal Audit (RBIA) gives good results to Mitigate the various Risks in the Banking Sector''. Explain.

(*3 marks*)

Answer 2(a)

Cheque Truncation System (CTS):

In Cheque Truncation System (CTS), the presenting bank (or its branch) captures the data (on the MICR band) and the images of a cheque using their Capture System (comprising of a scanner, core banking or other application) which is internal to their and meeting the specifications and standards prescribed for data and images under CTS.

To ensure security, safety and non-repudiation of data/images, end-to-end Public Key Infrastructure (PKI) has been implemented in CTS. As part of the requirement, the collecting bank (presenting bank) sends the data and captured images duly signed digitally and encrypted to the central processing location (Clearing House) for onward transmission to the paying bank (destination or drawee bank). For participating in the clearing process under CTS, the presenting and paying banks use either the Clearing House Interface (CHI) or Data Exchange Module (DEM) that enables them to connect and transmit data and images in a secure and safe manner to the Centralised Clearing House (CCH).

The Clearing House processes the data, arrives at the settlement, and routes the images and requisite data to the paying banks. This is called presentation clearing. The paying banks through their CHI/DEM receive the images and data from the CCH for further processing.

The paying bank's CHI/DEM also generates the return file for unpaid instruments, if any. The return file/data sent by the paying banks are processed by the Clearing House in the return clearing session in the same way as presentation clearing and return data is provided to the presenting banks for processing.

The clearing cycle is treated as complete once the presentation clearing and the associated return-clearing sessions are successfully processed. The entire essence of CTS technology lies in the use of images of cheques (instead of physical cheques) for payment processing.

Answer 2(b)

Payment System: Section 2(l)(i) of the Payment and Settlement Systems Act, 2007 (PSS Act, 2007) defines a "Payment System" to mean a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them, but does not include a stock exchange (Section 34 of the PSS Act 2007 states that its provisions will not apply to stock exchanges or clearing corporations set up under stock exchanges). It is further stated by way of an explanation that a "payment system" includes systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations.

All systems (except stock exchanges and clearing corporations set up under stock exchanges) carrying out either clearing or settlement or payment operations or all of them are regarded as payment systems. All entities operating such systems will be known as system providers. Also, all entities operating money transfer systems or card payment systems or similar systems fall within the definition of a system provider. To decide whether a particular entity operates the payment system, it must perform either the clearing settlement or payment function or all of them.

Objective of Payment and Settlement Systems Act, 2007: The PSS Act, 2007 provides for the regulation and supervision of payment systems in India and designates the Reserve Bank of India as the authority for that purpose and all related matters. The Reserve Bank of India is authorized under the Act to constitute a Committee of its Central Board known as the Board for Regulation and Supervision of Payment and Settlement Systems (BPSS), to exercise its powers and perform its functions and discharge its duties under this statute. The Act also provides the legal basis for "netting" and "settlement finality". This is of great importance, as in India, other than the Real Time Gross Settlement (RTGS) system all other payment systems function on a net settlement basis.

Answer 2(c)

The advantages of the Risk-Based approach to the Internal Audit function in Banks are as follows:

(i) It appropriately defines the audit universe and identifies the auditable branches within the Bank for which these analyses would be carried out.

(ii) It assists the management in identification of appropriate risk factors to reflect the managements concerns.

(iii) It results in development of an appropriate format for evaluating risk factors so that the more important risk factors play a more prominent role in the risk assessment process than less important risk factors.

(iv) It develops a combination rule for each branch, which will properly reflect its riskiness over several risk factors that have been identified and a method of setting up audit priorities for the branches.

(v) It results in appropriate audit coverage plan, which provides a roadmap for the management of internal audit staff skills so that they are available to carry out audits of appropriate scope when they are needed the most.

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

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

Question 3

(a) A Limited Company enjoying CC Sanction Limit of ₹ 14,00,000 from M/s XYZ Banks. The details of Stock and Book Debts Statement as at the end of 31st March. 2024 are as under :

The Margins and other conditions as per Sanction letter issued by the Bank is as follows :

(a) On Stocks = 25%

(b) On Debtors = 50%

(c) Debtors are to be considered by the Bank is up to 90 Days

(d) Dead Stocks/Non-moving Stocks Not considered for Finance.

Total Stocks ₹ 14,00,000, Total Creditors ₹ 4,00,000 (of which creditors for expenses is ₹ 1,00,000), Total Debtors ₹ 5,00,000 of which debtors aged more than 90 days is ₹ 1,00,000, Dead Stocks/ Non-moving Stocks in Total Stocks is ₹ 1,00,000.

Calculate the Drawing Power for March, 2024.

(6 marks)

(b) Explain the Key Features and Functions of Small Finance Banks.

(6 marks)

(c) Frauds Data to be published by the Banks in their Balance Sheet as per the disclosure norms issued by the Regulator. Explain what types of information to be mentioned in the Disclosure on Frauds.

(3 marks)

Or (Alternate Question to Q. No. 3)

Question 3A

(a) While closing its books of account on March 31st of a financial year, a Non-banking Finance company has its advances classified as follows :

Particulars	**₹ Lakhs**
(i) Standard Assets (Other standard loans including Medium Enterprises)	₹ 16,800
(ii) Sub-Standard Assets (Secured)	₹ 1,340
(iii) Secured Positions of Doubtful Debts :	
(a) UP to one year	₹ 320
(b) One year to three years	₹ 90
(c) More than three years.	₹ 30
(iv) Unsecured Portions of Doubtful debts	₹ 97
(v) Loss Assets	₹ 48

Calculate the amount of provision which must be made against the advances.

(6 marks)

(b) RBI defined NBFC as ''When a company's financial assets constitute more than 50 per cent of the total assets and income from financial assets constitute more than 50 per cent of the gross income. A company which fulfils both these criteria will be Registered as NBFC by RBI '. Explain how NBFCs differ from Commercial Banks.

(6 marks)

(c) Explain few examples of Red Flags or Indicators of Potential Money Laundering Activities in Customer Accounts ?

(3 marks)

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

Answer 3(a)

a) **Drawing Power Calculation:**

A	Total Stocks	Rs. 14,00,000
B	**Less:** Creditors (Who Supplied the Stocks) (Rs. 400,000-Rs. 1,00,000)	Rs. 3,00,000
C	Net Paid Stock (A-B)	Rs. 11,00,000
D	**Less:** Non-movable Stocks	Rs.1,00,000
E	Stocks Available for Finance (C-D)	Rs. 10,00,000
F	**Less:** Margin on stock @25% (i.e. 25% of Rs. 10,00,000)	Rs. 2,50,000
G	Drawing Power (DP) on Stocks (E-F)	Rs. 7,50,000
H	Total Debtors	Rs. 5,00,000
I	**Less:** Debtors > 90 days	Rs. 1,00,000
J	Net Debtors for DP (H-I)	Rs. 4,00,000
K	**Less:** Margin on Debtor @50% (i.e. 50% of Rs. 4,00,000)	Rs. 2,00,000
L	Drawing Power (DP) on Debtor (J-K)	Rs. 2,00,000
M	Total Drawing Power (G+L)	Rs. 9,50,000

Drawing Power for the month of March, 2024 is Rs. 9,50,000/-

Answer 3(b)

Small finance banks have emerged as a vital component of the Indian banking sector. These banks play a crucial role in extending financial services to the unbanked and under-banked sections of society, including small businesses, farmers, and individuals in rural areas. Small finance banks are specifically designed to cater to the unique needs of these underserved segments, offering a range of key features and functions that differentiate them from traditional commercial banks.

(i) **Focus on Financial Inclusion:** Small finance banks are mandated to prioritize financial inclusion by providing basic banking services to the unbanked population. They aim to bring people into the formal banking system and bridge the gap between traditional banks and underserved communities. By setting up branches in remote areas and offering simplified account opening procedures, small finance banks actively work towards increasing financial literacy and encouraging savings habits among the unbanked population.

(ii) **Targeted Customer Base:** Unlike commercial banks that cater to a wide range of customers, small finance banks primarily focus on serving specific customer segments. These segments include micro and small enterprises, small farmers, low-income households, and migrant workers. By understanding the unique needs and challenges faced by these customers, small finance banks can tailor their products and services to provide relevant and accessible solutions. This targeted approach ensures that the banking needs of underserved individuals and businesses are met effectively.

(iii) **Microfinance Services:** Small finance banks often have a strong focus on microfinance, which involves providing small loans to individuals and small businesses. They leverage their deep understanding of local markets and customers to offer microcredit facilities for income generation activities, agriculture, and other productive purposes. By extending credit to those who do not have access to traditional banking services, small finance banks empower individuals and foster entrepreneurship at the grassroots level.

(iv) **Simplified Documentation:** Recognizing the challenges faced by individuals in rural and remote areas, small finance banks simplify the account opening process by reducing the documentation requirements. By embracing innovative solutions such as e-KYC (electronic Know Your Customer), small finance banks facilitate easier access to banking services for individuals with limited access to formal identification documents. This stream lines the on boarding process, making banking facilities more accessible to a wider population.

(v) **Technology-driven Approach:** Small Finance Banks embrace technology to enhance operational efficiency and provide convenient banking services to their customers. With the advent of digital banking solutions, these banks leverage mobile banking, internet banking, and mobile wallets to reach customers in remote areas where physical branches are not viable. By leveraging technology, small finance banks enable customers to perform various banking transactions, such as fund transfers, bill payments, and balance inquiries, from the comfort of their homes.

(vi) **Priority Sector Lending:** Small finance banks are mandated to allocate a significant portion of their lending towards priority sectors, such as agriculture, microenterprises, and small businesses. This ensures that funds are channelled to the segments that need them the most, facilitating economic growth and development. By focusing on priority sector lending, small finance banks contribute to poverty reduction, job creation, and the overall well-being of underserved communities.

(vii) **Deposit Products and Savings Schemes:** Apart from offering credit facilities, small finance banks also provide a range of deposit products and savings schemes tailored to the needs of their customers. These include savings accounts, recurring deposits, fixed deposits, and customized savings schemes that encourage regular savings. By promoting a culture of saving, Small Finance Banks empower individuals to build financial resilience and achieve their long-term financial goals.

In conclusion, Small Finance Banks have emerged as significant players in the Indian banking sector, driving financial inclusion and catering to the unique needs of underserved communities.

Answer 3(c)

The Indian banking sector has experienced significant growth and changes since liberalization of the economy. Though the banking industry is generally well-regulated and supervised, the sector suffers from its own set of challenges when it comes to ethical practices, financial distress and corporate governance. In recent years, instances of financial fraud have regularly been reported in India. Although banking frauds in India have often been treated as a cost of doing business, post liberalization the frequency, complexity and cost of banking frauds have increased manifold resulting in a very serious cause of concern for regulators, such as the Reserve Bank of India (RBI).

Banks are required to disclose the number and amount of frauds as well as the provisions made as per the given format in the Annual Report:

Particulars	Current Year	Previous Year
Number of Frauds reported		
Amount Involved in Fraud (Rs. in Crore)		
Amount of Provision made for such Frauds (Rs.in Crore)		
Amount of Unamortised provision debited from "Other Reserves" as at the end of the Year (Rs. in Crore)		

Or (Alternate Question to Q. No. 3)

Answer 3A(a)

(a) Calculation of Provisions against the advances of Non-Banking Finance Company:

Particulars	Loan (Rs. Lakhs)	Provision (%)	Provision (Rs. Lakhs)
Standard Assets	16,800	0.40%	67.20
Sub- Standard Assets	1,340	10.00%	134.00
Secured Portion of Doubtful Debts:			
Up to One Year	320	20.00%	64.00
1 Year to 2 Years	90	30.00%	27.00
More than 3 Years	30	50.00%	15.00
Unsecured Portion of Doubtful debts	97	100.00%	97.00
Loss Assets	48	100.00%	48.00
Total Provision			452.20

Answer 3A(b)

NBFCs play an important role in the Indian financial system by complementing and competing with banks and by bringing in efficiency and diversity into financial intermediation. The Reserve

Bank's regulatory perimeter applies to companies conducting non-banking financial activity, such as lending, investment or deposit acceptance as their principal business. The regulatory and supervisory architecture is, however, focused more on systemically important non-deposit-taking NBFCs (with asset size Rs. 5 billion and above) and deposit-accepting NBFCs with light touch regulation for other non-deposit-taking NBFCs.

NBFCs differ from Banks on the following grounds:

(i) NBFC cannot accept demand deposits; whereas banks can accept the same.

(ii) NBFCs do not form part of the payment and settlement system and cannot issue cheques drawn on itself, whereas banks can do so.

(iii) Deposit insurance facility of Deposit Insurance and Credit Guarantee Corporation is not available to depositors of NBFCs, unlike in the case of banks.

(iv) An NBFC is not required to maintain Reserve Ratios (Cash Reserve Ratio, Statutory Liquidity Ratio etc.).

(v) An NBFC cannot indulge Primarily in Agricultural, Industrial Activity, Sale-Purchase and Construction of immovable Property.

Answer 3A(c)

Red flags or indicators of Potential Money Laundering Activities can include:

(i) Large cash deposits or withdrawals that are inconsistent with a customer's profile or known business activities.

(ii) Frequent transactions just below the reporting threshold to avoid detection.

(iii) Unusual patterns of transactions, such as structuring transactions to avoid reporting requirements.

(iv) Transactions involving high-risk countries or jurisdictions known for money laundering or terrorist financing.

(v) Rapid movement of funds through multiple accounts or complex financial structures.

(vi) Unexplained or sudden changes in a customer's transactional behaviour or business activities.

PART-II

Question 4

Re-insurance

The objective of the reinsurance accounting is to record the business, control the funds and maintain proper books and records for the benefit and information of all stakeholders both internal and external. Special nature of Reinsurance Accounting is concerned with technical, financial, legal and underwriting aspects of reinsurance. Premiums, expenses and losses will have effects on both sides of a treaty but these have to be considered on all overall basis of reinsured and reinsurers. It is imperative for reinsurance firm to have proper accounting and financial management so that it can safely settle accounts and create confidence with regulators. The insurance regulators in countries all over the world, including India, have prescribed regulations for insurance and reinsurance accounts and methods of treating certain assets and liabilities. In this connection, IRDAI regulations relating to various items need to be examined.

Reinsurance accounting is comprehensively connected with technical, financial, legal and underwriting aspects of reinsurance. The significance of accounting for reinsurance techniques must

be understood and appreciated with reference to the class of business, the type or combination of types of reinsurance methods used and the forms of arrangements as placed directly or through brokers. Legal issues and tax matters are significant to reinsurance accounting. Incredible perils like natural perils such as devastating floods, chilling windstorms and life shattering earthquakes became insurable because of sharing of risk through reinsurance. It is not profit or earnings that can count in these risks since one loss in 25 to 30 years can wipe out the entire profits accumulated over a period of time. It is reinsurance that is so special to motivate insurers to venture into these kinds of businesses.

A long-standing relationship with the reinsurer can be maintained only if proper accounts are rendered by the ceding company. The actual must be reconciled with past trends for renewal of the reinsurance business.

On the basis of the above facts, answer the following questions :

(a) Outline the role of Primary Insurer in reinsurance administration.

(*5 marks*)

(b) The more important data that should be capable of being made available from a good information system used by the primary insurer should include certain elements. Highlight them.

(*5 marks*)

(c) Outline the role of reinsurer in the context of reinsurance administration.

(*5 marks*)

(d) Explain how claims are settled under different methods of reinsurance.

(*5 marks*)

Answer 4(a)

Role of Primary Insurer in Reinsurance Administration: Reinsurance is a mechanism through which insurance companies transfer the risks they assume on insurance policies to another insurer, called Reinsurer. Accordingly a Reinsurance contract is entered into with the Reinsurer by the primary insurer.

The primary insurer must conduct his underwriting operations satisfactorily within the guidelines and expectations of the treaty so that the reinsurer has no surprises coming in the form of large losses. More, the primary insurer must notify promptly all large losses and the reinsurer must be given the opportunity to participate in investigation of such losses.

The primary insurer has the freedom to underwrite individual risks and adjust individual claims once clear-cut underwriting policies are contemplated under a treaty. We conventionally use a phrase "FOLLOW THE FORTUNES". It means the reinsurer is normally bound by the primary insurer's actions in the underwriting and claims matters. The primary insurer must have a good or well-designed information system to be able to furnish all necessary information in time for the reinsurer to be able to control losses wherever possible and to discharge their obligations under the treaty professionally.

Answer 4(b)

Following are the points of important data that should be capable of being made available from a good information system:

1. **Policyholder Information:** Details about the insured individuals or entities, including their names, contact information, policy numbers, coverage details, and any relevant demographic information.

2. **Policy Details:** Information about the insurance policies issued by the insurer, such as policy terms and conditions, coverage limits, premium amounts, deductibles, and effective dates.
3. **Claims Data:** Data related to insurance claims filed by policyholders, including claim numbers, dates of loss, descriptions of the events or incidents giving rise to the claims, claim amounts, and status of claim processing.
4. **Underwriting Information:** Data used in the underwriting process to assess risks and determine premium rates, including information about the insured property or individuals, risk assessments, underwriting decisions, and rating factors.
5. **Financial Data:** Financial information about the insurer's operations, including revenue, premiums collected, claims paid, reserves, expenses, profitability metrics, and financial ratios.
6. **Regulatory Compliance Data:** Data necessary to ensure compliance with regulatory requirements, including information about regulatory filings, compliance audits, and adherence to industry standards and guidelines.
7. **Loss Experience Data:** Historical data on claims experience, including loss frequency, severity, and trends by line of business, geographic region, or other relevant factors.
8. **Customer Service Information:** Data related to customer interactions, inquiries, complaints, and feedback, as well as customer satisfaction metrics and service-level agreements.
9. **Risk Management Data:** Information about risks faced by the insurer, risk mitigation strategies, risk assessments, and risk exposure levels.
10. **Market Data:** External market data relevant to the insurance business, such as industry trends, competitive intelligence, market share data, and benchmarking information.
11. **Fraud Detection Data:** Data used to identify and prevent insurance fraud, including suspicious claims patterns, fraud alerts, investigation outcomes, and fraud detection models.
12. **Operational Performance Data:** Data related to operational efficiency and effectiveness, including key performance indicators (KPIs), process metrics, and performance benchmarks.

Answer 4(c)

One would think that the reinsurers have very little to do except collect reinsurance premiums and pay claims and brokerage commissions to brokers and ceding commission to the primary insurer. Maybe this is so when the treaty relationship is smooth. Some reinsurers minimize their work by preferring large retentions with the possibility of no claims being presented at all. On the contrary, the reinsurers may be engaged in auditing the underwriting and claims practices of the primary insurer to ensure that these are done satisfactorily and as expected. Again, whenever the losses are large, the reinsurers may like to participate in the investigation of the same, both to see that proper procedures are in place and to find out the underwriting implications. Many a time, the primary insurers, both on underwriting and claims issues, openly consult the reinsurers.

The reinsurers, not only help in stabilizing loss exposures but also positively assist the primary underwriters in underwriting on account of their superior experience and expertise.

Answer 4(d)

The claim settlement procedure differs from treaty to treaty based on individual agreements. If it is a pro rata treaty, the primary insurer sends a monthly bordereau to the reinsurer, detailing the premiums due to the reinsurer and claims due from the reinsurer. The primary insurer will remit the difference to the reinsurer when the premiums exceed the losses and if the losses exceed the

premiums, the reinsurer remits the difference to the primary insurer. If at any time, there are some exceptionally large losses, then it is the convention for the reinsurer to remit the losses to the primary insurer before the end of the reporting period.

In the case of excess treaties, as soon as losses exceed the retention, intimation is given and the reinsurer pays on being given proof of settlement, which is simply a statement of losses paid by the primary insurer, together with estimates of current reserves. In the case of aggregate excess treaties, the reinsurers are known to make initial payments say sixty days after the end of the accounting year. If it is clear that the losses will exceed the retention, then payments may be made before the end of the year.

Question 5

(a) Mr. Hari insured his machinery and stock of goods stored in the factory premises against damage by fire and a protection note was given, subject to the usual conditions of the Company's Policy, one warranty clause being ''Smoking and Cooking be strictly Prohibited in or about the Premises''. The Stocks were damaged by Fire said to be accidental in nature. But the Insurance Company claimed that Smoking a Cigarette or Bidi carelessly by some Employee occasioned the Fire. Is the denial justified ?

(6 marks)

(b) Explain the Principles of Underwriting Practices that are followed by Insurance Companies in India while developing various Insurance Products.

(6 marks)

(c) M/s XYZ General Insurance Company Ltd. delivers a fire policy to Mr. Venu on April 15. However, the insured paid the premium on a later date. Unfortunately, there was a Fire in the Premises resulting in loss of Property Insured. The Company denied its liability on the basis of the fact that the premium was overdue at the time of loss. Is it correct ? Discuss.

(3 marks)

Answer 5(a)

Warranty: A warranty is a statement that is considered guaranteed to be true and, once declared, becomes an actual part of the contract. Typically, a breach of warranty provides sufficient grounds for the contract to be voided. Conversely, a representation is a statement that is believed to be true to the best of the other party's knowledge. In order to void a contract based on a misrepresentation, a party must prove that the information misrepresented is indeed material to the agreement. According to the laws of most states and in most circumstances, the responses that a person gives on an insurance application are considered to be a representations, and not warranties.

In the said case, the company denied the claim on the ground that there was a breach of warranty as the fire was occasioned by smoking which is strictly prohibited. But as there was no eye-witness to the origin of the fire, the court held that the cause of the fire was a matter of conjecture. *[Bhattacharjee vs. Sentinal Insurance Co.]*

In the famous case *[Dekhari Tea Co vs. Assam Bengal Roadways Company]*, it was also held that fire cannot always be explained, and it must be a matter of conjecture. As regards the warranty, as the plaintiff had put notices Strictly Prohibiting Smoking in and around the places, in fact there is no breach of warranty. Hence, the denial on the part of the insurance Company is not justified. On the other hand, the Company should make Good the Loss.

Answer 5(b)

Insurance is a concept of the creation of a fund of premiums collected from various persons by pooling all of their risks, from which the financial losses of those few who suffer from the insured perils are compensated. The theory of probability, which can predict with a certain degree of precision, the possibility of a certain event occurring that can give rise to a claim provided there is sufficient data on past experience, is invariably the basis on which the concept of underwriting rests.

It follows that a prudent underwriter will necessarily have to build up data on claims lodged and this has to be done continuously. Further, this database has to be separately compiled for each of the different insurance portfolios - Fire, Marine & Miscellaneous. Having put this practice in place, he should follow certain basic principles before accepting a risk.

The principles that guide an underwriter before accepting a risk are:

- Selecting insureds that fit the company's underwriting standards: Only those insured whose actual loss experience does not exceed the loss experience assumed in the company's rating structure will be selected. The rate is based on a low loss ratio. For example, if the expected loss ratio is 20 percent and a rate is set accordingly, only those insured will be selected, who can meet the required criteria, so that the actual loss ratio for the group will not go beyond 20 percent.
- There should be proper balance within each rate classification: The underwriter must be able to group insured in such a way that the average rate in the group is enough to pay for all claims and expenses. Therefore, units with similar loss-producing features are placed in the same class and charged the same rate, ensuring that a below-average insured is compensated for by an above-average insured.
- Charging equitable rates: The rates that apply to one group should not be charged to another group as well. This would mean that one group is unduly subsidising another group. For example, in the case of life insurance, charging the same premium rate for people in the age group of 20-25 years and those in the age group of 50-55 years will result in the younger lot subsidising the older people. This amounts to overcharging and the younger persons will then look out for some other insurance company that has a more equitable system.

Answer 5(c)

No, the M/s XYZ General Insurance Company Ltd. cannot deny its claim.

When an insurance company delivers a policy without requiring immediate payment of the premium, they incur responsibility for the Risk, because having delivered the policy, they are held to have given credit for the premium.

Moreover, when once the contract is concluded with the premium and other particulars fixed, the policy drawn and delivered, the insurer becomes liable for loss by fire, and it is immaterial whether the premium is paid before or after the fire.

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

Question 6

(a) Is there any difference between Individual Insurance Policies and Group Insurance Policies ? Explain.

(6 marks)

(b) What is Ayushman Bharat Health Insurance ? Explain the features and benefits of the Scheme.

(6 marks)

(c) Outline the functions of IRDAI, which highlights its development role ?

(*3 marks*)

OR (Alternate question to Q. No. 6)

Question 6A

(*a*) The cargo on a ship was insured against loss on account of sea water. Some rats in the ship caused a hole in the bottom of the ship resulting in the entry of sea water into the ship resulting in the loss of the cargo. The insurance company refuses to pay the money on the ground that the loss was caused on account of rats, which was not an insured peril. Is the refusal by the Insurance Company Tenable ? Discuss.

(*4 marks*)

(b) Mr. Sharma insured his goods in a warehouse against fire with XYZ Insurance Company. The goods were burnt and Mr. Sharma recovered the full value of ₹ 10,00,000 from the insurance company. Subsequently Mr. Sharma also sued the warehouse. And recovered a sum of ₹ 10,00,000. Can Mr. Sharma retain this money ?

(*4 marks*)

(c) Mr. Prakash effected insurance on his goods against loss or damage by fire. Mr. Prakash and his wife quarrelled and the excited wife set fire and destroyed the goods. Can Mr. Prakash recover under the policy ? If yes, can the insurer sue the wife under the doctrine of subrogation ?

(*4 marks*)

(d) Mr. Aakash contracted to build a ship for Mr. Bunny for ₹ 5,00,000. All the materials were to be supplied by Mr. Bunny. Can Mr. Aakash get all the materials insured for the period of construction ?

(*3 marks*)

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

Answer 6(a)

If individuals are provided insurance coverage on their own lives that is individual insurance. Group insurance is a means through which a group of persons, who usually have a business or professional relationship with the contract owner, are provided insurance coverage under a single contract. Generally, it is provided by employers for the benefit of their employees. Creditor-debtor groups like the loanees of a housing finance company, and miscellaneous groups like professional associations, religious groups, customers of large retail chains, and savings account depositors, poorer sections of the society, land less agricultural workers also can avail the benefits of group insurance.

The following table shows the difference between Individual Insurance plans and Group Insurance plans.

Sr. No.	Individual Insurance Plans	Group Insurance Plans
1.	Insurance on individual lives.	Insurance on a group of lives (Group selection of risks).
2.	Individual policies are issued.	A single policy is issued to the entire group called Master Policy.

3.	This is voluntary and individual decision. No compulsion.	Compulsory for all new entrants into the group.
4.	A contract between the individual and the Co.	A contract between the Group representative and the Co.
5.	Long term contracts.	One-year renewable contracts.
6.	Premium is constant throughout the term.	Premium varies every year due to the change in the group.
7.	Underwriting standards are strict and individual selection.	Underwriting standards are very liberal. Only group selection. Rarely Medical Examination is required.
8.	Premium is higher as the administration cost is high.	Premium is low due to mass scale Administration.
9.	Individual has the choice of plan, term, Sum Assured etc.	An individual has no choice in terms of Contract.
10.	Participate in the profits of the Company.	Do not directly participate in the profits. If the claims experience is favourable, experience rating adjustment is made in the subsequent year's premium.
11.	Terms of the contract depend on the individual characteristics.	Terms of the contract depend on the characteristics of the Group as a whole.

Answer 6(b)

Ayushman Bharat Health Insurance Scheme: Ayushman Bharat is a health protection scheme to provide health insurance to citizens. It provides insurance coverage of up to Rs.5 lakhs on a family floater basis to beneficiaries every year to receive primary, secondary, and tertiary healthcare services. The scheme was earlier referred to as Ayushman Bharat - National Health Protection Scheme (AB-NHPS) as it is an initiative under the existing National Health Protection Scheme (NHPS). Currently, it is known as Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (PM-JAY). The government plans to distribute this scheme through national insurance companies. The scheme subsumes the existing senior citizen health insurance scheme as well as the Rashtriya Swasthya Bima Yojana.

Features and Benefits of Ayushman Bharat - National Health Protection Scheme (AB-NHPS) are as under:

(i) A cover of up to Rs. 5 lakh is available for the beneficiary family every year.

(ii) The scheme can be utilised to get primary, secondary, and tertiary healthcare services. The benefits of the scheme can be availed at any government hospital or empanelled private hospital.

(iii) The eligibility of beneficiaries targeted towards the poor, deprived rural families and identified occupational category of urban workers' families based on the Socio-Economic Caste Census (SECC) 2011 data.

(iv) Package model are followed to make payments. The package is defined by the government-in-charge in terms of payment of total costs, specific services, and procedures.

(v) An Ayushman Bharat National Health Protection Mission established for effective coordination between the Central and the state governments.

(vi) The scheme covers about 40% of the country's population who are poor and vulnerable. All expenses incurred by the beneficiary from his pocket during the hospitalisation are also covered.

(vii) The cost incurred during the pre and post-hospitalisation period are covered.

(viii) The insurance provides a cash-less hospitalisation facility.

(ix) Daycare treatment expenses are covered by the scheme.

(x) The insurance scheme covers all pre-existing health conditions. Follow-up of medical examinations upto 15 days are also covered to ensure that the patients have recovered completely.

Answer 6(c)

Insurance Regulatory and Development Authority of India (IRDAI): Out of the innumerable functions of the IRDAI, those that highlight its developmental role in the growth of the insurance markets in India are as follows:

(i) To regulate, promote and ensure orderly growth of the insurance business and reinsurance business.

(ii) To protect the interests of the policyholders in matters concerning assigning of policy, nomination, insurable interest, settlement of insurance claim, surrender value of policy, and other terms and conditions of contracts of insurance.

(iii) To promote efficiency in the conduct of insurance business.

(iv) To call for information form, undertake inspection of, and conduct enquiries and investigations, including audit of the insurers, intermediaries, insurance intermediaries and other organizations connected with the insurance business.

(v) To regulate the investment of funds by insurance companies

(vi) To regulate maintenance of margin for solvency.

(vii) To settle disputes between insurers and intermediaries or insurance intermediaries.

(viii) To specify the percentage of life insurance business and general insurance business to be underwritten by the insurer in the rural or the social sector.

Or (Alternate Question to Q. No. 6)

Answer 6A(a)

Principle of Maxim of 'Causa Proxima' (Proximate Cause): Measuring the quantum of damage from loss is another significant aspect for all kinds of insurance. The loss must be caused by the peril insured against, i.e., cause of loss. Hence insurance contracts the rule of proximate cause', the maxim 'causa proxima non remota spectator which means that proximate and not the remote cause shall be a taken as the cause of the loss.

It means the immediate and not the remote cause is to be considered in measuring the damages. This rule of causa proxima, i.e., proximate cause and Torts. In Torts the defendant (person committing wrong) is liable only for those consequences which are not too remote from his conduct. No defendant can be made liable ad infinitum for all the consequences which follow his wrongful act. On practical grounds, a line must be drawn somewhere, and certain kinds or types of losses, though a direct result of defendant's conduct may remain uncompensated. The same principle is applicable in insurance contracts.

In the given case, the rats were a remote cause of loss and sea water was a proximate cause.

Since the loss was on account of sea water, which is an insured peril the insurer is liable to pay for the loss.

Answer 6A(b)

Principle of Subrogation: Subrogation is an equitable doctrine now assumed statutory recognition, 'Subrogation' comes from Roman law which means substitution. In insurance law subrogation is the name given to the right of the insurer who has paid a loss to be put in the place of the assured so that he can take advantage of any means available to the assured to extinguish or diminish the loss for which the insurer has indemnified the assured.

Subrogation means substitution of one person for another. The doctrine of subrogation confers upon the insurer the right to receive the benefit of such rights and remedies as the assured has against third parties in regard to the loss to the extent that the insurer has indemnified the loss and made it good.

According to the doctrine of subrogation in a contract of indemnity, an insured cannot be allowed to make any profit from an insurance claim.

Mr. Sharma cannot take benefit of an insurance policy as well as any other alternative remedies.

Based on the above principle, Mr. Sharma ought to return a sum of Rs.10,00,000 to the insurance company.

Answer 6A(c)

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Mr. Prakash can recover the loss amount under the policy as his wife had set fire to the goods without his approval. But the insurer cannot sue the wife under the principle of subrogation, because there can be no subrogation of those rights which the insured himself does not have.

In this case, the Mr. Prakash (husband) himself cannot sue his wife for her act.

Answer 6A(d)

Principle of Insurable Interest: Insurable Interest means the assured must have an actual interest in the subject matter of insurance. Any person may said to have an interest in the subject matter of insurance who may be injured by the risks to which the subject matter is exposed.

Insurable interest is a basic requirement of any contract of insurance whether life, fire, marine, etc. unless it can be and is, lawfully waived. As a general rule, this means that the party to the insurance contract who is insured or policy-holder must have a particular relationship with the subject matter of the insurance whether that be a life or property or a liability to which he might be exposed. The absence of the required relationship will render the contract illegal or void depending on the type of insurance.

Yes, Mr. Aakash can get the materials insured because he has an insurable interest therein, as he would suffer financial loss on the destruction of the materials.

INSOLVENCY AND BANKRUPTCY – LAW & PRACTICE

ELECTIVE 2 PAPER 7.5

Time allowed : 3 hours ***Maximum marks : 100***

NOTE : *Answer All Questions.*

PART- I

Questions 1

Alok is a dealer in Eyewear, Spectacles and other eye accessories in India for the last 10 years based in Gurgaon. His vision was to transform the way people see and experience the world. He is a frequent traveller and visited many countries to expand his business. Gulshan is one of the cousins of Alok and a resident of South Africa. Alok has a very good relations with his cousin and during his visit to South Africa in 2015 he started a showroom in partnership with his cousin in South Africa.

Alok has a very big showroom in India also. He used to import spectacles and other accessories from South Africa. With the increasing demand of more and more spectacles, goggles etc., business is reaching greater heights and he made a huge profit. His business was a growing business going very well. Since there was huge demand, the business went well and profits got multiplied in 3 to 4 years. In the year 2019 some differences developed between both the cousins and Alok decided to quit from the partnership.

He was also a director of Padmavat Solutions Private Limited and its associate company. Shekhawat Solutions Private Limited where he used to get the sitting fee for attending the Board Meetings.

In India also due to entry of online selling platform and other sales promotion strategies of the competitors, there were lots of changes in the market situation in India and his business started running into losses. He raised loans worth ₹ 10 Crore in the year 2019 to finance the working capital requirement of the business. He managed for another one year (year 2020) to run the business out of the retained earnings of the business. However due to the impact of COVID 19 and other reasons the demand declined rapidly and later on he started making defaults. He defaulted in making payment to his creditors and Insolvency proceedings commenced and a repayment plan was approved. Alok failed to follow the repayment plan and filed for bankruptcy on 1st April, 2022 which was admitted on 10th April, 2022. A Bankruptcy order was passed and Gopal Gupta, an Insolvency Professional was appointed as a Bankruptcy Trustee.

Gopal Gupta started investigation of the affairs of the Bankrupt. He observed that on 7th April, 2022, Alok Gupta sold his shop to Kapil Kalra for ₹ 50 Lakh and gifted this amount to his major son. As per Bankruptcy Trustee, he has some doubt that this transaction is not allowed as per Insolvency and Bankruptcy Code, 2016.

The Bankruptcy Trustee further asked Alok to prepare the list of the assets and hand over to the bankruptcy trustee. As per the list of the assets, Alok informed as below :

- Alok stated that he has been entrusted by his friend Arun to look after his property in Delhi currently valued at ₹ 1 Crore as Arun is staying in UK.
- Alok has ₹ 50 Lakh in provident fund, pension fund and the gratuity fund of the employees.

- Alok has a residential flat worth ₹ 2 Crore in his name.
- He has an antique paintings and silver household utensils and other valuable items worth ₹ 50 Lakh which have not been encumbered.
- He has also unencumbered insurance policy worth of ₹ 50 Lakh.
- He has also the father's inherited property now in his name worth ₹ 5 Crore.

While bankruptcy proceedings were going on, Alok further decided to start a new business of kids garments by forming a new company in the name of "Kids Paradise Pvt. Ltd." and engage himself in the formation and management of Kids Paradise Pvt Ltd. (Under Incorporation).

Based on the above facts, answer the following questions :

(a) Whether the doubt of the Bankruptcy Trustee about the sale of his shop to Kapil Kalra for ₹ 50 Lakh and gift to his son has any relevance as per the Insolvency and Bankruptcy Code, 2016. Describe with reference to the provisions of Insolvency and Bankruptcy Code, 2016 ?

(*5 marks*)

(b) Is act of Alok for continuing as a director in the Padmavat Solutions Pvt. Ltd. and Shekhawat Solutions Private Limited and participating in the formation and management of a new company is valid ? Explain with the help of the provisions of Insolvency and Bankruptcy Code, 2016.

(*5 marks*)

(c) Explain the relevant provisions for the distribution of the estate of the Alok in accordance with the Insolvency and Bankruptcy Code.

(*5 marks*)

(d) Based on the above facts, ascertain the assets, which will form part of the estate of the Alok.

(*5 marks*)

(e) What is fresh start process and conditions to be fulfilled for applying for fresh start process ?

(*5 marks*)

Answer 1(a)

As per Section 164(1) of the Insolvency and Bankruptcy Code, 2016(Code), the bankruptcy trustee may apply to the adjudicating authority for an order under that section in respect of an undervalued transaction between a bankrupt and any person.

As per Section 164(2) of the Code, the undervalued transaction should have

a) been entered into during the period of two years ending on the filing of the application for bankruptcy; and

b) caused bankruptcy process to be triggered.

As per Section 164(3) of the Code, a transaction between a bankrupt and his associate entered into during the period of two years preceding the date of making of the application for bankruptcy shall be deemed to be an undervalued transaction under this section.

Section 164(4) of the Code provides that on the application of the bankruptcy trustee, the adjudicating authority may

a) Pass an order declaring an undervalued transaction void:

b) Pass an order requiring any property transferred as a part of an undervalued transaction to be vested with the bankruptcy trustee as a part of the estate of the bankrupt; and

c) Pass any other order it thinks fit for restoring the position to what it would have been if the bankrupt had not entered into the undervalued transaction.

As per Section 164(5) the order under Section 164(4)(a) shall not be passed if it is proved by the bankrupt that the transaction was undertaken in the ordinary course of business of the bankrupt. However, the provisions of Section 164(5) shall not be applicable to undervalued transaction entered into between a bankrupt and his associate under Section 164(3).

Sale of shop by Alok to Kalra has not taken place in the ordinary course of business of Alok and Gifting that sale proceeds to son (being relative, fall under the definition of "Associate" under section 79(2) of the Code) will attract provisions of section 164(3).

Thus, Gift to his son will amount to undervalued transaction under the provisions of Insolvency and Bankruptcy Code, 2016.

Answer 1(b)

As per Section 141 of the Insolvency and Bankruptcy Code, 2016, a bankrupt from the bankruptcy commencement date shall:

a) Not act as a director of any company, or directly or indirectly take part in or be concerned in the promotion, formation or management of a company:

b) Without the previous sanction of the bankruptcy trustee, be prohibited from creating any charge on his estate or taking any further debt;

c) be required to inform his business partners that he is undergoing a bankruptcy process;

d) prior to entering into any financial or commercial transaction of such value as may be prescribed, either individually or jointly, inform all the parties involved in such transaction that he is undergoing a bankruptcy process;

e) without the previous sanction of the Adjudicating Authority, be incompetent to maintain any legal action or proceedings in relation to the bankruptcy debts; and

f) Not be permitted to travel overseas without the permission of the Adjudicating Authority.

Hence, the act of Alok Gupta for continuing as a director in the Padmavat Solutions Pvt Ltd and Shekhawat Solutions Private Limited as well as taking part in the formation and management of a new company is not valid.

Answer 1(c)

According to Section 136 of Insolvency and Bankruptcy Code, 2016, the bankruptcy trustee shall conduct the administration and distribution of the estate of the bankrupt in accordance with the provisions of Chapter V, which deals with administration and distribution of estate of the bankrupt.

As per the Section 178(1) of Insolvency and Bankruptcy Code, 2016, the estate of the Bankrupt shall be distributed in the following order:

- Firstly, the cost and expenses incurred by the Bankruptcy trustee for the Bankruptcy process in full;
- Secondly, the workmen's dues for the period of 24 months preceding the bankruptcy commencement date and debts owned by secured creditors;
- Thirdly, wages and any unpaid dues owned to employees, other than workmen, of the

Bankrupt for the period of 12 months preceding the bankruptcy commencement date;

- Fourthly, any amount due to the Central Government and the State Government including the amount to be received on account of Consolidated Fund of India and Consolidate Fund of the State, if any, in respect of the whole or any part of the period of two years preceding the bankruptcy commencement date;
- Lastly, all other debts and dues owned by the bankrupt including unsecured debts.

Section 178 (2) provides that the debts in each class specified in sub-section (1) shall rank in the order mentioned in that subsection but debts of the same class shall rank equally amongst themselves, and shall be paid in full, unless the estate of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

Section 178(3) states that where any creditor has given any indemnity or has made any payment of moneys by virtue of which any asset of the bankrupt has been recovered, protected or preserved, the adjudicating authority may make such order as it thinks just with respect to the distribution of such asset with a view to giving that creditor an advantage over other creditors in consideration of the risks taken by him in so doing.

As per Section 178(4), unsecured creditors shall rank equally amongst themselves unless contractually agreed to the contrary by such creditors.

According to Section 178(5) any surplus remaining after the payment of the debts under sub-section (1) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the bankruptcy commencement date.

Section 178(6) states that interest payments under sub-section (5) shall rank equally irrespective of the nature of the debt.

Section 178(7) provides that in the case of partners, the partnership property shall be applicable in the first instance in payment of the partnership debts and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

As per Section 178(8) where here there is a surplus of the separate property of the partners, it shall be dealt with as part of the partnership property; and where there is a surplus of the partnership property, it shall be dealt with as part of the respective separate property in proportion to the rights and interests of each partner in the partnership property.

Answer 1(d)

According to Section 155 (1) of the Code, the estate of the bankrupt shall include, –

a) all property belonging to or vested in the bankrupt at the bankruptcy commencement date;

b) the capacity to exercise and to initiate proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the bankruptcy commencement date or before the date of the discharge order passed under section 138; and

c) all property which by virtue of any of the provisions of this Chapter is comprised in the estate.

Further as per Section 155(2) of the Code, the estate of the bankrupt shall not include –

a) Excluded assets (as mentioned under Section 79 (14) of the Code

b) Property held by the bankrupt on trust for any other person;

c) All sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund; and

d) Such assets as may be notified by the Central Government in consultation with any financial sector regulator.

Assets which form part of the Estate of Alok Gupta:

Particular	Amount (Rs.)
Residential Property of Alok Gupta	2,00,00,000
Alok Gupta's father's property inherited by him	5,00,00,000
Unencumbered antique painting and silver household utensils and other valuable items (as they are not necessary to satisfy basic domestic needs of the bankrupt and his family member)	50,00,000
Total	7,50,00,000

Hence, according to above stated provisions of IBC, assets of Rs. 7.5 Crore will form part of the estate of the Bankrupt, Mr. Alok.

Answer 1(e)

Section 80 of the Insolvency and Bankruptcy Code, 2016 provides that a debtor who is unable to pay his debt and fulfils the below mentioned conditions shall be entitled to make an application for a fresh start for discharge of his qualifying debt.

A debtor may either personally or through a Resolution Professional may apply for fresh start process in respect of his qualifying debts to the Adjudicating Authority if he fulfils the following conditions:

a) The gross annual income of the debtor does not exceed sixty thousand rupees:

b) The aggregate value of the assets of the debtor does not exceed twenty thousand rupees;

c) The aggregate value of the qualifying debts does not exceed thirty-five thousand rupees;

d) He is not an undischarged bankrupt;

e) He does not own a dwelling unit, irrespective of whether it is encumbered or not;

f) A fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and

g) No previous fresh start order under these provisions has been made in relation to him in the preceding twelve months of the date of the application for fresh start.

Section 79 (19) defines "qualifying debt" to mean amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at certain future time and does not include –

(a) an excluded debt;

(*b*) a debt to the extent it is secured; and

(c) any debt which has been incurred three months prior to the date of the application for fresh start process;

Question 2

(a) Vinayaka Car Company Ltd (VCC) is a manufacturer of passenger cars and commercial vehicles in India. It sells the cars through single brand dealerships across different cities. The dealerships are separate for passenger cars and commercial vehicles. VCC is lagging behind the competitors in the passenger car segment due to its cost structure and is losing market share for the last 3 years. With no revival in sight, the company has decided to exit the passenger car segment and notified its dealers about shutdown of passenger car manufacturing and sales in India. Further added that the service centres for passenger cars will continue its operations for the next 3 years.

Karthik Cars Pvt Ltd. (KCL) is a passenger car dealer for VCC in Bangalore with an office cum showroom and no service centre. KCL has bank loans from Bank B1 and Bank B2 for ₹ 10 crore and ₹ 7 crore respectively. Both the banks have pari-passu charge on the office premise cum showroom.

KCL has expressed its inability to repay its financial obligations to the bankers. One of the bankers, Bank B1 has filed an application for Insolvency Resolution Process (IRP) which is admitted by the adjudicating authority, while the other bank is still contemplating to proceed against the borrower under SARFAESI.

- VCC has an interest free dealership security deposit of ₹ 1.50 crore since 2010 from KCL with a right to set-off against any receivables pending from KCL towards VCC.
- The nephew of the promoter of KCL had given a loan of ₹ 0.50 crore to KCL in the last 3 months to pay the utility bills, pressing commitments and office expenses.
- VCC in its claims has demanded ₹ 3.50 crore from KCL against pending receivables.
- KCL has not paid wages to the tune of ₹ 0.50 crore to its workmen and statutory employer contributions to the tune of ₹ 0.20 crore.
- As per valuer, Rama Mani's report, approximate realizable value of office cum showroom is ₹ 12 crores. Items which are not readily relishable having not touch value has not been reckoned and hence has been ignored by the Valuer. Value of furniture and equipment is to the tune of ₹ 0.05 crore.
- The current receivables on books are ₹ 1.50 crore, out of which 50% is doubtful.
- KCL has a general-purpose current account with B1 having current balance of ₹ 0.15 crore.

On the basis of the below mentioned fact answer the questions :

(i) How much is VCC's net claim against KCL ?

(ii) What will be the status of VCC as a claimant for its claims against KCL ?

(iii) Who all will be in the committee of creditors ?

(iv) Who among the creditors/groups of creditors, cannot reject a proposed resolution plan ?

(v) Assume that IRP has failed in the resolution of the case. After deducting the insolvency costs, sum available from proceeds of liquidation of assets is ₹ 10.99 crore. Based on priority of claims, how much will Bank Bl receive ?

(vi) How much will Bank B2 receive, in case the proceeds on liquidation of assets are ₹ 8.34 crores.

(6 marks)

(b) Ankur Constructions Limited, is a Public Limited Company incorporated under the provisions of Companies Act, 2013 on 30th June, 2017. The Company had a 100% subsidiary in the name of ABC International Private Limited. It was engaged in the business of Projects relating to the cleaning of the Ganga River and the surrounding areas under the "Namami Gange Programme", a flagship programme approved by the Union Government of India to achieve the objective of effective abatement of pollution, conservation and rejuvenation of National River Ganga. The ABC International Private Limited could procure some orders under the "Namami Gange Programme" and commenced its commercial operations and continued working for four years and completed all its projects. After 4 years of its existence, the Board of Directors waited for 2 more years and could not expand its operations and thought of merging the company with the other operational company(s). The proposal of merger could not hold good and later on the management decided to wind up the company under the voluntary winding up provisions of the Insolvency and Bankruptcy Code, 2016. The Ministry of Urban Housing and Urban affairs also accorded its approval to close the company. The Board of Directors on their next Board Meeting filed a declaration of solvency stating that the company is solvent and no litigation is pending under any court and need to be closed under the voluntary winding up process of the company. The company is not having any employee on the rolls of the company.

The Board of Directors received a proposal of appointment of Geeta as a proposed Liquidator of the Company who is an insolvency Professional and cleared the necessary examination and training. After obtaining her consent and valid Authorisation for Assignment, the management recommended her name to the shareholders of the Company. The Management also appointed Registered Valuers to value the assets of the company ven though there were not any major assets in the company.

The management decided to take the agenda of initiation of Voluntary Liquidation and appointment of Voluntary Liquidator in the Extraordinary General Meeting of the company. In the Extraordinary General Meeting held on 20th June, 2023, the liquidator was appointed and she intimated to various authorities concerned including the Comptroller & Auditor General of India about the initiation of voluntary winding up of the company and filing of necessary claims.

The Liquidator received the claims from various creditors and after verification found that the both the operational creditors and financial creditors have filed their claims by post only. The Liquidator took necessary steps to realise the assets of the company as per the laid down procedures, payoff all the liabilities and distributed the proceeds among the various stakeholders of the Company after deducting the cost of Liquidation.

In view of the above facts, answer the following with reasons :

(i) Whether the mode of submission of proof of claims to the liquidator by the financial creditors are in line with the provisions of the Insolvency and Bankruptcy Code, 2016. Also, what are the various type of forms prescribed for submission of proof of claim to the liquidator by all the stakeholders ?

(5 marks)

(ii) What is the role of the liquidator if she finds that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in the liquidation ?

(4 marks)

(c) Panapathi G. Seeds Pvt. Ltd. a closely held private company was engaged in the business of processing oilseeds for edible oils. It was established in 1988 under the leadership of Panapathi

G. Prasad. Within a decade, Panapathi G. Seeds Pvt. Ltd positioned itself as a leader in production of groundnut oil in the Western region of India with two premium brands.

In 2016 Panapathi G. Prasad had a severe heart attack and died without any succession plan in place. Ram and Sham, the two sons of Panapathi G. Prasad were also directors in the company with equal shareholding. After the death of Panapathi G. Prasad, both brothers had strained relations over the management control which adversely affected the business of the company. With declining profit and turnover both the brothers were worried and decided to reach a family settlement whereby the control of the company was handed over to the elder brother Ram. Sham resigned as the director of the company and in lieu of the same he was entrusted with the management and control of another family firm Saraswathi Edibles, wherein both brothers were partners. Praveen, son of Ram was inducted as director in the Company.

In 2018 Sham wanted to withdraw unsecured loan given by him to the company because the company stopped paying him interest on the loan. Despite follow up Sham was not paid either the principal or interest, which forced him to file an application under section 7 of the Insolvency and Bankruptcy Code 2016.

The Adjudicating Authority (*i*) admitted the application, (*ii*) declared moratorium and (*iii*) appointed Nagarajan, as an Interim Resolution Professional (IRP). Ram refused to hand over the management control to the IRP on the plea that it was a family dispute, and they will settle soon on their own. He also asked the IRP not to make the public announcement. IRP tried to persuade Ram citing the provisions of the Code and warned him that if he does not hand over control of the Corporate Debtor IRP will be forced to approach the Adjudicating Authority for appropriate orders. Thereafter Ram allowed the IRP to take inventory of the assets and stocks after 15 days from the insolvency commencement date.

With reference to the above facts and other details provided, answer the following questions with particular reference to the provisions contained in the Code, Regulations and rules of IBC and others :

(i) Sophie Bank, the only Bank with whom the Company is banking, filed an appeal before the National Company Law Appellate Tribunal (NCLAT) to set aside the order of Adjudicating Authority regarding admission of CIRP on the ground that its cash credit account with the company is regular and there is no default. Will the application of Sophie Bank survive ?

(ii) Sham filed a claim for unsecured loan of ₹ 1,75,00,000 along with interest @ 18 per cent per annum. IRP reviewed the accounts and found that there is neither an agreement to that effect on interest rate, northern is any resolution of the Board of Director in this regard. IRP admitted the claim only for the principal amount. Is the IRP right in his decision ?

(iii) Sophie Bank charged interest @ 9 per cent on the cash credit limit availed by the company, as per the terms of sanction, even after the insolvency commencement date and justified it on the ground that if the interest is not charged the account has to be classified as NPA. Is the bank's claim legally justified ?

(iv) On review of the bank accounts, IRP observed that sixteen months before the insolvency commencement date, a payment of ₹ 1 Crore has been made to a creditor viz., Saraswathi Edibles in which Ram is a partner. What is the status of this transaction under the code ?

(v) IRP sent the notice of the CoC meeting to Ram but not to Sham. Sham protested this and represented that Ram is also a related party and an unsecured financial creditor like him therefore, he is also entitled to receive notice of the CoC meeting. What is your opinion on the representation by Sham ?

(*5 marks*)

(d) Whether the legislative scheme that is contained in section 7 and section 9 of IBC, differentiating between financial creditors and operational creditors respectively as regards the Code's objectives and notice on default, are discriminatory and arbitrary ? Substantiate your answer with the relevant case law.

(*5 marks*)

Answer 2(a)

(i) VCC's net claim against KCL= `2 crore (3.5cr-1.5 cr)

(ii) As an Operational Creditor

(iii) Bank(s) B1 and B2

(iv) VCC, nephew of the promoter, and workmen all being Operational Creditors

(v) Rs. 6.05 Crore

(vi) Rs. 3.14 Crore

Answer 2(b)(i)

As per Regulation 16, 17, 18 & 19 of IBBI (Voluntary Liquidation Process) Regulations, 2017, the modes of submission of proof of claim to the liquidator by various stakeholders of the corporate debtor in voluntary liquidation, along with the forms prescribed therein are as follows:

1. A person claiming to be an operational creditor of the corporate person, other than a workman or employee, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form B of Schedule I. (Regulation 16)
2. A person claiming to be a financial creditor of the corporate person shall submit proof of claim to the liquidator in electronic means in Form C of Schedule I. (Regulation 17)
3. A person claiming to be a workman or an employee of the corporate person shall submit proof of claim to the liquidator in person, by post or by electronic means in Form D of Schedule I. (Regulation 18)
4. A person, claiming to be a stakeholder other than those as mentioned above, shall submit proof of claim to the liquidator in person, by post or by electronic means in Form D of Schedule I. (Regulation 19)

Thus, we can say that the mode of submission of proof of claims to the liquidator by the financial creditors are not in line with the provisions of the IBC, Code. 2016.

The Financial Creditors have to file their claim by electronic mode only.

Answer 2(b)(ii)

As per Regulation 40 of IBBI (Voluntary Liquidation Process) Regulations, 2017, where the liquidator is of the opinion that the corporate person will not be able to pay its debts in full from the proceeds of assets to be sold in voluntary liquidation, he shall make an application to the Adjudicating Authority to suspend the process of voluntary liquidation and pass any such orders as it deems fit.

Answer 2(c)(i)

If a default of threshold has occurred under Section 7 of the Insolvency and Bankruptcy Code, 2016 w.r.t. any financial creditor and the application for Corporate Insolvency Resolution Process has been admitted by the Adjudicating Authority, application by other creditor (Sophie Bank here) to set aside the admission because there is no default w.r,t, its loan will not survive.

The appeal filed by Sophie Bank to NCLAT shall not succeed because a default u/s 7 of the Code has occurred in the present case, and other creditors does not have any right to intervene.

Answer 2(c)(ii)

IRP was right in admitting only the principal amount of the loan in the absence of any evidence for the interest chargeable.

Answer 2(c)(iii)

No, interest cannot be charged after insolvency commencement date. Bank must file claim as on the insolvency commencement date.

Answer 2(c)(iv)

It is given to a related party during the period of two years preceding the insolvency commencement date and needs to be classified as a preferential transaction under section 43 of the Insolvency and Bankruptcy Code, 2016.

Answer 2(c)(v)

IRP was justified in sending the notice to Ram, in his capacity as a member of the suspended Board of Directors u/s 24(3) of the Insolvency and Bankruptcy Code, 2016 though he was also an unsecured financial creditor. Directors do not have any right to vote in CoC meeting.

Proviso to Section 21(2) of the Insolvency and Bankruptcy Code, 2016 mentions that a related party to whom a corporate debtor owes a financial debt shall not have any right of representation, participation or voting in a meeting of the committee of creditors. But still notice of meeting of CoC shall be sent to financial creditor who is a related party. So, Sham is also entitled to receive notice of meeting of CoC.

Answer 2(d)

In the case of *Swiss Ribbons*, it was held by the Hon'ble Supreme Court that financial creditors are involved with the assessment of viability of corporate debtors and are, therefore, better equipped to engage in restructuring of loans as well as reorganization of the corporate debtor's business in the event of financial stress. These differentiations are not only intelligible, but directly relate to the objects sought to be achieved by the Code. Insofar as Section 7 of the Code relatable to financial creditors, and Sections 8 and 9 of the Code, which relate to operational creditors are concerned, it is a fallacy to say that no notice is issued by the financial creditors on defaults made, as financial creditors are fully aware of the loan structure and the defaults that have been made. Preserving the corporate debtor as a going concern while ensuring maximum recovery for all creditors being the objective of the Code, financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code.

Question 3

(a) Suhani and Dhwani are childhood friends and were very fond of designing Indian traditional dresses. After completing their schooling, Suhani joined a fashion designing course to pursue

her interest and Dhwani decided to be a fashion Model. She participated in various fashion show programs conducted by Non-Government Organisation(s) engaged in the creating awareness for cervical cancer which is spreading rapidly among Ladies in India.

After some years, in one of the fashion programmes, they met again and planned to form a private Limited Company in the name of Suhani Fashions Private Limited having a paid-up share capital of 5 Crore and became Entrepreneurs.

Suhani Fashions Pvt. Ltd. is engaged in the business of Manufacturing and Selling Ladies Suits and Sarees in Kolkata, West Bengal which is a very big market for Indian traditional dresses. They also offered their products on online e-commerce platforms. They employed more than 100 Ladies and other staff in their workshop who were engaged in designing, cutting, tailoring and other allied works. Suhani also used to design products being sold by the company.

Both Suhani and Dhwani were Promoter Directors of the company as per the Article of Association of the company and also the subscribers to the Memorandum of Association of the company by subscribing 50% shares each in the company. Dhwani, being a fashion model, did modelling for her products in order to improve the sales of the company. The company started growing very fast and sales touched a figure of ₹ 20 crores in the very first year and in order to meet the working capital and other requirements, the company approached the bankers Beta bank and Gama Bank for a facility of ₹ 3 crores and ₹ 5 crores respectively. The Company already had taken the credit facilities with Alpha Bank and outstanding amount is ₹ 6 crores.

After the change in demand of the products and growing need of Formal dresses from the Indian traditional dresses, sales started declining and the company started facing cash crunch and made a default in paying the instalments for ₹ 2 crores which were outstanding in the name of the Alpha bank.

The Alpha bank decided to file an Insolvency Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 as a financial Creditor on 3rd January, 2024. The Corporate Insolvency Resolution Process application was admitted by the Adjudicating Authority on 25th January, 2024. Moratorium was declared and Ishann was appointed as an Interim Resolution Professional. Ishaan, Interim Resolution Professional made a public announcement and prepared a list of creditors based on the claims received. The CoC is yet to be formed.

Consider the above facts and answer the following questions :

(i) What is the date of initiation of Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 ?

(*3 marks*)

(ii) Describe in detail the meaning of Interim finance. How the interim finance and cost incurred in raising such finance is treated in case the corporate debtor goes into liquidation ?

(*5 marks*)

(iii) State, whether any other creditor can initiate proceeding under the Insolvency and Bankruptcy Code, 2016, after the withdrawal of an application for Corporate Insolvency Resolution Process by an applicant ? Discuss with the help of the case laws.

(*5 marks*)

(iv) State the provisions of Insolvency and Bankruptcy Code for withdrawal of application admitted under section 7, 9 and 10 by the applicant. Can it be withdrawn after

its admission but before the constitution of CoC. Explain with the help of the case laws.

(*7 marks*)

(*b*) XYZ Limited had undertaken financial debts of ₹ 500 crores. It was unable to service the debts to Financial Creditors. The Financial Creditors restructured the debt under a Restructuring Agreement with XYZ Limited. However, it continued to remain in default with the Financial Creditors. Application was filed against XYZ Limited under section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Proceedings. To this effect XYZ Limited took shelter under a Special Provision Act of State of Tamil Nadu (State Act). XYZ Limited was declared as a relief undertaking by the Government of Tamil Nadu under a State law through which XYZ Limited's liabilities were suspended by way of Moratorium. National Company Law Tribunal admitted the application filed by the Financial Creditor initiating Corporate Insolvency Resolution Process against XYZ Limited. Directors of XYZ Limited immediately filed an appeal before National Company Law Appellate Tribunal against the National Company Law Tribunal's order for admission of the company to Corporate Insolvency Resolution Process as the company is already subject to moratorium under the Tamil Nadu State Act.

Whether the non-obstante Clause contained under Insolvency and Bankruptcy Code, 2016 will prevail over the non-obstante Clause under a State Act ?

(*5 marks*)

Answer 3(a)(i)

As per the provisions of Section 5(11) of the Insolvency and Bankruptcy Code, 2016, "Initiation Date" means the date on which a financial creditor, corporate applicant or operational creditor, as the case may be, makes an application to the Adjudicating Authority for initiating corporate insolvency resolution process or the pre-packaged insolvency resolution process as the case may be. Hence, in the present case, the date of initiation is 3rd January, 2024.

Answer 3(a)(ii)

As per the provisions of section 5(15) of the Insolvency and Bankruptcy Code, 2016 "Interim finance" means any financial debt raised by the resolution professional during the insolvency resolution process period or by the corporate debtor during the pre-packaged insolvency resolution process period, as the case may be and such other debt as may be notified.

As per the provisions of section 5(13) of the Insolvency and Bankruptcy Code, 2016, amount of any interim finance and the costs incurred in raising such finance shall be included in the "insolvency resolution process costs".

Hence in case the corporate debtor goes into liquidation, the insolvency resolution process costs which includes interim finance and the costs incurred in raising such finance are paid from the sale of the liquidation assets in priority during the distribution of assets [Section 53].

Answer 3(a)(iii)

In the case of *Ashok G. Rajani Vs. Beacon Trusteeship Ltd. & Ors. (Sep 2022),* Hon'ble Supreme Court held that the question of approval of withdrawal of corporate insolvency resolution process by the Committee of Creditors by the requisite percentage of votes, can only arise after the Committee of Creditors is constituted. Before the Committee of Creditors is constituted, there is no bar to withdrawal by the applicant of an application admitted under Section 7 of the Code.

Also, the withdrawal of an application for Corporate Insolvency Resolution Process by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under Insolvency and Bankruptcy Code, 2016. Hence, the withdrawal of an application for CIRP by the applicant would not prevent any other financial creditor from taking recourse to a proceeding under Insolvency and Bankruptcy Code, 2016.

Answer 3(a)(iv)

Section 12A of the Insolvency and Bankruptcy Code 2016 provides that the Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent voting share of the committee of creditors, in such manner as may be specified.

Before admission of the application, however, the Adjudicating Authority may permit withdrawal of the application made under Rules 4, 6 or 7, as the case may be, on the request of the applicant under Rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Form FA given under Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is required to be filed for withdrawal of the CIRP.

Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations. 2016 provides that an application for withdrawal under section 12A may be made to the Adjudicating Authority

(a) before the constitution of the committee, by the applicant through the interim resolution professional or

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the Resolution Professional, as the case may be.

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

In the matter of *Ms. Ashish Ispat Private Limited Vs. Primuss Pipes & Tubes Ltd.,* NCLAT held that when a withdrawal application under section 12A of the Code is filed prior to constitution of CoC, the requirement of 90% vote of CoC is not applicable, and the Adjudicating Authority has to consider the application without requiring any approval from CoC. Approval of 90% shall be applicable only when Committee of Creditors is constituted and withdrawal application under section 12A of Insolvency and Bankruptcy Code, 2016 has been filed post that.

Answer 3(b)

Insolvency and Bankruptcy Code, 2016 is a complete code in itself. It is an exhaustive code on insolvency in relation to corporate entities and others. IBC is a single unified umbrella code, covering all law relating to insolvency resolution of corporate persons and others in a time-bound manner. Under a State Act, the State Government may take over the management of the undertaking and impose a moratorium in the same manner as that contained in the IBC. However. by giving effect to the State Act, the plan/scheme that may be adopted under IBC will be directly hindered. There would be direct clash between moratoriums under the two statues.

Hon'ble Supreme Court in the case of *M/s. Innoventive Industries Ltd. vs. ICICI Bank Ltd* held that the non-obstante clause of the IBC (which is a Parliamentary enactment) will prevail over the non-obstante clause of any State Act (State Statue). On account of the non-obstante clause in the IBC, any right of the CD under any other law cannot come in the way of the IBC.

Question 4

(a) Vikky Construction Company Pvt. Ltd. (Corporate Debtor & Respondent) entered into a sub-Contract Agreement with one Nusheerabad Constructions Pvt. Ltd. (NCPL) on 01.02.2008, to undertake work of Construction and widening of roads for and on behalf of NCPL.

Apart from this Agreement, a separate agreement of the same date was entered into between the said NCPL and one KDM Projects Private Limited, Kolkata, as a result of which, a tripartite Memorandum of Understanding was entered into on 09.05.2008 between NCPL, KDM Projects Pvt. Ltd. and the Respondent.

During the course of the project, disputes and differences arose between the parties and the same were referred to an Arbitral Tribunal, which delivered its Award on 21.01.2017. One of the claims that was allowed by the said Award was in favour of the respondent for a sum of ₹ 1,71,98,302/- which arose out of certain interim payment certificates. Another claim that was allowed related to higher rates of payment in which a sum of ₹ 13,56,98,624 was awarded. Three cross claims that were made by the Respondent were rejected.

A notice dated 06.02.2017 was sent by the Respondent to NCPL to pay an amount of ₹ 1,79,00,166. This notice was stated to be a notice under Section 8 of the Code. Within 10 days, by a letter dated 16.02.2017, NCPL disputed the invoice that was referred to in the said notice, stating that the said amount was, in fact, the subject-matter of an arbitration proceeding, and as per NCPL's accounts, the Respondent was liable to pay larger amounts to them.

After the notice and reply, on 20.04.2017, a Section 34 petition was filed by NCPL under the Arbitration and Conciliation Act, 1996 challenging the aforesaid Award. This petition was filed within the period of limitation set down in Section 34(3) of the Act. It is only thereafter that a petition was filed under Section 9 of the Code, on 14.07.2017.

The Adjudicating Authority (AA), by its order dated 29.08.2017, referred to the afore stated facts and also referred to the fact that the Award which was challenged under Section 34 specifically stated that learned counsel for the first Respondent (i.e., the corporate debtor) was fair enough to admit that the claimant is entitled to the said sum of ₹ 1,71,98,302/- According to the AA, the fact that a Section 34 petition was pending was irrelevant for the reason that the claim stood admitted, and there was no stay of the Award. For these reasons, therefore, the Section 9 petition was admitted.

An appeal filed to the Appellate Tribunal met with the same fate, as according to the Appellate Tribunal, the non-obstante clause contained in Section 238 of the Code would override the Arbitration Act. Also, according to the Appellate Tribunal, since Form(s) required to be filed in terms of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 requires particulars of an order of an arbitral panel adjudicating on the default, this would have to be treated as "a record of an operational debt", as a result of which the petition would have to be admitted, as was correctly done by the Adjudicating Authority. The appeal was, accordingly, dismissed.

Being aggrieved by the decision of the Appellate Tribunal, the Appellant has appealed to the apex court. In the light of decided cases, examine whether the code can be invoked in respect of an operational debt where an Arbitral Award has been passed against the operational debtor, which has not yet been finally adjudicated upon ? Would the Appellants' plea against the judgment of the Authorities be accepted ?

(6 marks)

(b) Match the following dictum/issue involved with the Case Law(s) based on ratios/decisions pronounced under IBC :

Sr. No.	Dictum/issue involved	Case Law(s)
(i)	There is no scope for elaborate pleadings. An application to the Adjudicating Authority under Section 7 of the Code in the prescribed form, cannot therefore, be compared with the plaint in a suit	Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr,
(ii)	Once the amount is shown as 'fees' and 'resolution cost' the same to be paid in terms of Section 53 of the Code.	State Bank of India Vs. Jet Airways (India) Ltd., (NCLT. Mumbai)
(iii)	Can an Insolvency Resolution professional who had been in employment of a financial creditor be appointed as Resolution professional ?	Dena Bank (now Bank of Baroda Vs. C. Shivakumar Reddy and Anr
(iv)	Can the Appellate Tribuanl set aside the order of liquidation of a corporate debtor using the powers under Rule 11 of NCLAT Rules, 2016 ?	Liberty House Group Pte. Ltd. Vs. State Bank of India & Others (NCLAT, New Delhi)
(v)	Without initiating CIRP against the principal borrower, it is open to the FC to initiate CIRP under section 7 against corporate guarantors as the creditor is also the FC qua corporate guarantor.	State Bank of India Vs. Metenere Limited (Supreme Court)
(vi)	Admitting of corporate insolvency resolution process of the corporate debtor in India in the light of order passed by a foreign Court ?	Rai Bahadur Shree Ram and Company Pvt. Ltd. Vs. Rural Electrification Corporation Ltd. and Ors.

(9 marks)

(c) Sanjay Garg is a practising Company Secretary and an Insolvency Professional. He is acting as an Interim Resolution Professional in Saturn Toys Limited. (STL) vide the order of Hon'ble National Company Law Tribunal, Principal Bench, Delhi dated 8th October, 2018. Sanjay Garg was subsequently confirmed as the Resolution Professional of the Corporate Debtor, Saturn Toys Limited (STL) by the Committee of Creditors (CoC) in its first CoC meeting held on 1st November, 2018.

Prior to the commencement of CIRP, MIRDI Bank (one of the financial creditors) conducted a bidding process for selecting an Interim Resolution Professional for the corporate insolvency resolution process of STL. Along with the selection of Sanjay Garg as proposed, H & M was selected to provide Infrastructure, Personnel and Back-office support services to assist Sanjay Garg for the purpose of corporate insolvency resolution process of STL.

The payment agreed to be paid to H & M is 19 times of the fee payable to Resolution professional. Sanjay Garg, Resolution Professional appointed professionals during the corporate insolvency resolution process and could not disclose the payment made to

himself, H & M and the other professionals separately. He raised the invoices for an amount which is more than the amount approved by the appropriate authorities.

The Complaint was made against the Resolution Professional and the matter travelled to the Disciplinary Committee of the Insolvency and Bankruptcy Board of India.

The Disciplinary Committee is of the view that it is inconceivable that the cost of providing infrastructure, personnel and back-office support services is 19 times of the fee payable to Resolution Professional which is not a reasonable reflection of the work done and the insolvency professional was not straight forward and forthright in his conduct.

In the light of the provisions of the Code and decided case laws, discuss whether Sanjay Garg as a resolution professional is liable on the basis of above facts ?

(*10 marks*)

Answer 4(a)

The facts given in the question are similar to the case of *K. Kishan v. Vijay Nirman Company Pvt. Ltd.* in which the Supreme Court had an occasion to decide whether the provisions of the Insolvency and Bankruptcy Code, 2016 ('IBC') can be invoked in respect of an Operational Debt where an Arbitral Award has been passed in favour of the Operational Creditor in respect of such Operational Debt, but the objections against the said Arbitral Award are pending under Section 34 of the Arbitration & Conciliation Act, 1996 ('A&C Act'). The facts before the Supreme Court were that VNCP had entered into a sub-contract with KCPL on 01-02-2008, to undertake 50% of Section 2 work of 'Construction and widening of the existing two-lane highway to four lanes on NH 67 at KM 190000 to KM 218215 admeasuring a total of 28.215 KM for and on behalf of KCPL.' Apart from this Agreement, a separate agreement of the same date was entered into between the KPCL and one SDM Projects as a result of which, a tripartite Memorandum of Understanding was entered into on 09-05-2008 between KCPL, SDM Projects and VNCP.

During the course of the project, certain disputes arose between the parties. The said disputes were referred to arbitration. The Arbitral Tribunal delivered an Award dated 21.01.2017. The Arbitral Tribunal allowed one of the claims of VNCP for a sum of Rs. 1,71,98,302/- and another claim for a sum of Rs. 13,56,98,624/-. Three cross claims that were made by KCPL were rejected.

Thereafter, a notice under Section 8 of the IBC dated 06.02.2017 was sent by VNCP to KCPL to pay an amount of Rs. 1,79,00,166/-. KCPL responded on 16.02.2017 and disputed the invoice that was referred to in the said notice, stating that the said amount was, in fact, the subject-matter of an arbitration proceeding, and as per KCPL's accounts, VNCP was liable to pay larger amounts to them which were claimed in counter-claims before the Arbitral Tribunal. Subsequently, KCPL filed its objections under Section 34 of the A&C Act challenging the Arbitral Award.

After the filing of the objections by KCPL, VNCP filed a petition under Section 9 of the IBC on 14.07.2017 before the NCLT. In the said petition, VNCP stated that as the amount claimed by it formed part of the Award, it has become an Operational Debt. On the other hand, KCPL submitted that the alleged Operational Debt was disputed all along and that it has also raised its counter-claims for much higher sums. It was also stated that KCPL has filed its objections against the Award under Section 34 of the A&C Act, which were pending and if its objections were allowed and its counter claims were awarded, KCPL would have to make recoveries from VNCP and not the other way around.

The NCLT, by its order dated 29.08.2017, held that as the counsel for the KCPL was fair enough to admit that VNCP is entitled to the said sum of Rs. 1,71,98,302/-. According to the NCLT, the fact that a Section 34 petition was pending was irrelevant for the reason that the claim stood

admitted, and there was no stay of the Award. For these reasons, the Section 9 petition was admitted by the NCLT.

Being aggrieved, KCPL filed an appeal before the NCLAT. The NCLAT held that the non-obstante clause contained in Section 238 of the IBC would override the A&C Act. The NCLAT also held that since Form V of Part 5 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 requires the particulars of an order of an arbitral panel adjudicating on the default, this would have to be treated as "a record of an operational debt", as a result of which the petition would have to be admitted. Accordingly, the appeal by KCPL was dismissed.

KCPL came in appeal before the Supreme Court. The parties made various submissions before the Supreme Court. Ultimately, the Supreme Court followed its decision in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* and held that the mere factum of challenge of an Arbitral Award under Section 34 of the A&C Act would be sufficient to state that the Corporate Debtor disputes the Award and that such a case would be treated as a case of a pre-existing ongoing dispute.

As far as the non-obstante clause contained in Section 238 of the IBC is concerned, the Supreme Court observed that Section 238 of the IBC would apply in case there is an inconsistency between the IBC and the A&C Act. However, the Supreme Court held that there was no such inconsistency demonstrated in the present case.

Therefore, the Supreme Court held that the pendency of objections under Section 34 or of an appeal under Section 37 of the A&C Act will render the subject matter of the award as a 'disputed debt' for the purposes of the IBC and an Operational Creditor cannot invoke the provisions of the IBC to initiate the Corporate Insolvency Resolution Process against a Corporate Debtor.

Answer 4(b)

Sl. No.	Dictum/issue involved	Case Law(s)
1	There is no scope for elaborate pleadings. An application to the Adjudicating Authority under Section 7 of the Code in the prescribed form, cannot therefore, be compared with the plaint in a suit	Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr
2	Once the amount is shown as 'fees' and 'resolution cost' the same to be paid in terms of Section 53 of the Code.	Sanjay Kumar Ruia Vs. Catholic Syrian – Bank Ltd. & Anr.
3	Can an Insolvency Resolution professional who had been in employment of a financial creditor be appointed as Resolution professional?	State Bank of India Vs. Metenere Limited (Supreme Court)
4	Can the Appellate Tribunal set aside the order of liquidation of a corporate debtor using the powers under Rule 11 of NCLAT Rules, 2016?	Liberty House Group Pte. Ltd Vs. State Bank of India & Others (NCLAT, New Delhi)
5	Without initiating CIRP against the principal borrower, it is open to the FC to initiate CIRP under section 7 against corporate guarantors as the creditor is also the FC qua corporate guarantor.	Rai Bahadur Shree Ram and Company Pvt. Ltd. Vs. Rural Electrification Corporation Ltd. & Ors

6	Admitting of corporate insolvency resolution process of the corporate debtor in India in the light of order passed by a foreign Court	State Bank of India Vs. Jet Airways (India) Ltd., (NCLT, Mumbai)

Answer 4(c)

The IBBI (Insolvency Professionals) Regulations, 2016 makes provision for the Examination and Registration of Insolvency Professionals with the IBBI. These regulations also make provisions for the disciplinary proceedings against the Insolvency Professional as well as prescribes a code of conduct for Insolvency Professionals.

First Schedule to the aforesaid regulations prescribe a code of conduct for the Insolvency Professionals (IP). According to Regulation 7(2)(h), the registration of an Insolvency Professional shall be subject to the condition that he shall at all times abide by the Code of Conduct specified in the First Schedule to the Regulations which provides for the following:

- Integrity and Objectivity
- Independence and impartiality
- Professional competence
- Representation of correct facts and correcting misapprehensions.
- Timeliness
- Information management
- Confidentiality
- Occupation, employability and restrictions
- Remuneration and costs
- Gifts and hospitality

An Insolvency Professional must maintain integrity by being honest, straightforward and forthright in all professional relationships. (Clause 1 of the First Schedule to the Regulations) An Insolvency Professional must provide services for remuneration which he charged in transparent manner, is a reasonable reflection of the work necessarily and properly undertaken. and is not inconsistent with the applicable regulations. (Clause 25 of the First Schedule to the Regulations)

An Insolvency Professional shall disclose the fee payable to him, the fee payable to the IPE and the fee payable to Professionals engaged by it to the IPA of which he is a professional member and the agency shall publish such disclosure on its website. (Clause 25A of the First Schedule to the Regulations)

An Insolvency Professional shall not accept any fee or charges other than those which are disclosed to and approved by the persons fixing its remuneration. (Regulation 26 of the First Schedule to the Regulations)

In the NCLT Order dated 14.10.2019 in the matter of *Anurag Nirbhaya Vs. Anuj Maheshwari & Ors,* Resolution Professional (RP) claimed Rs. 12 Lakhs for the first month and Rs. 11 Lakhs per month for the period of rest of the two and half months and he was paid Rs. 6 Lakhs for the total period of three and half months. The AA observed that the exorbitant fee has been claimed by the IRP and stated that generally they allow fee @ Rs. 1 Lakh per month to the professionals.

Further, in the NCLT Order dated 13.03.2018 in the matter of *Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt. Ltd,* the AA took notice of fixation of exaggerated insolvency resolution cost,

inclusive of fixation of fee of RP in a lump sum manner by the CoC without applying its mind as regards to the fate of CD, the volume, nature and complexity of CIRP. It is observed that it is time to have legitimate guidelines or regulation in this regard so as to safeguard and to ensure the prospects and revival of a dying CD not be at the highest cost which canned be affordable by the CD.

An IP should not charge abnormally high fee in relation to the services: The Disciplinary Committee of IBBI found that an IP attempted to charge abnormally high fee in relation to the services. Besides, he acted *malafide* by seeking increase of his fee after approval of fee by the AA and displayed professional incompetence by using stale information for decision making. He, then signed the term sheet with the applicant, who is not legally competent to appoint RP or fix his fee, and thereby attempted to deprive the CoC of its legitimate right to appoint a RP of its choice and fix his fee. The Disciplinary Committee suspended the registration of the IP for two years, directed the IP to undergo the pre-registration educational course and work for at least six months as an intern with a senior insolvency professional, at any time during the period of suspension.

In view of the above stated precedence, Sanjay Garg as a resolution professional is liable as per the provisions of the code of conduct.