

GOVERNANCE, RISK MANAGEMENT, COMPLIANCES AND ETHICS

Lecture Kart

MODULE 1 PAPER 1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

- (a) XYZ Ltd. is a listed entity having 10 directors. Its paid-up share capital is ₹ 50 Crores divided in equity shares having face value of ₹ 10 each. 70% of the paid-up equity of XYZ Ltd. is held by the promoters of the company. The market price of the share of the company at the close of the FY 2022-23 was ₹ 524 per share.

Ms. R is a local political leader and resides in the city wherein the Registered Office of the company is situated. She owns 1,000 shares in the company. She noticed that the Company's Board is not having representation of Small Shareholders.

She obtained a list of the members of the company and individually sent letters to few of them to propose her name as a Small Shareholders Director in XYZ limited for protecting interest of the minority shareholders.

The Annual General Meeting (AGM) of the Company was scheduled to be held on 25th August, 2023. Ms. R sent a notice to the Company well before the date of the AGM containing the proposal for her appointment as Small Shareholders Director. This proposal was sent along with the requisite documents duly signed by some of the small shareholders for her election.

Referring the provisions relating to the appointment of Small Shareholders Director under the Companies Act, 2013, analyze whether Ms. R is eligible for appointment as Small Shareholders Director in XYZ Ltd ?

(5 marks)

- (b) Mr. P has been appointed as a director in Well-Known Home Appliance Limited. His Permanent/Present Address as mentioned in DIR-3 (Application for allotment of DIN) is of Mumbai. However, most of the times, he resides with his son at Nagpur to take care of his business. You are the Company Secretary of Well-Known Home Appliance Limited. Mr. P insists you to send all the notices of the forthcoming meetings of Board at the Nagpur address of his son, till further information. State your course of action at the request of Mr. P.

(5 marks)

- (c) Below is the extract of financial information of Z Infotech Ltd for last 5 financial years :

Particulars	Financial Year (₹ in Crores)				
	2019-20	2020-21	2021-22	2022-23	2023-24
Paid-up Capital	200	200	200	200	200
Free Reserves	265	265	265	270	280
Turnover	100	600	650	700	800
Net Profit (Loss)	(4)	4	15	30	35

Referring the provision of Companies Act, 2013 for constitution of CSR Committee, analyze whether Z Infotech Ltd. is required to constitute a CSR Committee in FY 2024-25.

(5 marks)

- (d) To meet out the seasonal demand, the Mango Agro Products Ltd. (an Unlisted Public Company) availed a Cash Credit limit of ₹ 65 Crores against the hypothecation of its book debts in November, 2023 from True Banks Ltd. The company paid off all its due towards the Cash Credit limit in February 2024 as a result the outstanding loans as on 31-03-2024 remained as NIL.

For the Financial Year ended on 31st March, 2024 the extract of financial information of the company is as under :

Paid-up capital : ₹ 9 Crores

Free Reserves : ₹ 35 Crores

Turnover: ₹ 90 Crores

Mr. X, who is the Corporate Lawyer and Adviser of the Company, advised the Board of the Company to constitute an Audit Committee to the Board, since the company has availed the Cash Credit Limit of ₹ 65 Crores. The Board is not sure about the advice of Mr. X and seeks your advice with regard to formation of Audit Committee in the company. Comment.

(5 marks)

Answer 1(a)

Appointment of Small Shareholder Director

According to Section 151 of the Companies Act, 2013 every listed company may have one director elected by "small shareholders". For the purpose of this section, "small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

Rule 7 of Companies (Appointment and Qualifications of Directors) Rules, 2014 lays down the terms and conditions for appointment of Small Shareholder's Director. A listed company, may upon notice of not less than 1000 or one-tenth of the total number of small shareholders, whichever is lower, have a Small Shareholders' Director elected by the small shareholders. A listed company may suo moto (on its own accord) opt to have a director representing small shareholders. The Small Shareholder's Director's appointment is optional and made available to listed companies only.

In the given case, Ms. R is having 1000 shares of the company having the face value of Rs.10 which

amounts to Rs. 10,000 only. Since the nominal value of holding of Ms. R is less than Rs. 20,000 hence she is eligible to be a small shareholder director subject to compliance with other provisions of the Act relating to appointment of directors. Here the face value of the shares is to be considered and not the market value.

Answer 1(b)

Section 173(3) of the Companies Act, 2013 provides that a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at this address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Para 1.3.1 of SS-1 specifies that notice in writing of every Meeting shall be given to every Director by hand or by speed post or by registered post or by facsimile or by e-mail or by any other electronic means.

The Notice shall be sent to the postal address or e-mail address, registered by the Director with the company or in the absence of such details or any change thereto, any of such addresses appearing in the Director Identification Number (DIN) registration of the Director.

As a Company Secretary of the Company, I would request Mr. P as under:

- The Company can send the notice to the director at his address registered with the company only, which is as per Section 173(3) of the Companies Act, 2013.
- If Mr. P wants to have the notice to be delivered at Nagpur address, he has to make changes in the present address as mentioned in DIR-3 and submit it at the MCA Portal. After change of the address, Mr. P should inform the company about the new / changed address. Thereafter only, the company will be able to change the address and notice will be sent to the Nagpur address.
- Till the time the address is changed, the company shall continue to send the notice at Mumbai address and Mr. P is expected to get it collected from Mumbai address.

Answer 1(c)

Section 135 (1) read with Rule 3 of Companies (Corporate Social Responsibility Policy) Rules, 2014, mandates that every company which fulfils any of the following criteria during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of Board consisting of three or more directors, out of which at least one director shall be an independent director-

- Companies having net worth of rupees five hundred crore or more, or
- Companies having turnover of rupees one thousand crore or more, or
- Companies having a net profit of rupees five crore or more.

Further, Section 135(9) provides that where the amount to be spent by a company under Section 135 (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

With reference to whether the Constitution of CSR Committee is required in FY 2024-25 in Z Infotech Ltd., the calculation is as under:

Net profit of the company in FY 2023-24 – Rs. 35 Crores which is more than the limit as mentioned in rule 3 of Companies (Corporate Social Responsibility Policy) Rules, 2014.

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Average Profit of last three financial years of the company:

Profit in FY 2021-22 = Rs. 15 crores

Profit in FY 2022-23 = Rs. 30 crores

Profit in FY 2023-24 = Rs. 35 crores

Average Profit in last three financial years = $(15+30+35)/3$ = Rs. 26.67 crores

2% of Rs. 26.67 = Rs. 53,33,333 which is more than Rs. 50 lakh as provided in Section 135(9), Hence, the Company is required to constitute CSR Committee in the FY 2024-25.

Answer 1(d)

Section 177(1) of the Companies Act, 2013 read with rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014 provides that the Board of Directors of every listed public company and a company covered under rule 4 of the Companies (Appointment and Qualifications of Directors) Rule, 2014 are required to constitute an Audit Committee of the Board.

Rule 4 of the Companies (Appointment and Qualifications of Directors), Rules, 2014 provides the following class or classes of companies:-

- (i) All public companies with a paid-up capital of 10 crore rupees or more;
- (ii) All public companies having turnover of 100 crore rupees or more;
- (iii) All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

Explanation to Rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014 provides that the paid-up share capital or turnover or outstanding loans or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken into account for the purposes of this rule.

The Company does not come within the purview of Rule 4(1)(i) and 4(1)(ii) since the limits prescribed for paid-up capital and turnover is below the prescribed limit as on 31.03.2024.

Further as regards Rule 4(1)(iii) i.e. outstanding borrowing / loans, the balance is Nil as on 31.03.2024 hence any of the parameters required for constitution of the Audit Committee are not satisfied. Though the Company availed the seasonal credit limit of Rs. 65 crores during the FY 2023-24 but at the end of the FY the outstanding was zero, hence the Company is not mandated to constitute the Audit Committee.

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

Question 2

- (a) Fair Deal Private Limited has two directors on its Board. The company was incorporated in year 2014-15 and the registered office of the company is in Delhi. Both of the directors of M/s Fair Deal Private Limited generally reside in New York and visit India on time-to-time basis. During Financial Year 2023-24, Mr. X who is one of the directors of the company had not visited India while Mr. Y who is the other director had stayed in India during 1st April 2023 to 5th October, 2023. Analyze whether the company has complied with the provisions of Section 149(3) of the Companies Act, 2013.

(5 marks)

- (b) M/s XYZ Limited is a listed company. It is subsidiary of M/s NMF limited which is a prominent consumer durable company and owns many big brands. M/s XYZ has entered into an

agreement with M/s NMF Limited for the sale of the products under the brand name of M/s NMF Limited and in exchange of this M/s XYZ will pay 8% of the sales value of M/s NMF Limited as royalty. During FY 2023-24, M/s XYZ Limited consolidated turnover was ₹ 7,000 Crores and it has paid ₹ 400 crore as royalty to M/s NMF limited. Examine whether the royalty payment by M/s XYZ Limited to M/s NMF limited would be considered as material transaction.

(5 marks)

- (c) M/s TTQ is a listed Company and it is involved in business of manufacturing soaps and detergents. Its market valuation is approx. ₹ 7,000 crores and the market value of one share of the company is ₹ 80 per share. It has three existing directors. It has recently appointed Mr. Saral Singh as its director. Mr. Saral Singh is an expert in the field of chemistry and he is associated with the company for last 20 years as an employee. The Company wants to reward Mr. Saral Singh for the know-how, he has brought to the company and wants to issue 50,000 equity shares to Mr. Saral Singh at a discounted price of ₹ 15 per share. Examine in view of applicable provision of companies Act, and state whether issue of equity shares at a discounted price to a director is allowed. If yes, state the disclosures required in Board Report for such issue of shares.

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) M/s Zeta Limited is a listed company. It is engaged in the business of manufacturing electronic components. The company has an item having book value of ₹ 500 crores in its balance sheet as a part of its assets. As per applicable Accounting Standard, the company needs to fully amortize this asset in the current financial year but the company's management is having a view that this asset item should be amortize in 5 years and not fully in current year. You are the Company Secretary and the company wants your view whether this can be done.
- (ii) As per the OECD's Corporate Governance framework. It should ensure timely and accurate disclosure on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company. Comment.
- (iii) Mr. X is appointed as the chairman of the Board of Fair Deal Insurance Limited which is a newly formed Insurance Company in India. You are the Senior Practicing Company Secretary and engaged with Fair Deal Insurance company as a consultant. Mr. X want you to analyze the composition of Board in the Company and have a discussion with him. As the consultant of Fair Deal Insurance Limited, what factor will you consider in analyzing the Board composition of Fair Deal Insurance Company.

(5 marks each)

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

Answer 2(a)

Section 149 (3) of the Companies Act, 2013 deals with the provisions related to Resident Director in a company. Section 149 (3) provides that every company shall have at least one director who stays in India for a total period of not less than 182 days during the financial year.

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

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In the question, Mr. Y has stayed in India during 1st April 2023 to 5th October, 2023 which is more than 182 days so the requirement of Section 149 (3) of the Companies Act, 2013 has been complied with.

Answer 2(b)

As per Regulation 23(1A) of SEBI (LODR) Regulation, 2015 with effect from July 01, 2019 a transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed 5% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

Since in this case, the royalty payment of Rs. 400 crore by M/s XYZ Limited to M/s NMF Limited is more than the 5% of the consolidated turnover (i.e., Rs. 350 crore) of M/s XYZ Limited, so this transaction would be considered as a material transaction in view of Regulation 23(1A).

Answer 2(c)

The company may issue sweat equity shares to Mr. Saral Singh. Sweat equity shares are the shares which are issued by the Company to its Directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Rule 8(13) of the Companies (Share Capital and Debenture) Rules, 2014 provides that the Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the following details of issue of sweat equity shares namely:-

- a) the class of director or employee to whom sweat equity shares were issued;
- b) the class of shares issued as Sweat Equity Shares;
- c) the number of sweat equity shares issued to the directors, key managerial personnel or other employees showing separately the number of such shares issued to them, if any, for consideration other than cash and the individual names of allottees holding one percent or more of the issued share capital;
- d) the reasons or justification for the issue;
- e) the principal terms and conditions for issue of sweat equity shares, including pricing formula;
- f) the total number of shares arising as a result of issue of sweat equity shares;
- g) the percentage of the sweat equity shares of the total post issued and paid up share capital;
- h) the consideration (including consideration other than cash) received or benefit accrued to the company from the issue of sweat equity shares;
- i) the diluted Earnings Per Share (EPS) pursuant to issuance of sweat equity shares.

OR (Alternate question to Q. No. 2)

Answer 2A(i)

Yes, the company may amortize the asset item in its books of account in 5 years but company should be having valid reasons for believing that such treatment will result into better representation of the true and fair view of the company's operations. Further company needs to comply the comply with the requirement of Para 2 -Schedule V which stipulates that where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's

explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.

Answer2A (ii)

OECD's corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company:

- A. Disclosure should include, but not be limited to material information on:
 1. The financial and operating results of the company.
 2. Company objectives and sustainability related information.
 3. Capital structures, group structures and their control arrangements.
 4. Major share ownership, including beneficial owners, and voting rights.
 5. Remuneration of members of the board and key executives.
 6. Information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.
 7. Related party transactions.
 8. Foreseeable risk factors.
 9. Governance structures and policies, including the content of any corporate governance code and policy and the process by which it is implemented.
- B. Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non- financial reporting.
- C. An annual external audit should be conducted by an independent, competent and qualified auditor in accordance with internationally recognised auditing, ethical and independence standards in order to provide reasonable assurance to the board and shareholders on whether the financial statements are prepared, in all material respects, in accordance with an applicable financial reporting framework.
- D. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit in the public interest.
- E. Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Answer 2A(iii)

In order to analyze the composition of the board, compliance to IRDAI guidelines on the Composition of the Board of Directors in an Insurance Company would be assessed. As per the Guidelines for Corporate Governance for insurers in India:

- Insurance companies should ensure that the Board comprises of competent and qualified Directors to drive the strategies in a manner that would sustain growth and protect the interests of the stakeholders in general and policyholders in particular.
- The size of the Board in addition to being compliant with legal requirements (where applicable), should be consistent with scale, nature and complexity of business.
- It is expected that the shareholders of the companies elector nominate Directors from

various are as of financial and management expertise such as accountancy, law, insurance, pension, banking, securities, economics, etc., with qualifications and experience that is appropriate to the company.

- It is essential that the Directors possess the knowledge of group structure, organizational structure, process and products of the insurer and the Board generally complies with the following requirements-
 - The Board of Directors and Key Management Persons should understand the operational structure of the insurer and have a general understanding of the lines of business and products of the insurer, more particularly as the insurer grows in size and complexity.
 - The Board of Directors of an insurer belonging to a larger group structure/ conglomerate should understand the material risks and issues that could affect the group entities, with attendant implication on the insurer.
- The Board of Directors is required to have a minimum of three "Independent Directors". However, this requirement is relaxed to 'two' independent directors, for the initial five years from grant of Certificate of Registration to insurers. An independent Directors shall fulfill all the conditions specified under Section 149 of the Companies Act, 2013.
- In case the number of independent directors falls below the required minimum laid down, such vacancy shall be filled up before the immediately following Board meeting or 3 months from the date of such vacancy, whichever is later, under intimation to the Authority.
- Where the Chairman of the Board is non-executive, the Chief Executive Officer should be a whole-time director of the Board.

As required under Section 149 of the Companies Act, 2013, there shall be at least one-Woman Director on the Board of every Insurance company.

Question 3

- (a) Explain the provisions of Sarbanes-Oxley Act, 2002 for the protection of Whistle Blowers.
(3 marks)
- (b) Explain about the members of the board of Trustee of National Foundation for Corporate Governance (NFCG).
(3 marks)
- (c) Explain the cases in which members or depositors of a Company can file for Class Suit Action before the Tribunal.
(3 marks)
- (d) Discuss the role of Proxy Advisors in ensuring Good Corporate Governance.
(3 marks)
- (e) Explain the provisions relating to the 'Website Disclosure' as contained in SEBI (LODR) Regulations, 2015.
(3 marks)

Answer 3(a)

Section 302 of Sarbanes Oxley Act of 2002, an Act enacted by U.S. congress to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes contains following provisions for whistle-blowers:

- i) Make it illegal to “discharge, demote, suspend, threaten, harass or in any manner discriminate against” whistle-blowers;
- ii) Establish criminal penalties of up to 10 years for executives who retaliate against whistle-blowers;
- iii) Require board audit committees to establish procedures for hearing whistle-blower complaints;
- iv) Allow the secretary of labour to order a company to rehire a terminated employee with no court hearing.
- v) Give a whistle-blower the right to a jury trial, bypassing months or years of administrative hearings.

Answer 3(b)

Board of Trustees of NFCG deal with the implementation of policies and programmes and laying down the procedure for the smooth functioning. It is chaired by Secretary, Ministry of Corporate Affairs, Government of India. The members of the Board of Trustees are: -

1. Director General, Confederation of Indian Industry (CII);
2. Secretary, Institute of Chartered Accountants of India (ICAI);
3. Secretary, Institute of Company Secretaries of India (ICSI);
4. Secretary, The Institute of Cost Accountants of India (ICMAI);
5. Representative, National Stock Exchange (NSE); and
6. Director General & CEO, Indian Institute of Corporate Affairs (IICA).

Answer 3(c)

A class action is a legal proceeding in which shareholders bring suit as a group against the Company or its directors or officers and the judgment or settlement received from the suit covers all the shareholders equally. Section 245 of the Companies Act, 2013 mentions about class action suit. Cases where members or depositors can file class action before the tribunal are:

- a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
- c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- d) to restrain the company and its directors from acting on such resolution;
- e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- f) to restrain the company from taking action contrary to any resolution passed by the members;
- g) to claim damages or compensation or demand any other suitable action from or against;
 - (i) The company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;

- (ii) The auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
- (iii) Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part.

(h) to seek any other remedy as the Tribunal may deem fit.

Answer 3(d)

Proxy advisory firms are independent research outfits that evaluate the pros and cons of corporate matters such as mergers, acquisitions, top appointments and CEO pay, which shareholders are expected to vote on in AGMs, EGMs or court-convened meetings. These firms engage in heavy duty analysis of the major actions that are put to vote, and produce detailed reports advising shareholders on how they should swing to safeguard their interest.

Proxy advisers can be valuable because they fill an information gap: institutional investor's contract with these firms to carry out comprehensive reviews of voting proposals that the investors themselves have neither the time nor the resources to undertake. In short, many institutional investors, including pension funds and mutual funds, review and perhaps follow proxy advisers' recommendations when voting their shares.

Over the years, proxy services firms have played an increasingly outsized role in imposing their views of appropriate corporate governance on corporations and their shareholders. These firms purport to evaluate every issue for which corporate proxies are solicited, and their recommendations are demonstrably influential in how proxy votes are cast.

Proxy advisers also influence boards' decision making. They do a good job of policing the boards and governance records of the firms they track, and nudging institutional investors to take a stand on governance issues.

Answer 3(e)

Regulation 46 of the SEBI (LODR) Regulations, 2015 deals with the 'Website Disclosure', which reads as under:

- (1) The listed entity shall maintain a functional website containing the basic information about the listed entity.
- (2) The listed entity shall disseminate the following information under a separate section on its website:
 - a) details of its business;
 - b) terms and conditions of appointment of independent directors;
 - c) composition of various committees of board of directors;
 - d) code of conduct of board of directors and senior management personnel;
 - e) details of establishment of vigil mechanism/ Whistle Blower policy;
 - f) criteria of making payments to non-executive directors, if the same has not been disclosed in annual report;
 - g) policy on dealing with related party transactions;
 - h) policy for determining 'material' subsidiaries;

- i) details of familiarization programmes imparted to independent directors including the following details: -
 - i. number of programmes attended by independent directors (during the year and on a cumulative basis till date),
 - ii. number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), and
 - iii. other relevant details.
 - j) the email address for grievance redressal and other relevant details;
 - k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
 - l) financial information including:
 - i. notice of meeting of the board of directors where financial results shall be discussed;
 - ii. financial results, on conclusion of the meeting of the board of directors where the financial results were approved;
 - iii. complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc.
 - m) shareholding pattern;
 - n) details of agreements entered into with the media companies and/or their associates, etc;
 - o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors;
 - oa) Audio or video recordings and transcripts of post earnings/quarterly calls, by whatever name called, conducted physically or through digital means, simultaneously with submission to the recognized stock exchange(s), in the following manner:
 - (i) the presentation and the audio/video recordings shall be promptly made available on the website and in any case, before the next trading day or within twenty-four hours from the conclusion of such calls, whichever is earlier;
 - (ii) the transcripts of such calls shall be made available on the website within five working days of the conclusion of such calls:
- Provided that—
- a. The information under sub-clause (i) shall be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.
 - b. The information under sub-clause (ii) shall be hosted on the website of the listed entity and preserved in accordance with clause (a) of regulation 9.
- p) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;
 - q) items in sub-regulation (1) of regulation 47, namely
 - financial results, as specified in regulation 33, along-with the modified opinion(s) or reservation(s), if any, expressed by the auditor;

Provided that if the listed entity has submitted both standalone and consolidated financial results, the listed entity shall publish consolidated financial results along-with (1) Turnover, (2) Profit before tax and (3) Profit after tax, on a stand-alone basis, as a foot note; and a reference to the places, such as the website of listed entity and stock exchange(s), where the standalone results of the listed entity are available.

- notices given to shareholders by advertisement.
 - r) With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings.
 - s) separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year.
 - t) secretarial compliance report as per sub-regulation (2) of regulation 24A of these regulations;
 - u) disclosure of the policy for determination of materiality of events or information required under clause (ii), sub-regulation (4) of regulation 30 of these regulations;
 - v) disclosure of contact details of key managerial personnel who are authorized for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) as required under sub-regulation (5) of regulation 30 of these regulations;
 - w) disclosures under sub-regulation (8) of regulation 30 of these regulations;
 - x) statements of deviation(s) or variation(s) as specified in regulation 32 of these regulations;
 - y) dividend distribution policy by listed entities based on market capitalization as specified in sub-regulation (1) of regulation 43A;
 - z) annual return as provided under section 92 of the Companies Act, 2013 and the rules made thereunder.
- (3) (a) The listed entity shall ensure that the contents of the website are correct.
- (b) The listed entity shall update any change in the content of its website within two working days from the date of such change in content.

PART-II

Question 4

- (a) Fresh Food Cloud Kitchens Pvt Ltd opened its cloud kitchen in Bangalore in Year 2020. The food items prepared and delivered by the company are liked by most on account of its ethnic taste and in the short time of 2 years, the company got popularity and it earned good revenue. With this success, the promoters of the company opened 5 new cloud kitchens in the year 2022 and 2023 in the nearby areas of Bangalore in a phased manner. The promoters purchased the business places on these areas and hired the man-power to prepare and deliver the food. Although the response from these areas were good, but the company was facing acute shortage of liquidity, since the revenue earned by the one outlet was

being deployed in opening the new store and so on. Sometimes the company was not able to pay off to the suppliers for the raw materials supplied and the salary payment to the employees remained overdue for 2-3 months. As a result, the company had to close all its 5 kitchens which were opened in the year 2022-2023 and sold off the kitchen utensils and other electric equipment at 25% of its purchase price. The company's Balance Sheet was showing a good amount of fixed assets in building and the Profit and Loss Account was also showing reasonable profits, but the promoters were forced to shut down all the new kitchens, in spite of the solvency and profitability of the business. From the above facts, explain which type of risk, the company has faced and what measures you would suggest to mitigate such risk ?

(5 marks)

- (b) My Wallet Ltd. (MWL) is a Payment Bank, licensed from the Regulator. In order to provide the UPI services to the common man, it adopted intensive marketing and opened accounts in good numbers by compromising the Know Your Customer (KYC) and other regulatory norms prescribed by the Regulator. The Regulator during the course of its inspection observed the severe irregularity and imposed fine on the Company as well as on the defaulting officers and terminated the license of MWL for providing of the UPI services. Soon the news of imposing of penalty and termination of UPI services by the Regulator spread and the people started assembling at the branches of MWL and demanded for closure of the company and refund of their money. Explain which two types of risks is MWL facing and what is the co-relation between these two risks ?

(5 marks)

- (c) What is Risk Governance in an organisation ? What steps may be taken by the Board to achieve Risk oversight in an organisation ?

(5 marks)

- (d) Studies of the large public companies indicate that strategic risk contributes for more than half of the reasons attributable to decline in market capitalization of these companies. In view of this statement, explain the meaning of 'Strategic Risks' and also provide examples of strategic risks in an organization.

(5 marks)

Answer 4(a)

From the facts given in the question, it seems that the company was not able to have sufficient liquidity to run the business. The situation of the shortage of funds to meet the day-to day expenses is called as Liquidity Risk. The liquidity risk arises due to mismatches in the cash flow i.e., absence of adequate funds. Liquidity is different from solvency. A firm may be in a sound position as per the balance sheet, but if the current assets are not in the form of cash or near cash assets, the firm may not be in a position to make payment to its creditors which adversely affects the reputation of the firm. The liquidity risk may be of two types, trading risk and funding risk.

Trading Risk

It may mean the absence of the liquidity or enough products or securities etc. to actually undertake buying and selling activities. e.g., in the context of securities trading inability to enter into derivative transactions with counter parties or make sales or purchase of securities.

Funding Risk

It refers to the inability to meet the obligations e.g., inability to manage funds by either borrowing or the sale of assets/securities. It arises where the balance sheet of a firm contains illiquid financial assets which cannot be turned in to cash within a very short time.

Measures to mitigate the risk

In the given case the company has deployed its funds in purchasing business places at various locations in Bangalore. This involves the heavy cash out flow. Whatever the retained earning the company had earned in previous years, from its first kitchen, were expended in opening of the new kitchens, which was a wrong decision. Instead of this the company could place to have the place of business on rent. Though the Balance Sheet seems to be solvent and the business was profitable, but once the trade cycle of inflow and outflow of funds are mismatched, the business suffers a lot. Some other ways to mitigate liquidity risk includes –

- Develop accurate cash flow forecasts
- Have policies and guidelines in place for decision-making regarding the allocation of cash
- Effective receivables management
- Prevent operational risks
- Frequent analyses
- Use predictive analytics

Answer 4(b)

From the given facts, the MWL has initially faced the Compliance Risk. Compliance Risk arises on account of non-compliance or breach of laws/ regulations which the entity is supposed to adhere. It may result in deterioration of reputation in public eye, monetary penalty and other penal provisions. Initially MWL did not comply with the regulatory norms and was facing the compliance risk.

When the regulator imposed fine and terminated the license for the UPI services the people started gathering in the branches to get their money back, due to bad news being circulated in the society, which is called as the Reputation Risk. This type of risk arises from the negative public opinion. Such type of risk may arise from e.g. from the failure to assess and control compliance risk and can result in harm to existing or potential business relationships.

Compliance risk and reputation risk are co-related as compliance risk leads to reputation risk. As seen in the above case, a non-compliant company not only runs the Compliance Risk but it is also prone to reputation risk as public today is very vigilant and news spread fast and far and wide. Thus, compliance risk and reputation risk are interlinked.

Answer 4(c)

Risk governance includes the skills, infrastructure (i.e., organization structure, controls and information systems), and culture deployed as directors exercise their oversight. Good risk governance provides clearly defined accountability, authority, and communication/reporting mechanisms.

The board shall have to identify the extent and type of risks it faces and the planning necessary to manage and mitigate the same for ensuring growth for the benefit of all the stakeholders. Therefore, the Board has to define a risk philosophy and the extent to which it is willing to accept any consequence of taking of risks by the organisation and its functionaries in its day-to-day functioning.

A strengthened management information system (MIS) supported by robust information technology platform is a necessary pre-requisite for enhancing Board efficiency in oversight and decision making. Similarly, augmented skill sets and experience at the level of independent directors would go a long way in enhancing the Board capacity. Strong MIS facilitates risk reporting to the boards in an effective and comprehensive manner, which in turn enhances transparency and causes informed

decision taking. Robust information technology systems are a necessary condition for supporting the MIS framework as the quality of risk information that the Boards and the top management receive depends largely on the quality and robustness of the information technology systems.

The risk management committees have an important role to play in the overall risk governance framework. Apart from monitoring the company's strategic-risk profile on an on-going basis, such committees would also be responsible for defining the company's overall risk appetite; approving major transactions above a company's risk threshold, and; establishing limit structures and risk policies for use within individual businesses. Risk oversight is the responsibility of the entire Board and the same can be achieved through a review mechanism which inter-alia could include:

1. Developing policies and procedures around risk that is consistent with the organization's strategy and risk appetite.
2. Taking steps to foster risk awareness.
3. Encourage an organizational culture of risk adjusting awareness.
4. Maintenance of a Risk Register.
5. A compliance certificate on the identification of risks and establishment of mitigation measures.

Answer 4(d)

Meaning of Strategic Risks

Strategic risk is the risk that failed business decisions may pose to a company. Strategic risk is often a major factor in determining a company's worth, particularly observable if the company experiences a sharp decline in a short period of time.

Strategic risks are events, whether internal or external, that impacts an organisation's ability to reach their objectives and goals. As is the case with risk, it refers to probability. In this case, it's the probability that an organisation's strategy will fall short of goals. These risks can have severe consequences that impact organizations in the long term.

Strategic risk is a category of risk in the same way that risks such as operational risk, financial risk, reputational risk and regulatory risk are.

As Edinburgh Business School professors Roberts, Wallace, and McClure defined the concept, strategic risk is corporate-level risk that "affects the development and implementation of an organisation's strategy."

Examples of Strategic Risks

Since businesses are dynamic, strategic risk may look different at various points in time, as factors outside of the company's control can get in the way of achieving goals. For example, in case of a bank with major market share, then competitive risk may not currently be at the top of the management's mind. But, if a new entrant comes into the space and starts to threaten the market share, then competitive risk becomes a focal point.

Other Examples of events or circumstances that could derail an organization's strategic goals include:

- Strategic decisions that are unclear or poorly made
- Changes in senior management and leadership
- The introduction of new products or services

- Mergers and acquisitions which prove unsuccessful
- Market or industry changes, such as a shift in the needs or expectations of customers
- Problems with suppliers and other stakeholders
- Financial challenges
- Failure to adapt to a changing environment or keep up with competitors
- Company reputation damage

PART-III

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

Question 5

- (a) Explain the meaning of Internal Control and its limitations as per the Standard on Auditing, 315(SA 315). (5 marks)
- (b) In general, the internal control of an organization has mix of manual and automated controls and each type of control has its own limitations. In view of this statement, explain the different limitations as faced by automated IT controls. (5 marks)
- (c) Governance, Risk Management and Compliance are three related facets which aim to ensure that an organization achieves objectives, addresses uncertainty and acts with integrity. Comment (5 marks)
- (d) Sustainability Reporting is the intrinsic element of Integrated Reporting. Comment. (5 marks)

OR (Alternative question to Q. No. 5)**Question 5A**

- (i) *Compliances are the mechanism which are used by the organizations to prevent and detect the violations of the state rules, internal policies and procedures.* In reference to above statement, explain the different internal compliance mechanisms in an organization.
- (ii) Explain key drivers of Corporate Sustainability Reporting.
- (iii) There are different types of Internal Controls employed in an organization including preventive controls, detective controls, input control and output controls. In reference to this statement. Explain the difference between Input Controls and Output Controls along with examples of both types of controls.
- (iv) An integrated report includes various Content Elements that are fundamentally linked to each other and are not mutually exclusive. Comment (5 marks each)

Attempt all parts of either Q. No. 5 or Q. No. 5A**Answer 5(a)**

According to SA 315 the internal control is “the process designed, implemented and maintained by those charged with governance, management and other personnel to provide reasonable assurance about the achievement of an entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations. The term “controls” refers to any aspects of one or more of the components of internal control.”

Limitations of Internal Control

The limitations of Internal Control as laid down by SA 315 are:

- Internal control, no matter how effective, can provide an entity with only reasonable assurance about achieving the entity's financial reporting objectives. The likelihood of their achievement is affected by the inherent limitations of internal control. These include the realities that human judgment indecision- making can be faulty and that breakdowns in internal control can occur because of human error. For example, there may be an error in the design of, or in the change to, a control. Equally, the operation of a control may not be effective, such as where information produced for the purposes of internal control (for example an exception report is not effectively used because the individual responsible for reviewing the information does not understand its purpose or fails to take appropriate action.
- Additionally, controls can be circumvented by the collusion of two or more people or inappropriate management override of internal control. For example, management may enter into side agreements with customers that alter the terms and conditions of the entity's standard sales contracts, which may result in improper revenue recognition. Also, edit checks in a software program that are designed to identify and report transactions that exceed specified credit limits may be overridden or disabled.
- Further, in designing and implementing controls, management may make judgments on the nature and extent of the controls it chooses to implement, and the nature and extent of the risks it chooses to assume.

Answer 5(b)

Specific limitations related to an entity's automated IT internal control, includes:

1. Reliance on systems or programs that are inaccurately processing data, processing inaccurate data, or both.
2. Unauthorized access to data that may result in destruction of data or improper changes to data, including the recording of unauthorized or non-existent transactions, or inaccurate recording of transactions. Particular risks may arise where multiple users access a common database.
3. The possibility of IT personnel gaining access privileges beyond those necessary to perform their assigned duties thereby breaking down segregation of duties.
4. Unauthorized changes to data in master files.
5. Unauthorized changes to systems or programs.
6. Failure to make necessary changes to systems or programs.
7. Inappropriate manual intervention.
8. Potential loss of data or inability to access data as required.

Answer5(c)

Governance, risk management, and compliance are three related facets that aim to assure that an organization reliably achieves objectives, addresses uncertainty and acts with integrity:

Governance is the combination of processes established and executed by the directors (or the board of directors) that are reflected in the organization's structure and how it is managed and led toward achieving goals. Governance describes the overall management approach through which senior executives direct and control the entire organization, using a combination of management information and hierarchical management control structures. Governance activities ensure that critical management information reaching the executive team is sufficiently complete, accurate and timely to enable appropriate management decision making, and provide the control mechanisms to ensure that strategies, directions and instructions from management are carried out systematically and effectively.

Risk management is predicting and managing risks that could hinder the organization from reliably achieving its objectives under uncertainty. Risk management is the set of processes through which management identifies, analyzes, and, where necessary, responds appropriately to risks that might adversely affect realization of the organization's business objectives. The response to risks typically depends on their perceived gravity, and involves controlling, avoiding, accepting or transferring them to a third party, whereas organizations routinely manage a wide range of risks (e.g. technological risks, commercial/financial risks, information security risks etc.)

Compliance refers to adhering with the mandated boundaries (laws and regulations) and voluntary boundaries (company's policies, procedures, etc.). Compliance means conforming to the stated requirements. At an organizational level, it is achieved through management processes which identify the applicable requirements (defined for example in laws, regulations, contracts, strategies and policies), assess the state of compliance, assess the risks and potential costs of non-compliance against the projected expenses to achieve compliance, and hence prioritize, fund and initiate any corrective actions deemed necessary.

Governance, Risk Management and Compliance (GRC) is the integrated collection of capabilities that enable an organization to reliably achieve objectives, address uncertainty and act with integrity. Governance, Risk and Compliance (**GRC**) refers to a strategy for managing an organization's overall governance, enterprise risk management and compliance with regulations. GRC is a set of processes and practices that runs across departments and functions. GRC might be enabled by a dedicated platform and other tools, although this is not mandatory. While organizations generally don't need to maintain a separate GRC department, most organizations have a team in place to manage the GRC platform and tools. The scope of GRC doesn't end with just governance, risk, and compliance management, but also includes assurance and performance management, information security management, quality management, ethics and values management, and business continuity management.

Answer 5(d)

Sustainability reporting is a process that assists organizations in setting goals, measuring performance and managing change towards a sustainable global economy – one that combines long term profitability with social responsibility and environmental care. Sustainability reporting – mainly through but not limited to a sustainability report – is the key platform for communicating the organization's economic, environmental, social and governance performance, reflecting positive and negative impacts. The aspects that the organization deems to be material, in response to its stakeholders' expectations and interests, drive sustainability reporting. Stakeholders can include those who are invested in the organization as well as those who have other relationships with the organization.

Integrated reporting is an emerging and evolving trend in corporate reporting, which in general aims primarily to offer an organization's providers of financial capital with an integrated representation of the key factors that are material to its present and future value creation. Integrated reporters build on sustainability reporting foundations and disclosures in preparing their integrated report. Through the integrated report, an organization provides a concise communication about how its strategy, governance, performance and prospects lead to the creation of value over time. Therefore, the integrated report is not intended to be an extract of the traditional annual report nor a combination of the annual financial statements and the sustainability report. However, the integrated report interacts with other reports and communications by making reference to additional detailed information that is provided separately.

Although the objectives of sustainability reporting and integrated reporting may be different, sustainability reporting is an intrinsic element of integrated reporting. Sustainability reporting considers the relevance of impact of sustainability trends, risks and opportunities on the long term prospects and financial performance of the organization. Sustainability reporting is fundamental to an organization's integrated thinking and reporting process in providing input into the organization's identification of its material issues, its strategic objectives, and the assessment of its ability to achieve those objectives and create value over time.

OR (Alternative question to Q. No. 5)

Answer 5A(i)

Internal compliance refers to internally designed set of rules and regulations which the owners, employees, traders, customers follow to maintain the quality of the services or products provided by the organisation. An organisation will comply with external requirements only when it is working in line with the internal rules and regulations. Certain internal compliance mechanisms are:

- a. **High level company personnel who exercise effective oversight:** The organization's governing body should be knowledgeable about the effective compliance program and should have oversight of it. The governing body should have the overall responsibility for the compliance program and shall ensure the effectiveness of it. A Compliance Officer shall be designated by the organization's governing body, who shall periodically report to the higher level management/ governing body.
- b. **Written policies and procedures:** The employees of the organization should be made known the legal requirements so that employees understand their obligations. The employees should be encouraged to report suspected fraud and other irregularities without fear.
- c. **Training and education:** The employees of the organization should be provided reasonable training to understand the organization's compliance program and its policies and process.
- d. **Lines of communication:** Information about the compliance program must be widely communicated at all levels of an organization.
- e. **Standards enforced through well-publicized disciplinary guidelines:** The organization's compliance and ethics program should be promoted and enforced consistently through well-publicized guidelines that provide incentives to support the compliance and ethics program and at the same time provides disciplinary measures for disobeying the law, the organization's policies, or the requirements of the compliance and ethics program.
- f. **Internal compliance monitoring:** The organization shall take reasonable steps, including monitoring and auditing, to ensure that the organization's compliance and ethics program is followed diligently and its effective compliance must be evaluated periodically.

- g. **Response to detected offenses and corrective action plans:** After monitoring and auditing of the compliance program, the organization shall take reasonable steps to, respond appropriately to any violations of the law or policies, to prevent future misconduct; and modify or improve its program if required at any stage.

Answer 5A(ii)

The key drivers of corporate sustainability reporting are as under:

- **Regulations:** Governments, at most levels have stepped up the pressure on corporations to measure the impact of their operations on the environment. Legislation is becoming more innovative and is covering an ever-wider range of activities. The most notable shift has been from voluntary to mandatory sustainability, monitoring and reporting.
- **Customers:** Public opinion and consumer preferences are a more abstract but powerful factor that exerts considerable influence on companies, particularly those that are consumer oriented. Customers significantly influence a company's reputation through their purchasing choices and brand.
- **Loyalty:** This factor has led the firms to provide much more information about the products they produce, the suppliers who produce them, and the product's environmental impact starting from creation to disposal.
- **NGO's and the media:** Public reaction comes not just from customers but from advocates and the media, who shape public opinion. Advocacy organizations, if ignored or slighted, can damage brand value.
- **Employees:** Those who work for a company bring particular pressure to bear on how their employers behave; they, too, are concerned citizens beyond their corporate roles.
- **Peer pressure from other companies:** Each company is part of an industry, with the peer pressures and alliances that go along with it. Matching industry standards for sustainability reporting can be a factor; particularly for those who operate in the same supply chain and have environmental or social standards they expect of their partners.
- **Companies themselves:** Corporations, as public citizens, feel their own pressure to create a credible sustainability policy, with performance measures to back it up, but with an eye on the bottom line as well. Increasingly, stakeholders are demanding explicit sustainability reporting strategies and a proof of the results.
- **Investors:** Increasingly, investors want to know that companies they have targeted have responsible, sustainable, long-term business approaches. Institutional investors and stock exchange CEOs, for example, have moved to request increased sustainability reporting from listed companies, and environmental, social and corporate governance indices have been established such as the Dow Jones Sustainability Index.

Answer 5A(iii)

Input Controls: Input controls in the context of internal control means the procedures and systems to ensure completeness, accuracy, existence, validity of the data entered in the financial and non- financial records. Input control helps in preventing errors and frauds thereby making the information is reliable for decision making. Examples are: Data validation, Data verification, Audit trail and authorization procedure.

Output Controls: Output controls in the context of internal control means the mechanism put in place to monitor and evaluate the results of operation or activities. The purpose of output control is to ensure that the objectives of the entity are met and the results are in line with the expectations.

Examples are: Monitoring and measuring key performance indicators such as productivity, efficiency and effectiveness, quality control, obtaining feedback, review of exception reports.

Answer 5A(iv)

An integrated report includes different Content Elements that are fundamentally linked to each other and are not mutually exclusive:

1. **Organizational overview and external environment:** What does the organization do and what are the circumstances under which it operates?
2. **Governance:** How does the organization's governance structure support its ability to create value in the short, medium and long term?
3. **Business model:** What is the organization's business model?
4. **Risks and opportunities:** What are the specific risks and opportunities that affect the organization's ability to create value over the short, medium and long term, and how is the organization dealing with them?
5. **Strategy and resource allocation:** Where does the organization want to go and how does it intend to get there? Performance: To what extent has the organization achieved its strategic objectives for the period and what are its outcomes in terms of effects on the capitals?
6. **Outlook:** What challenges and uncertainties is the organization likely to encounter in pursuing its strategy, and what are the potential implications for its business model and future performance?
7. **Basis of presentation:** How does the organization determine what matters to include in the integrated report and how are such matters quantified or evaluated?

PART-IV

Question 6

- (a) Explain the different principles which generally forms the foundation of "Code of Business Conduct"
- (b) Explain the concept of "Economic Value Added". The Net Operating Profit After Tax (NOPAT) of a company is ₹ 2,400 crores. The capital employed in the company is ₹ 8,000 crores and weighted average cost of the capital of the company is 15%. Find the Economic Value Added (EVA) by the company.

(5 marks each)

Answer 6(a)

The Code of Conduct or what is popularly known as the Code of Business Conduct contains standards of business conduct that must guide actions of the Board of Directors and senior management of the company. The Code of Conduct outlines specific behaviours that are required or prohibited as a condition of ongoing employment. The code of conduct for a group or organization is an agreement on rules of behaviour for the members of that group or organization. Commonly generated by corporations themselves, corporate codes of conduct vary extensively in design and objective. Crucially, they are not directly subject to legal enforcement. In an era acutely aware of the dramatic social and environmental effects of corporate activity across the world, such codes of conduct have become the focus of considerable attention.

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Although the exact details of this code are a matter of discretion, the following principles have been found to occur in most of the companies:

- Use of company's assets;
- Avoidance of actions involving conflict of interests;
- Avoidance of compromising on commercial relationship;
- Avoidance of unlawful agreements;
- Avoidance of offering or receiving monetary or other inducements;
- Maintaining confidentiality;
- Collection of information from legitimate sources only;
- Safety at workplace;
- Maintaining and Managing Records;
- Free and Fair competition;
- Disciplinary actions against the erring person.

Answer 6(b)

"Economic Value Added (EVA) is the net operating profit minus an appropriate charge for the opportunity cost of all capital invested in an enterprise or project. It is an estimate of true economic profit, or amount by which earnings exceed or fall short of the required minimum rate of return investors could get by investing in other securities of comparable risk.

EVA is net operating profit after tax(NOPAT) less capital charge.

$EVA = NOPAT - (\text{Invested Capital} \times \text{Weighted Average Cost of Capital (WACC)})$

Calculation of EVA in the given problem

NOPAT= Rs. 2400 crores

Weighted average cost of capital(WACC) = 15%

Invested Capital = Rs. 8,000 crores

$EVA = Rs. 2400 \text{ crore} - (Rs. 8,000 \text{ crore} \times 15\%)$

= Rs. 1,200 crore

Lecture Kart

ADVANCED TAX LAWS

MODULE 1 PAPER 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) Swadeshi Pvt. Ltd., a registered person in Lucknow (Uttar Pradesh) under GST Laws is a supplier of goods and pays GST tax under regular scheme. It has made the following transactions for the month of November, 2023 :

- (i) Supplied goods worth ₹ 8,00,000 to R of Kanpur (Uttar Pradesh)
- (ii) Supplied goods worth ₹ 5,00,000 to M of Amritsar (Punjab)
- (iii) Purchased goods worth ₹ 2,00,000 from J Ltd of Noida (Uttar Pradesh)
- (iv) Purchased goods worth ₹ 3,00,000 from Paras of Patna (Bihar)

The company has following opening balance of ITCs for November 2023 :

Particulars	Amount (₹)
CGST	54,000
SGST	4,000
IGST	70,000

Note :

- (i) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively.
- (ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.
- (iii) All the transactions of inward and outward supplies are made with GST registered persons under regular scheme.
- (iv) All the conditions necessary for availing the ITC have been fulfilled.

Compute the head-wise minimum GST payable, in cash, by Swadeshi Pvt. Ltd. for the month of November 2023. Make suitable assumptions as required.

(5 marks)

(b) Rajshree, a resident of Ahmedabad (Gujarat), commenced her business of supply of goods in the month of April 2023. She has provided the following information :

- (i) Her intra-state turnover for the first two quarters were :
 - (a) April to June, 2023 ₹ 25 lakhs
 - (b) July to September, 2023 ₹ 90 lakhs (includes 30% supplies of exempted goods).
- (b) Since the goods supplied by her were eligible for composition scheme, she opted for registration under composition scheme, in the State of Gujarat, with effect from 1st July, 2023,

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You are required to compute the tax payable by Rajshree, till the end of second quarter, under GST law in the following independent situations :

- (i) If she is a manufacturer of goods other than notified goods.
- (ii) If she is a trader.

(5 marks)

- (c) Kala Niketan, registered in Jaipur, Rajasthan, wishes to organise a 'Balle Dance Concert' in Nagpur, Maharashtra. Kala Niketan enters into a contract with an event management company Galaxy Entertainment Pvt. Ltd., registered in Kolkata, West Bengal, for organising the said concert at an agreed consideration of ₹ 1 lakh. Galaxy Entertainment books Kala Kunj Auditorium, registered in Nagpur, Maharashtra, for holding the concert for a lump sum consideration of ₹ 45,000. Kala Niketan fixes the entry ticket fee to the concert at ₹ 600 per ticket. 440 tickets were sold for the concert. You are required to determine the following in respect of each of the supply involved in the given scenario in the context of CGST Act, 2017 :

- (a) Place of supply of services
- (b) The amount of CGST and SGST or IGST payable in each case.

Will your answer differ, in anyway, if Kala Niketan fixes the entry ticket fee at ₹ 460 instead of ₹ 600 per ticket.

Note :

- Rate of CGST, SGST and IGST are 9%, 9% and 18% respectively.
- All the amounts given above are exclusive of taxes, wherever applicable.

(5 marks)

- (d) Vithal is a trader, registered in Nashik (Maharashtra), under the regular scheme under GST Law. On the GST portal, his electronic liability register, show the following tax and other liabilities due as on 1st June, 2024 :

Particulars	Amount (₹)
Self-assessed output tax due for April, 2024	3,00,000
Self-assessed output tax due for May, 2024	3,50,000
Interest due for April 1, 2024	25,000
Penalty due for April, 2024	28,000
Liability due towards demand notice issued by proper officer u/s 74 for suppression of facts	1,25,000

Being afraid of liability arising out of demand notice u/s 74, he is of the opinion to pay this liability first over other tax and liability due.

Assuming that there is sufficient balance in his electronic credit and cash ledgers, you are required to examine the provision of order of discharge of GST liabilities u/s 49(8) of the CGST Act, 2017 with reference to above particulars and advice to Vithal accordingly.

(5 marks)

Answer 1(a)**Computation of GST Payable on outward supplies for November 2023**

Sr. No.	Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%	Total
(i)	Intra-state supply of goods to R worth Rs. 8,00,000	72,000	72,000	Nil	1,44,000
(ii)	Inter-state supply of goods to M worth Rs. 5,00,000	Nil	Nil	90,000	90,000
	Total GST payable	72,000	72,000	90,000	2,34,000

Computation of Total Input Tax Credit (ITC) available for November, 2023

Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%
Opening ITC	54,000	4,000	70,000
Add: ITC on Intra-state purchase of goods from J Ltd.	18,000	18,000	Nil
Add: ITC on Inter-state purchase of goods from Paras	Nil	Nil	54,000
Total ITC Available	72,000	22,000	1,24,000

Computation of Minimum GST payable head-wise from Electronic Cash Ledger for November 2023

Particulars	CGST @ 9%	SGST @ 9%	IGST @ 18%	Total
GST payable	72,000	72,000	90,000	2,34,000
Less: ITC [First ITC of IGST should be utilized in full-first against IGST liability and then against CGST and SGST liabilities in a manner to minimise cash outflow	Nil	(34,000) IGST	(90,000) IGST	(1,24,000)
Less: ITC of CGST and SGST set off against CGST and SGST respectively	(72,000) CGST	(22,000) SGST	Nil	(94,000)
Minimum GST payable in cash	Nil	16,000	Nil	16,000

Note: Since sufficient balance of ITC of CGST is available for paying CGST liability and cross utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) to minimise cash outflow.

Answer 1(b)

As per section 10 read with rule 7 of CGST Act, a registered person opting for composition levy for goods, pays tax at the rates mentioned below during the current financial year in lieu of the tax payable by him under regular scheme:

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Manufacturer, other than manufacturer of notified goods	1% (0.5% CGST + 0.5% SGST / UTGST) of the turnover in the State / Union Territory
Trader	1% (0.5% CGST + 0.5% SGST / UTGST) of the turnover of taxable supplies of goods & services in the State/Union Territory

Turnover prior to getting registered will not be considered for determining the turnover in a State/ Union Territory

Tax Payable by Rajshree:

- i. If she is a manufacturer of goods other than notified goods

$$\text{CGST} = \text{Rs. } 90 \text{ lakhs} \times 0.5\% = \text{Rs. } 45,000$$

$$\text{SGST} = \text{Rs. } 90 \text{ lakhs} \times 0.5\% = \text{Rs. } 45,000$$

- ii. If she is a trader

$$\text{CGST} = \text{Rs. } 63 \text{ lakhs (as 30\% of turnover is of exempted goods)} \times 0.5\% = \text{Rs. } 31,500$$

$$\text{SGST} = \text{Rs. } 63 \text{ lakhs (as 30\% of turnover is of exempted goods)} \times 0.5\% = \text{Rs. } 31,500$$

Answer 1(c)

In the given situation, three supplies are involved:

- Services provided by Kala Niketan to audiences by way of admission to the Balle Dance Concert held at Kala Kunj Auditorium
- Services provided by Galaxy Entertainment Pvt Ltd to Kala Niketan by way of organising the Balle Dance Concert at Kala Kunj Auditorium
- Services provided by Kala Kunj Auditorium to Galaxy Entertainment Pvt Ltd by way of accommodation to auditorium for organising the Balle Dance Concert

The Place of Supply, CGST and SGST or IGST payable in respect of each of the above supplies is determined as under:

- i. As per the provision of section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to, inter alia, a cultural event shall be the place where the event is actually held.

Therefore, the place of supply of services supplied by Kala Niketan (Jaipur, Rajasthan) to audiences by way of admission to the Balle Dance Concert is the location of the Kala Kunj auditorium i.e., Nagpur, Maharashtra

Since the location of the supplier (Jaipur, Rajasthan) and the place of Supply (Nagpur, Maharashtra) are in different states, IGST will be leviable. Therefore, IGST leviable will be computed as follows:

$$\text{Consideration of supply (440 tickets @ Rs. 600 per ticket)} = \text{Rs. } 2,64,000$$

$$\text{IGST @ 18\% of Rs. } 2,64,000 = \text{Rs. } 47,520$$

- ii. Section 12(7)(a)(i) of the IGST Act, 2017, stipulates that the place of supply of services provided by way of organisation of, inter alia, a cultural event to a registered person is the location of such person.

Therefore, place of supply of services supplied by Galaxy Entertainment Pvt Ltd (Kolkata, West Bengal) to Kala Niketan (Jaipur, Rajasthan) by way of organising the Balle Dance Concert is the location of the registered person i.e., Jaipur, Rajasthan.

Since the location of the supplier, Kolkata, West Bengal, and the place of supply, Jaipur, Rajasthan are in different states, IGST will be leviable. Therefore, IGST leviable will be computed as follows: $\text{Rs. } 1,00,000 * 18\% = 18,000$

- iii. As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organising, inter alia, any cultural function, shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Kala Kunj Auditorium (Nagpur, Maharashtra) to Galaxy Entertainment Pvt Ltd (Kolkata, West Bengal) by way of accommodation in the auditorium for organising the Balle Dance Concert shall be the location of Kala Kunj Auditorium.

Since the location of the supplier (Nagpur, Maharashtra) and the place of supply (Nagpur, Maharashtra) are in the same state, CGST and SGST will be leviable as computed below:
CGST= $\text{Rs. } 45,000 * 9\% = \text{Rs. } 4,050$

SGST= $\text{Rs. } 45,000 * 9\% = \text{Rs. } 4,050$

If the price for the entry ticket is fixed at Rs. 460 in place of Rs. 600 per ticket, answer will change in respect of supply of services provided by way of admission to Balle Dance Concert, as mentioned in Part (i) above. There will be no GST liability if the consideration for the ticket is Rs. 460 as the inter-state services by way of right to admission to, inter alia, Balle Dance concert are exempt from IGST vide notification no. 9/2017 IT(R) dated 28.06.2017, if the consideration is not more than Rs. 500 per person. However, there will be no change in the answer in respect of supplies mentioned in part (ii) and (iii) above.

Answer 1(d)

The order of discharge of GST liabilities under section 49(8) of the CGST Act, 2017 is as under:

- Self-assessed tax, interest, penalty, fee or any other amount related to returns of the previous tax periods
- Self-assessed tax, interest, penalty, fee or any other amount related to returns of the current tax periods
- Any other amount payable including demand determined under section 73 or section 74

In view of the aforesaid provision, Vithal cannot clear his liability of demand notice u/s 74 first over other tax and liabilities due.

The order of discharge of liabilities of Vithal will be as under:

S No.	Particulars	Amount (Rs.)
(i)	Self-assessed output tax, interest and penalty due for April, 2024 (300000+25000+28000)	353,000
(ii)	Self-assessed output tax due for May, 2024	350,000
(ii)	Liability arising out of demand notice u/s 74	1,25,000

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

- (a) Eastern Traders Pvt Ltd, a registered entity under GST Law in Cuttack (Odisha), is engaged in the supply of various goods and services. Following transactions towards outwards supply have occurred during the month of November, 2023 :

S. No.	Particulars	Amount (₹)
(i)	Supplied 250 wall fans at Kolkata to the state government of West Bengal	4,00,000
	250 stands mandatorily required to mount the fans on wall were also supplied along with wall fans	36,000
(ii)	Provided intra-state service as a Direct Selling Agent (D.S.A.) to Arunoday Bank Ltd for their consumer loan products	2,50,000
(iii)	Company owned ferries were used as passenger transportation services to general public from one shore to another shore of the river Mahanadi to facilitate daily commutation of local public	1,00,000
(iv)	Supplied goods to its agent in the state of Maharashtra. Open market value of the said goods were ₹ 2,80,000. The said agent is supplying goods of like kind and quality to unrelated customers at ₹ 3,00,000. The company wishes to choose the option which is most beneficial to it.	

The company has provided the following additional information :

- Rate of CGST, SGST and IGST are 9%, 9% and 18% respectively for outward supply of goods and services, except wall fan stand for which the rates are 14%, 14% and 28% respectively.
- All the amounts given above are exclusive of taxes, wherever applicable.

You are required to compute the taxable value of supply and GST liability payable, i.e., CGST, SGST or IGST as the case may be, for Eastern Traders Pvt. Ltd, for the month of November, 2023.

(5 marks')

- (b) Examine, with appropriate explanation, whether the suppliers are eligible for composition levy under section 10 of CGST Act, 2017, in the following independent cases in the beginning of the financial year 2023-24 :
- Audiocon Electronics, registered in Bangalore, Karnataka, is engaged in the manufacturing and supplying of front-load automatic washing machines, intrastate, on its own. Its aggregate turnover in the financial year 2022-23 is ₹ 76 lakhs. With a view to expand its business operations, it will also start providing the repairing services of front-load automatic washing machines in Karnataka in the financial year 2023-24.
 - Hitesh, registered in Tripura, is engaged in running a pure veg restaurant 'Jim Jam Kitchen' in Agartala. He has a turnover of ₹ 49 lakhs in the financial year 2022-23. Due to incurring heavy losses, he decided to shut down the restaurant business and start

providing interior designing consultancy services, within Tripura, from financial year 2023-24.

(5 marks)

- (c) Anil, a trader registered under regular scheme, has opted to file returns of GSTR-1 and GSTR-3B on monthly basis. He has filed GSTR-3B for the month of May, 2023 within due date i.e., 20.06.2023. Anil noticed in July, 2023, that the tax dues for the month of May, 2023 have been short paid by ₹ 20,000. The shortfall of ₹ 20,000 was paid through electronic cash ledger and credit ledger amounting to ₹ 15,000 and ₹ 5,000 respectively while filing GSTR-3B of July, 2023 which was filed on 20.08.2023.

- (i) Examine and compute the interest payable, if any, under CGST Act, 2017.
- (ii) What would be your answer if, GSTR-3B for the month of May, 2023 had been filed belatedly on 20.08.2023 as above.

Note : Assume that electronic cash ledger and credit ledger carried sufficient balance for the above shortfall.

(5 marks')

- (d) (i) When is Dynamic Quick Response (QR) Code applicable to supplier who issue invoice to unregistered persons ?
- (ii) What is the amount of penalty for non-compliance of Dynamic Quick Response (QR) Code, when applicable ?
- (iii) List the suppliers (any three) to whom Dynamic Quick Response (QR) Code is not applicable.

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Amit an unregistered person has taken a loan from the public sector Bank on 15th August, 2022 worth ₹ 1.95 Crore and purchased a machine on 17th August, 2022 for ₹ 2.10 Crore. Subsequently Mr. Amit defaulted in paying the loan amount along with interest. Later on, Bank repossessed the machine from Mr. Amit on 22nd June, 2023. The banker sold the said machine on 27th October, 2023.

You are required to calculate the value of taxable supply of machine as per rule 32(5) of CGST Rules 2017 in the hands of banker and tax payable in the following two independent cases :

Case	Particulars	Amount in (₹)
Case 1	Machine sold for	1.90 Crore
Case 2	Machine sold for	1.40 Crore

Note : Assume applicable rate of 1GST @ 12% for this purpose.

(5 marks)

- (ii) Bharat has committed offence under CGST Act which can be compounded as per provisions of section 138(1) of the CGST Act, 2017. He has paid the tax amount of ₹ 6 lakhs involved in the offence. He wishes to apply to commissioner for compounding the said offence.

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You are required to compute minimum and maximum compounding amount as per provisions of section 138(2) of the CGST Act, 2017, payable by Bharat.

What are the consequences if Bharat pay such compounding amount as may be determined by commissioner.

(5 marks)

- (iii) Rajkumar is registered under GST in Gujarat, West Bengal and Odisha. Due to closure of business activities in Odisha with effect from 30th April, 2023, Rajkumar filed an application for cancellation of registration before the jurisdictional tax authorities of Odisha on 28th May, 2023. The registration was suspended with immediate effect from 28th May, 2023 by the jurisdictional tax authorities. The final order of cancellation was dated 30th June, 2023.

Further, Rajkumar was also registered as an ISD (Input Service Distributor) in Odisha. The registration of ISD was cancelled with effect from 30th May, 2023 with an order dated 30th June, 2023.

- (a) You are required to advice Rajkumar regarding the last date for filing the final return by it in Odisha.
- (b) Advice whether the final return is required to be filed upon cancellation of ISD registration by Rajkumar.

(5 marks)

- (iv) Examine and decide, whether e-way bill is required in the following situations ?

- (a) Where goods transit through another State while moving from one area in a State to another area in the same State.
- (b) Where goods move from a DTA unit to a SEZ unit or vice versa located in the same State.

(5 marks)

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

Answer 2(a)

Computation of GST liability payable for the month of November, 2023

(Amount in Rs.)

S No.	Particulars	Amount of Taxable Supply	CGST	SGST	IGST
(i)	Supply of 250 wall fans [It is an inter-state supply of goods since place of supply here is the location where the movement of goods terminates viz. Kolkata Further, supply of wall fans with stands is a composite supply, chargeable to tax at the rate applicable to the principal supply (i.e. supply of wall fans) @ 18%	4,36,000 (4,00,000+36,000)	Nil	Nil	78,480 (4,36,000 * 18%)

(ii)	Intra-state supply as Direct Selling Agent (DSA) [Taxable under forward charge. Reverse charge mechanism is not applicable since services are provided by a body corporate and not by an individual DSA]	2,50,000	22,500 (2,50,000 * 9%)	22,500 (2,50,000 * 9%)	Nil
(iii)	Passenger transportation service [Passenger transportation service provided by public transport, other than predominantly for tourism purpose, In a vessel between places located in India is exempt]	Nil	Nil	Nil	Nil
(iv)	Supply of goods to an agent [Value of inter- state supply of goods to agent shall be: <ul style="list-style-type: none"> Open market value (Rs. 280000) Or 90% of the price of goods of like kind and quality charged by recipient to unrelated customers (Rs. 3,00,000 * 90% i.e. 2,70,000) at the option of owner. Since the company wishes to choose most beneficial option, least of the two values has been taken] (Assumed Transaction between Principal & Agent is covered u/s 7(1) (C) and schedule I and Invoice of further supply issued by agent in his name vide Circular No. 57/31/2018-GST)	2,70,000	Nil	Nil	48,600
	Taxable value of supply	9,56,000			
	GST Liability Payable		22,500	22,500	1,27,080

Answer 2(b)

- (i) The turnover limit for being eligible for composition scheme under sub-sections (1) and (2) of section 10 for Bangalore (Karnataka) is Rs. 1.5 crores in the preceding financial year. Thus, Audiocon Electronics can opt for said composition scheme in financial year 2023-24 as its aggregate turnover, i.e. Rs. 76 lakhs, is less than Rs. 1.5 crore in the financial year 2022-23 and it is making intra-State supplies on its own.

Further, since the registered person opting for composition scheme can also supply services (other than restaurant services) for a value up to 10% of the turnover in the state in the preceding financial year or Rs. 5 lakhs, whichever is higher.

Audiocon Electronics can supply repair services up to a value of Rs. 7.6 lakhs [10% of Rs. 76 lakhs] or Rs. 5 lakhs, whichever is higher. Thus, the maximum value of supply of repair services in the financial year 2023-24 can be of Rs. 7.6 lakhs under composition scheme.

- (ii) The turnover limit for being eligible for composition scheme under sub sections (1) and (2) of section 10 for Tripura is Rs. 75 lakhs in the preceding financial year. However, a registered person who is exclusively engaged in supplying services other than restaurant services are not eligible for said composition scheme. Thus, Hitesh cannot opt for composition scheme under sub-sections (1) and (2) of section 10 in the financial year 2023-24.

The benefit of composition scheme under section 10(2A) is available in case of a registered person who is not eligible to pay tax under sub-sections (1) and (2) of section 10 provided his aggregate turnover in the preceding financial year does not exceed Rs. 50 lakhs.

Thus, in view of the above-mentioned provisions, Hitesh can avail the benefit of composition scheme under section 10(2A) as its aggregate turnover in the preceding financial year, i.e., Rs. 49 lakhs, is within the limit of Rs. 50 lakhs.

Answer 2(c)

In case of delayed payment of tax, interest is payable @ 18% per annum from the date following the due date of payment to the actual date of payment of tax. However, interest is payable only on the short-paid tax which is paid through electronic cash ledger if the return under section 39 is furnished after the due date.

- (i) In the given case, Anil has furnished the return for May, 2023 before the due date. Hence, interest is payable on the entire amount of short payment of Rs. 20,000, as under:

$$\text{Rs. } 20,000 * 18\% * 61/365 = \text{Rs. } 601.64 \text{ or Rs. } 602 \text{ (rounded off)}$$

$$[\text{No. of days} = 10 \text{ (June)} + 31 \text{ (July)} + 20 \text{ (August)} = 61 \text{ days}]$$

- (ii) If Anil has furnished the return for May, 2023 after the due date, interest is payable only on the short payment which is paid through electronic cash ledger i.e. Rs. 15,000 as under:

$$\text{Rs. } 15,000 * 18\% * 61/365 = \text{Rs. } 451.23 \text{ or Rs. } 451 \text{ (rounded off)}$$

$$[\text{No. of days} = 10 \text{ (June)} + 31 \text{ (July)} + 20 \text{ (August)} = 61 \text{ days}]$$

Answer 2(d)

- i. Where the aggregate annual turnover of a registered supplier in any of the preceding financial years, starting from 2017-18, exceeds Rs. 500 crore, he shall be required to have a dynamic quick response (QR) code displayed on invoices issued to unregistered persons i.e. B2C invoices raised by him. Where the supplier makes a dynamic QR code available through a digital display, the cross-reference of the payment made through it should be made available.
- ii. A penalty of Rs. 25,000 (Twenty-Five Thousand) is leviable u/s 125 of the CGST ACT, 2017 for non-compliance of Dynamic Quick Response (QR) Code, when applicable
- iii. Dynamic Quick Response (QR) Code is not applicable to following suppliers issuing invoices to unregistered persons:
 - (a) Insurer or banking company or financial institution including NBFC

- (b) GTA supplying services in relation to transportation of goods by road in a goods carriage
- (c) Supplier of passenger transportation service
- (d) Person supplying services by way of admission to exhibition of cinematography films in multiplex screens
- (e) Supplier of online information and database access or retrieval (OIDAR) services

OR [Alternative to Q. No. 2]

Answer 2A(i)

According to Rule 32(5) of CGST Rules, the value of second hand goods shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored, provided the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

Hence purchase price for banker

Particulars	Value in Rs.
Purchase value for borrower	2,10,00,000
Less: 5% per quarter for 6 quarters i.e. 30%	(63,00,000)
Net Purchases Value for banker	1,47,00,000

Particulars	Case 1	Case 2
Sale price	1,90,00,000	1,40,00,000
Less: purchase price	(1,47,00,000)	(1,47,00,000)
Taxable value	43,00,000	Nil (Negative)
IGST @ 12%	5,16,000	-

Answer 2A(ii)

i. Minimum limit for compounding amount:

- 25% of tax involved i.e. 25% of Rs. 6 lakhs = Rs. 1.5 lakhs

ii. Maximum limit for compounding amount:

- 100% of tax involved i.e., 100% of Rs. 6 lakhs = Rs. 6 lakhs

If Bharat pays such compounding amount as may be determined by commissioner, no further proceedings shall be initiated under this Act against him in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated. Provisions of Sec 138 Amended by FA,2023 w.e.f. 1/10/23 Notification no. 28/2023-Central Tax dated July 31, 2023.

Answer 2A(iii)

- (a) As per section 45 of the CGST Act read with rule 81, every registered person who is required to file a return under section 39(1) and whose registration has been cancelled, is required to file a final return electronically in Form GSTR-10 through the GST common portal. The final return has to be filed within 3 months of the:

- (i) Date of cancellation or
- (ii) Date of order of cancellation

whichever is later

Thus, in the given case, final return for Odisha registration has to be furnished within 3 months of the date of order of cancellation of registration i.e., 30th June, 2023. Hence, final return has to be filed by Rajkumar on or before 30th September, 2023

- (b) Further, since an ISD is not required to furnish return under section 39(1) but under section 39(4), final return is not required to be filed upon cancellation of ISD Registration. Therefore, Rajkumar is not required to furnish final return for ISD registration cancelled.

Answer 2A(iv)

The clarification on this matter given in Circular No. 47/21/2018-GST, dated 8-6-2018:

- (a) It may be noted that e-way bill generation is not dependent on whether a supply is inter-State or not, but on whether the movement of goods is inter-state or not. Therefore, if the goods transit through a second State while moving from one place in a State to another place in the same State, an e-way bill is required to be generated.
- (b) Normal Provisions of Generation of E way bill shall apply i.e. SEZ supplies are treated how the other inter-state supplies are treated. The SEZ units or developers will have to follow the same EWB procedures as the others in the same industry follow. In case of supplies from SEZ to a DTA or any other place, the registered person who facilitates the movement of goods shall be responsible for the generation of e-way bills.

Question 3

- (a) Banshi is engaged exclusively in supply of taxable goods from three different states. The particulars of intra-state supplies for the financial year 2023-24 are as follows :

State	Turnover (₹)
Tamil Nadu	6,00,000
Rajasthan	13,00,000
Mizoram	15,00,000

- (i) Banshi wants to know whether he is liable for registration under GST Law, assuming that Banshi is not engaged in making supplies of Ice cream and other edible ice (whether or not containing cocoa), Pan masala and all goods i.e., Tobacco and manufactured tobacco substitutes falling under chapter 24.
- (ii) If Banshi supplies only petrol and diesel from Mizoram instead of any other taxable goods, will your answer differ from (z) above.

(4 marks)

- (b) Kamal, a taxable person issued a tax invoice on 20th May, 2023 involving input tax credit

(ITC) of ₹ 15 lakhs to Mahendra, a registered person, who, being eligible, utilised the same in payment of his output tax liability. Against this tax invoice, there was no actual supply of goods involved between the two traders. On inquiry, Kamal admitted that this transaction was conducted at the instance of his tax consultant, Sohan, who was not a qualified professional.

Briefly explain the relevant provision and detenninc the amount of penalty leviabale under CGST Act, 2017, if any, on the persons involved in respect of the above referred transaction. "Under the GST law, taxes on taxable services supplied by the Central Government or the State Government to a business entity in India are payable by the recipient of services." Enumerate the exceptions to the said statement.

(4 marks)

(d) As per the relevant provisions of the GST law, answer the following independent situations relating to GST procedure :

(i) Khusboo, a trader, engaged in the buying and selling of perfumes within the state of Uttar Pradesh is not registered under GST. Turnover of Khusboo exceeded ₹ 20 lakhs on 16th September, 2023 and ₹ 40 lakhs on 15th January, 2024. She applied for registration under GST on 28th January, 2024 and certificate of registration was granted on 3rd February, 2024. Determine the date on which liability to register arises and the effective date of registration in this case.

(ii) Sweet Parlour is a chain of shops supplying sweets and savouries through three shops in West Bengal. It has a single GSTIN for all its shops in West Bengal and has a principal place of business at Jodhpur Park, Kolkata. The tax consultant has suggested Sweet Parlour to maintain books of account (for GST purposes) of all its shops at principal place of business at Jodhpur Park, Kolkata for better administration and control. Comment whether the suggestion of the tax consultant is correct or not according to the provisions of the GST Law.

(4 marks)

(e) "An appeal to the Appellate Authority cannot be filed manually under any circumstances." Comment on the validity of the above statement with reference to GST law.

(4 marks)

Answer 3(a)

Every person engaged in making a taxable supply is required to obtain registration if his aggregate turnover exceeds Rs. 20 lakhs in a financial year. An enhanced threshold limit for registration of Rs. 40 lakh is available to persons engaged exclusively in intra-state supply of goods in specified states. However, the applicable threshold limit for registration gets reduced to Rs. 10 lakhs in case a person is engaged in making supply from a Specified Special Category State provided such supply is a taxable supply.

(i) Since Banshi is making supply of taxable goods from Mizoram- a Specified Special Category State, the applicable threshold limit will get reduced to Rs. 10 lakh for registration purposes.

Thus, he is liable to be registered under GST Law for all the 3 states as its turnover of Rs. 15 lakhs in Mizoram exceeds the threshold limit even though his aggregate turnover is Rs. 34 lakhs for the financial year does not exceed the threshold limit of Rs.40 lakh.

(ii) In case, Banshi is making supply of non-taxable goods i.e., petrol and diesel from Mizoram, the applicable threshold limit will not be reduced to Rs. 10 lakh and therefore enhanced threshold limit of Rs.40 lakh will be applicable.

Thus, he is not liable to be registered under GST Law as his aggregate turnover is Rs. 34 lakh does not exceed the said threshold limit

Answer 3(b)

Where a taxable person:

- (a) issues any tax invoice without supply of goods, or
- (b) takes / utilises ITC without actual receipt of goods, either fully or partially, in contravention/ violation of the provisions of the GST law or the rules made thereunder,

such person shall be liable to pay a penalty of Rs. 10,000 Or an amount equivalent to the ITC availed of or passed on i.e., Rs. 15 lakh whichever is higher

Thus, Kamal (supplier) and Mahendra (recipient), both are liable to pay a penalty of Rs. 15 lakh each.

Further, any person at whose instance the above transaction was conducted, shall be liable to a penalty of an amount equivalent to ITC availed of/passed on. Thus, the tax consultant will also be liable to pay a penalty of Rs. 15 lakh.

Answer 3(c)

Tax on the following services supplied by the Central Government or State Government to a business entity in India is payable by the supplier of services except:

- (i) Services of renting of immovable property provided to an unregistered business entity
- (ii) postal services by Postal department and Ministry of Railway (Indian Railways).
- (iii) Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport
- (iv) Services of transport of goods or passengers

Answer 3(d)

- (i) Since, Khusboo is engaged exclusively in intra-state taxable supply of goods in Uttar Pradesh, it becomes liable to register when the aggregate turnover exceeds Rs. 40 lakhs i.e., on 15th January, 2024.

Further, since it has applied for registration within 30 days from the date of becoming liable to register, the effective date of registration is the date on which it becomes liable to register i.e., 15th January, 2024

- (ii) The suggestion of the tax consultant is not correct.

Every registered person is required to keep and maintain, books of account at his principal place of business.

Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such place of business.

Answer 3(e)

The Statement is not correct

Facility for filing appeal manually to Appellate Authority in certain specified circumstances [Rules 108(1) and 109(1) amended]

An appeal against any decision or order passed by an adjudicating authority to Appellate Authority can be filed either:

- (i) by the aggrieved person (taxpayer) [Section 107(1) read with rule 108] or
- (ii) by the Department [Section 107(2) read with rule 109].

Proviso have been inserted to each rule 108(1) and rule 109(1) to provide as follows:

An appeal to the Appellate Authority may be filed manually in GST APL- 01 (in case of appeal by aggrieved person) or GST APL-03 (in case of appeal by Department), along with the relevant documents, only if

- (i) the Commissioner has so notified, or
- (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal, and in such case, a provisional acknowledgement shall be issued to the appellant immediately.

[Effective from 04.08.2023]

[Notification No. 38/2023 CT dated 04.08.2023]

Question 4

- (a) Sunita Thomas, a non-resident Indian from Canada donated a milk processing machinery to Matri Charitable Trust (MCT) of Mumbai. MCT paid commission to local agent in India.

Assistant Commissioner of Customs determined the FOB value of machine at Can \$ 18,000. The trust accepted the value determined. Actual air freight paid was Can \$ 4,500 and insurance cost was Can \$ 1,600.

Other details available are given below :

- (i) Commission paid to local agent of the exporter is Can \$ 2,100 (paid in ₹ 1,26,000).
- (ii) Date of Bill of Entry presentation is 26th March, 2023. On this date, rate of BCD is 10%. Rate of exchange notified by CBIC is ₹ 60 per Can \$; Reserve Bank Rate is ₹ 61 per Can \$.
- (iii) Date of arrival of aircraft at customs station is 4th April, 2023. On this date, rate of BCD is 15%, Rate of exchange notified by CBIC is ₹ 59 per Can \$; Reserve Bank Rate is ₹ 60 per Can \$.
- (iv) Social welfare surcharge is leviable @ 10% and applicable IGST rate is 18%.

Compute the assessable value under the Customs Act and also calculate basic customs duty payable, social welfare surcharge and IGST on import of machine. Assume that no exemption is available on this transaction and make suitable assumptions, if required.

(5 marks)

- (b) Ascertain whether the exporter is entitled to duty drawback in the following independent cases and if yes, what is the quantum of such duty drawback ?

- (i) FOB value of goods exported is ₹ 50,000, Rate of duty drawback on such export of goods is 0.70%.
- (ii) FOB value of 2,000 kg of goods exported is ₹ 2,00,000, rate of duty drawback on such export is ₹ 30 per kg. Market price of goods is ₹ 50,000 (in wholesale market).
- (iii) FOB value of 2,000 kg of goods exported is ₹ 2,00,000. Rate of duty drawback on such export is ₹ 16 per kg. Market price of goods exported is ₹ 54,000 (in wholesale market).

(5 marks)

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Answer 4(a)**Computation of assessable value, basic customs duty, social welfare surcharge and IGST**

Particulars	Amount
FOB value computed by Assistant Commissioner of Customs	Can \$ 18,000
Add: Commission paid to local agent in India [Includible since it is not a buying commission]	Can \$ 2,100
FOB value as per customs	Can \$ 20,100
Add: Air freight (Can \$ 20,100 x 20%) [Restricted to 20% of FOB value since goods are imported by air.]	Can \$ 4,020
Add: Actual insurance charges	Can \$ 1,600
Assessable value	Can \$ 25,720
Assessable value in rupees [Can \$ 25,720 x Rs. 60] [Rate of exchange notified by CBIC on the date of filing of bill of entry is considered.]	Rs. 15,43,200
Add: Basic custom duty @ 15% on Rs. 15,43,200 [Rate of BCD is the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later]	Rs. 2,31,480
Add: Social Welfare Surcharge @ 10% on Rs. 231480	Rs. 23148
Total	Rs. 17,97,828
Integrated tax @ 18% on Rs. 17,97,828 [rounded off]	Rs. 3,23,609

Answer 4 b)

- (i) Drawback amount of Rs. 350 (0.70% of Rs. 50,000) is available earlier in Rule 8(1) of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, no amount of drawback was allowed if the rate of drawback is less than 1% of the FOB value, except where the amount of drawback per shipment exceeds Rs. 500.

But in New Customs and Central Excise Duties Drawback Rules, 2017 there is no such provision hence Rs. 350 is allowed as drawback.

- (ii) Section 76(1)(b) of the Customs Act, 1962 inter alia provides that no drawback shall be allowed in respect of any goods, the market price of which is less than the amount of drawback due thereon.

In this case, the market price of the goods is Rs 50,000, which is less than the amount of duty drawback i.e. 2,000 kgs x 30 Per Kg = Rs 60,000. Hence, no drawback shall be allowed.

- (iii) Rule 9 of Customs and Central Excise Duties Drawback Rules, 2017 provides that the drawback amount or rate shall not exceed one third of the market price of the export product. Hence, in this case instead of Rs. 32,000 (i.e. 2,000 kgs x 16 Per Kg) only 18,000 (1/3 of Rs. 54,000) is allowed as drawback.

PART-II**Question 5**

- (a) Bristo is employed as a marketing manager in a FMCG company. On 20th August, 2023, he received a motor car as gift from a distributor of the company. The market value of the gifted car is estimated at ₹ 3,50,000. Is the value of car taxable as income ₹ If so, under what head it is taxable ?

(3 marks)

- (b) Tax recovery officer attached the properties of C and D, two directors of PQR Pvt Ltd (a company in liquidation) in respect of the tax due from the company and also for interest and penalty due from the company. The two directors contended that the directors are not liable for any tax, interest and penalty due from the company. Moreover, a notice u/s 156 of Income Tax Act, 1961, had not been served on them and therefore, they are not liable for any tax, interest and penalty due from the company. Hence, the proceeding for recovery were not valid.

Discuss whether the contention of directors is correct ?

(3 marks)

- (c) What is the remedy available to an applicant who is aggrieved by the ruling of Board for Advance Rulings ? Also, state the time limit within which he should exercise this remedy.

- (d) Explain the meaning of the following terms in context of Income Tax Act, 1961 :

- (i) Juridical Double Taxation
- (ii) Economic Double Taxation.

(3 marks)

- (e) State any three conditions, which must be satisfied in order to attract Section 69A of the Income Tax Act, 1961 regarding unexplained money.

(3 marks)

Answer 5(a)

Bristo, an employee of a FMCG company, has received a motor car as a gift from a distributor of the company. Since there is no employer-employee relationship in this case between the distributor and Bristo, the value of gift is not a perquisite chargeable to tax under the head 'Salaries'.

Section 56(2)(x) of the Income tax Act, 1961 'the Act', brings within its scope the value of any property received by any person. For this purpose, 'property' means immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

Therefore, for the purpose of attracting the provisions of section 56(2)(x) of the Act for chargeability under the head 'Income from Other Sources', an individual should be in receipt of property as defined therein. Since, motor car is not included in the definition of 'property', the provisions of section 56(2)(x) of the Act would not be attracted in the hands of Bristo.

Further As per Sec 28 of the Act, Benefits/Perquisites arising from carrying on business or profession, convertible into money or not; or in cash or in kind or partly in cash and partly in kind is taxable under Head Business or Profession. Since, Bristo is not carrying on Business or Profession, Sec 28 will also not be attracted.

Answer 5(b)

Under section 179 of the Income Tax Act, 1961 'the Act', every person who was a director of a Pvt. Ltd. company at any time during the relevant previous year shall be jointly and severally liable for the payment of taxes which cannot be recovered from the company, unless he proves that the non-recovery cannot be attributed to any gross negligence, misfeasance or breach of duty on his part in relation to the affairs of the company.

Tax dues include penalty, interest, fee and any other sum payable under the Act. There is no necessity to issue a notice to a director, because the position of a person on whom liability is fastened is equated to that of an 'assessee' in default. Accordingly, the proceeding for recovery were valid.

However, before recovery of dues from the directors, it is necessary for the revenue to establish that such recovery cannot be made from the company and then alone it can reach the directors who were responsible for the conduct of its business.

Answer 5(c)

An applicant, who is aggrieved by any ruling pronounced by the Board for Advance Rulings, may appeal to the High Court against such ruling or order. He can file an appeal within sixty days from the date of the communication of that ruling, in the prescribed form and manner.

However, where the High Court is satisfied, on an application made by the appellant in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the 60 days period as specified above, it may grant further period of 30 days for filing such appeal.

Answer 5(d)

(i) Juridical Double Taxation:

When source rules overlap, double taxation may arise i.e., tax is imposed by two or more countries as per their domestic laws in respect of the same transaction, income arises or is deemed to arise in their respective jurisdictions. This is known as juridical double taxation.

In order to avoid such double taxation, a company can invoke provisions of Double Tax Avoidance Agreements (DTAAs) (also known as Tax Treaty or Double Taxation Convention-DTC) with the host/source country, or in the absence of such an agreement, can invoke provisions of section 91, providing unilateral relief in the event of double taxation.

(ii) Economic Double Taxation:

Economic double taxation happens when the same transaction, item of income or capital is taxed in two or more state/form but in hands of different persons (because of lack of subject identity). For example, before 01.04.2020, when income earned by a company is taxed both to the company and to its shareholders when distributed as dividend.

Answer 5(e)

In order to satisfy the condition for cash credit under section 69A of the Income tax Act, 1961, following conditions must be satisfied:

- The assessee must be found to be the owner of any money, bullion, jewellery or other valuable article.
- Such money, bullion, jewellery or valuable article is/are not recorded in the books of account, if any, maintained by him for any source of income.
- The assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article,

- d. In case the assessee provides explanation, the same offered by him is not, in the opinion of the Assessing Officer, satisfactory.

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

Question 6

- (a) B Inc. London has 37% equity in RTP Ltd. an Indian Company. The company RTP Ltd is engaged in .development of software and maintenance of customers across the globe, which includes R Inc.

During the financial year 2023-24, RTP Ltd. spent 1500 man hours for developing and maintaining a software for R Inc. and billed at ₹ 900 per hour. The cost incurred for executing maintenance work to B Inc. for RTP Ltd. amount to ₹ 14,00,000. Similar such work was done for unrelated party Fry Ltd. in which the profit was at 50%.

B Inc. gives technical support to RTP Ltd. which can be valued at 12% of gross profit. There is no such functional relationship with Fry Ltd. RTP Ltd. gives credit period of 60 days the cost of which is 4% of the normal billing rate which is not given to other parties.

Compute Ann's Length Price (ALP) under cost plus method in the hands of RTP Ltd. and the impact of the same on the total income under Income Tax Act, 1961.

(5 marks)

- (b) With reference to General Anti-Avoidance Rules (GAAR), answer the following independent situations :

- (i) The merger of a loss-making company with a profit making one results in losses setting off profits, a lower net profit and lower tax liability for the merged company.

Would the losses be disallowed by applying GAAR ?

- (ii) PP Ltd, an Indian Company, has two manufacturing units, unit A in the SEZ and unit F in non-SEZ. It transfers the goods manufactured by unit F to unit A at a price significantly lower than the market value of goods and thus becomes eligible for higher deduction. Can GAAR be invoked in this case ?

(5 marks)

- (c) What is meant by Digital economy ? What are the taxation issues in E-Commerce ?

List out the OECD recommendations under Action Plan 1 which deals with the digital economy.

OR (Alternate question to Q. No. 6)

Question 6A.

- (i) Raghav is appointed as 'Official Assignee', in respect of insolvency proceedings initiated against Paritosh Ltd. You are required to advise him whether he will be treated as Representative Assessee in this regard. What will be his status and his liability with respect to other procedures under Income Tax Act, 1961 ?
- (ii) Rishabh Private Limited is a closely held company. Its board of directors decided to issue 1000 shares face value of which is ₹ 100 per share, fair market value of which is ₹ 200 per share at a premium of ₹ 250 per share. Please advise whether section 56 of Income Tax Act, 1961, will be attracted and tax payable, in following circumstances :

In case the investor/subscribers to the shares of above-named company are :

- (a) Resident Indian
- (b) Non-resident Indian
- (c) Venture Capital undertaking.

Further, what will be your answer, if the shares are issued at fair market value.

- (ii) Sudoku Ltd., an Indian company, is engaged in the business of manufacture and sale of lamp shades. To expand its international sales, it hired the services of a New York based company, Moon Inc., for online advertisements. Moon Inc. has no permanent establishment in India. During the previous year 2023-24, Sudoku Ltd. paid ₹ 6 lakhs to Moon Inc. for such services and deducted the equalization levy on 15.03.2024 and credited it to the account of Central Government on 16.04.2024. You are required to :
- (i) Compute interest leviable to Sudoku Ltd. on the delayed payment of equalization levy.
 - (ii) What are the circumstances under which penalty cannot be imposed ?
 - (iii) Sudoku Ltd. is aggrieved by the order imposing penalty. What is the time limit for filing of appeal against the order of the Assessing Officer imposing the penalty ?

(5 marks each)

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

Answer 6(a)

Computation of Arm's Length Gross Profit Mark-up

Particulars	%
Normal Gross Profit Mark up	50
Less: Adjustment for differences	
Technical support from B Inc [12% of Normal GP = 12% of 50%]	(6)
	44
Add: Cost of Credit to B Inc 4 % of Normal Bill [4% * GP 50%]	2
Arm's Length Gross Profit mark-up (%)	46

(B) Computation of Increase in Total Income of B Inc.

Particulars	Amount in Rs.
Cost of services	14,00,000
Arm's length Billed Value [Cost / [(100 - Arm's Length markup)] [Rs. 14,00,000 / (100% - 46%)]	25,92,593
Less: Billed amount [1500 man hours x Rs. 900 per hour]	13,50,000
Therefore, Increase in Total Income	12,42,593

Answer 6(b)

- (i) As regards setting off of losses, the provisions relating to merger and amalgamation already contain specific anti-avoidance safeguards. Therefore, GAAR need not be invoked when SAAR is applicable, though as per CBDT Circular No. 7/2017 dated 27.01.2017, GAAR and SAAR can co-exist. Further, since merger and amalgamation would be carried out under the order of the National Company Law Tribunal (NCLT), GAAR need not be invoked if the NCLT has explicitly and adequately considered the tax implication while sanctioning the merger scheme.
- (ii) As there is no misrepresentation of facts or false submission, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit i.e. unit F to unit A, a SEZ unit. This is not the intention of the SEZ legislation. However, such tax avoidance is specifically dealt with through the provisions contained in section 10AA(9), as per which provisions of section 80-1A(8) would get attracted in such a case.

Further, if the aggregate of such transactions entered into in the relevant previous year exceed the threshold of Rs. 20 crore, domestic transfer pricing regulations under section 92BA would be attracted. Hence, the revenue need not invoke GAAR in such a case, though GAAR and SAAR can coexist as per clarification given in the CBDT circular.

Answer 6(c)

In digital economy transactions like sale, purchase, payment, rendering services are performed through digital or virtual mode. In the digital domain, business do not actually occur in any physical location but instead takes place in "cyberspace."

Taxation issues in e-commerce

The typical taxation issues relating to e-commerce are:

- (i) The difficulty in characterizing the nature of payment and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,
- (ii) The difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes.

The following are OECD recommendations under Action Plan 1 dealing with digital economy:

1. Modifying the existing permanent establishment rule to provide for whether an enterprise engaged in fully de-materialized digital activities would constitute a PE, if it maintained a significant digital presence in another country's economy.
2. a virtual fixed place of business in the concept of permanent establishments i.e., creation of a PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website.
3. Imposition of a final withholding tax on certain payments for digital goods or services provided by a foreign e-commerce provider or imposition of equalisation levy on consideration for certain digital transactions received by a non-resident from a resident or from a non-resident having permanent establishment in other contracting state.

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

CBDT Circular No. 4/2019 dated 28.01.2019 has clarified that since official assignee does not receive the income or manage the property on behalf of the debtor, he cannot be considered as a

'Representative Assessee' of the debtor under the Act while computing the tax liability arising from the estate of the debtor. Therefore, Raghav appointed as official assignee in respect of insolvency proceedings initiated against Paritosh Ltd will not be treated as 'Representative Assessee'.

For purpose of discharge of tax liability under the Act, the status of official assignee is that of an 'artificial juridical person' as prescribed in section 2(31)(vii), not being one of the persons falling in section 2(31)(i) to (iv)

Therefore, official assignee is required to file income tax return electronically in the Form applicable to 'artificial juridical person' separately for each of the estate of the insolvent Paritosh Ltd, and income shall be taxed as per the rates applicable in a particular year to an 'artificial juridical person'

In view of the above position, official assignee would have to obtain a separate PAN for each of the estate of the insolvent.

Answer 6A(ii)

In case the investors/subscribers are Resident Indian, then tax liability will arise on income i.e., issue price Rs. 350 (i.e. Rs. 100 face value plus Rs. 250 share premium) minus Rs. 200 (fair market price) = Rs. 150 per share. Deemed income u/s 56 will be Rs. 1,50,000 (1000 shares x Rs. 150 per share) and tax will be paid accordingly.

In case the investors/subscribers is Non Resident Indian, then tax liability will arise as calculated above u/s 56 of the Income tax Act, 1961.

But in case the investors/subscribers are venture capital undertaking then no tax liability will arise as they are exempted under Section 56 of the Income tax Act, 1961.

In case the shares were issued at fair market value instead at face value or at premium, then no tax liability would have occurred.

Answer 6A(iii)

(i) Interest for delayed remittance of equalization levy

Equalisation levy = 6% of Rs. 6 lakhs = Rs. 36,000

The equalization levy deducted on 15.03.2024 has to be paid to the credit of the Central Government by 07.04.2024 (i.e., 7th of the succeeding month).

However, in this case, Sudoku Ltd. remitted the same only on 16.04.2024.

The delay in this case is 9 days.

Simple interest @ 1% is leviable per month or part of month by which crediting of tax is delayed. Accordingly, interest would be 1% of Rs. 36,000 = Rs. 360

(ii) Circumstances under which penalty cannot be imposed

No penalty for failure to deduct or pay equalisation levy shall be imposable, if Sudoku Ltd. proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure.

Further, no order imposing a penalty shall be made unless Sudoku Ltd. has been given a reasonable opportunity of being heard.

(iii) Time limit for filing appeal

If Sudoku Ltd. is aggrieved by the order imposing penalty, it may appeal to Commissioner (Appeals) within a period of 30 days from the date of receipt of the order of the Assessing Officer imposing the penalty.

DRAFTING, PLEADINGS & APPEARANCES**MODULE 1 PAPER 3****Time allowed : 3 hours****Maximum marks : 100****NOTE :** Answer All Questions.**PART-I****Question 1**

- (a) Mr. Y, Landlord, served a notice to Mr. X, Licensee, to vacate possession of the premises. Draft a notice. Assume necessary facts, if required.
- (a) Draft a specimen deed of sale by co-owners of undivided property. Assume necessary facts, if required.
- (b) Draft a notice for the revocation of the Continuing Guarantee as per section 130 of the Indian Contract Act, 1872. Assume necessary facts, if required.
- (c) Draft an application for condonation of delay of a civil appeal. Assume necessary facts, if required.

*(5 marks each)***Answer 1(a)**

To

Mr. X

Re: premises No.....

Dear Sir,

I, undersigned, your landlord and owner/Licenser of the above premises, do hereby give you notice to quit, vacate and deliver peaceful vacant possession of the demised premises No. occupied by you on a rent of Rs..... per month to me before the..... day of being the date of expiry of the month of your tenancy or as you have failed and neglected to pay the said rent for made yourself liable to eviction even on that ground alone.

Please note that your tenancy in respect of the demised premises and all your relationship with me as between landlord and tenant shall stand terminated with effect from the said date. If you fail and/or neglect to comply with the notice, I shall institute proceedings for recovery of possession against you, making liable also for mesne profits, damages and Costs.

Date:

Yours faithfully,

Mr. Y (Landlord)

Answer 1(b)**Specimen Deed of Sale by co-owners of Undivided Property****THIS DEED OF SALE** is made on the ... day of, 2024 at

BETWEEN

AB of, etc. and CD of, etc. (vendors), of the one part

AND

XY of, etc. (purchaser), of the other part.

WHEREAS one Late PQ, who was a Hindu governed by the Dayabhaga or Bengal School of Hindu law died on the day of intestate, leaving his surviving only two sons viz., the said AB and CD as his heirs and legal representatives under the said school.

AND WHEREAS the said PQ left *inter alia* the following property as part of his estate.

Details of Property

.....
.....
.....

AND WHEREAS the estate of the said PQ has been fully administered.

AND WHEREAS the said AB and CD have agreed to sell the said properties free from encumbrances to the said XY for the sum of Rs.

NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rs..... paid to the said AB and CD by the said XY at or immediately before execution of these presents the receipts whereof the said AB and CD hereby admit, acknowledge and confirm, they, the said AB and CD and each as beneficial owner of one equal undivided moiety thereof, do hereby and hereunder grant convey, sell, transfer, assign and assure unto and to the use the said XY ALL THAT etc. (parcel, etc. As in conveyance).

TO HAVE and TO HOLD the same unto and to the use of the said XY, his heirs, executors, administrators, representatives and assigns absolutely and forever.

Schedule of the Property:

.....
.....
.....

IN WITNESS WHEREOF, etc.

Signed, sealed and delivered

.....AB
.....CD
.....XY

Alternate Answer to question no. 1(b)

SPECIMEN DEED OF SALE BY CO-OWNERS OF UNDIVIDED PROPERTY

THIS DEED OF SALE is made on this day of, 2024 at

BETWEEN

1. Mr. AB, son of Mr. XY, resident of, hereinafter referred to as the "First Vendor" (which expression shall, unless repugnant to the context or meaning thereof, be deemed to include his heirs, executors, administrators, and assigns) of the first part,

AND

2. Mr. CD, son of Mr. UV, resident of, hereinafter referred to as the "Second Vendor"

(which expression shall, unless repugnant to the context or meaning thereof, be deemed to include his heirs, executors, administrators, and assigns) of the second part,

IN FAVOUR OF

3. Mr. EF, son of Mr. GH, resident of, hereinafter referred to as the "Purchaser" (which expression shall, unless repugnant to the context or meaning thereof, be deemed to include his heirs, executors, administrators, and assigns) of the third part.

WHEREAS

1. One Mr. PQ, late of, who was governed by the Dayabhaga or Bengal School of Hindu Law, died intestate on the day of, leaving his surviving only two sons, the said Mr. AB and Mr. CD, as his heirs and legal representatives under the said school.
2. The said Mr. PQ left *inter alia* the following property as part of his estate (hereinafter referred to as the "Said Property"):
ALL THAT piece and parcel of land, more fully described in the Schedule hereto.
3. The estate of the said Mr. PQ has been fully administered, and the said Mr. AB and Mr. CD are in joint possession and enjoyment of the Said Property as co-owners in equal shares without effecting any partition or division thereof.
4. The said Mr. AB and Mr. CD, as co-owners, have agreed to sell the Said Property, free from encumbrances, to the said Mr. EF for the sum of Rs., and the said Mr. EF has agreed to purchase the Said Property for the said price.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. In pursuance of the said agreement and in consideration of the sum of Rs. (Rupees only), paid to the said Mr. AB and Mr. CD by the said Mr. EF at or immediately before the execution of these presents, the receipt whereof the said Mr. AB and Mr. CD hereby admit, acknowledge, and confirm, the said Mr. AB and Mr. CD, each as beneficial owner of one equal undivided moiety thereof, do hereby grant, convey, sell, transfer, assign, and assure unto and to the use of the said Mr. EF:

ALL THAT piece and parcel of land, together with all the buildings and structures standing thereon and all the plant and machinery attached to the earth or permanently fastened to anything attached to the earth, more fully described in the Schedule hereto,

TO HAVE AND TO HOLD the same unto and to the use of the said Mr. EF, his heirs, executors, administrators, representatives, and assigns absolutely and forever.

2. The Vendors do hereby covenant with the Purchaser as follows:
 - That the Said Property is free from all encumbrances, liens, charges, claims, and demands whatsoever.
 - That the Vendors have full power and absolute authority to grant, convey, sell, transfer, assign, and assure the Said Property in the manner hereinbefore indicated.
 - That the Purchaser shall have and enjoy quiet and peaceful possession of the Said Property without any interruption, disturbance, claim, or demand whatsoever by the Vendors or any person or persons claiming under or through them.
 - That the Vendors and all persons having or lawfully claiming any estate or interest in the Said Property shall and will from time to time and at all times hereafter, upon the request and at the cost of the Purchaser, do and execute or cause to be done and

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executed all such acts, deeds, and things whatsoever for further and more perfectly assuring the Said Property unto and to the use of the Purchaser in the manner aforesaid as shall or may be reasonably required.

3. The Schedule above referred to:

ALL THAT piece and parcel of land situate at, bearing Plot No., admeasuringsquare meters, and bounded as follows:

- On the North by
- On the South by
- On the East by
- On the West by

IN WITNESS WHEREOF, the Vendors and the Purchaser have hereunto set their respective hands and seals on the day, month, and year first above written.

SIGNED, SEALED, AND DELIVERED

by the within-named First Vendor Mr. AB

In the presence of:

1.
2.

SIGNED, SEALED, AND DELIVERED

by the within-named Second Vendor Mr. CD

In the presence of:

1.
2.

SIGNED, SEALED, AND DELIVERED

by the within-named Purchaser Mr. EF

In the presence of:

1.
2.

Answer 1(c)

NOTICE TO DETERMINE CONTINUING GUARANTEE

(Section 130 of the Indian Contract Act, 1872)

To

CD (Creditor)

Dear Sir,

I hereby give you notice that the guarantee dated the day of, 2024 which I executed in your favour for payment of all moneys which were then or at any time thereafter may be due to you from XY of etc. on the balance of his account is hereby revoked and determined and I give you further notice that if you make any further advances or payments or give further credit to the

said XY, you would do so on your own and the same shall have nothing to do whatsoever with the said guarantee which stands hereby revoked.

Yours faithfully,
AB (surety)

Answer 1(d)

Application under section 5 of the Limitation Act, 1963 for condonation of delay in preferring an appeal

In the High Court at

(Civil Appellate Jurisdiction)

In the matter of No.....of 20.....

A.B.....

Appellant

Versus

C.D.....

Respondent

In the matter of an application under section 5 of the Limitation Act, 1963 for condoning delay in filing the appeal

Valued at Rs

To The Hon'ble Mr Chief Justice and His companion Justices of the said Hon'ble Court
The humble petition of the petitioner above-named Most respectfully sheweth:

1.
2.
3.

(State the facts of the case and subject-matter leading upto filing of the appeal on
.....)

4. The appeal is out of time by days. Your petitioner has filed a petition under Order 43, rule 3A(1), C.P.C. along with memo of appeal.
5. That your petitioner could not prefer the appeal because of That Your petitioner submits that there was sufficient cause namely, for which the appeal could not be preferred in time.

In the premises aforesaid it is humbly prayed that Your Lordships would be pleased to issue a Rule on the Respondent to show cause why the delay in filing the appeal should not be condoned.

And, on hearing the cause shown, if any, to make the Rule absolute and to pass such further or other orders as Your Lordships may deem fit and proper.

Dated..... The.....20.....

Sd/-
(Appellant)

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Alternate answer to question no. 1(d)

Application for Condonation of Delay of a Civil Appeal under Section 5 of the Limitation Act, 1963

In the High Court of (Civil Appellate Jurisdiction)

In the matter of: Civil Appeal No. _____ of 2024

A.B.

Appellant-Petitioner

Versus

C.D.

Opposite-Respondent

Valued at Rs. _____

To

The Hon'ble Mr. Justice _____, Chief Justice and His Companion Justices of the said Hon'ble Court

The humble petition of the petitioner above-named

Most respectfully sheweth:

1. That the petitioner is aggrieved by the judgment and decree dated passed by the learned District Judge of in Civil Suit No. of 20.....
2. That the petitioner has preferred the accompanying appeal against the said judgment and decree of the learned District Judge of
3. That the said appeal is delayed by days due to the reasons stated hereunder.
4. That the petitioner submits that there was sufficient cause for not filing the appeal within the prescribed period of limitation. The reasons for the delay are as follows:
 - (a) (State the facts leading to the delay, e.g., "the petitioner met with a severe accident on which required prolonged medical treatment and bed rest for a period of months. Consequently, the petitioner was unable to attend to his legal affairs during this period.")
 - (b) (Any additional reasons, e.g., "the petitioner's counsel was unavailable due to unavoidable personal commitments, and the petitioner had to engage another counsel which took additional time.")
5. That the delay in filing the appeal is neither intentional nor deliberate but due to the circumstances beyond the control of the petitioner.
6. That the petitioner has always been vigilant and diligent in pursuing his legal remedies and has a bona fide intention to prosecute the appeal diligently.
7. That if the delay is not condoned, the petitioner will suffer irreparable loss and injury as he has a strong case on merits.
8. That the petitioner submits that the opposite respondent will not suffer any prejudice if the delay is condoned.
9. That the petitioner is willing to comply with any terms and conditions that this Hon'ble Court may deem fit to impose while condoning the delay.

In the premises aforesaid, it is humbly prayed that Your Lordships would be pleased to issue a Rule on the Respondent to show cause why the delay in filing the appeal should not be condoned.

And, on hearing the cause shown, if any, to make the Rule absolute and to pass such further or other orders as Your Lordships may deem fit and proper.

And your petitioner, as in duty bound, shall ever pray.

Place:

Date:

Advocate for the Petitioner/Applicant

Verification

I, A.B., the petitioner above-named, do hereby declare that the contents of the above application are true to my knowledge and belief, and nothing has been concealed therein.

Place:

Date:

Signature of the Petitioner/Applicant

Signed in the presence of:

(1)

(2)

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

Question 2

Write short notes on the following :

- (a) Notice of Adjournment of meeting.
- (b) Arbitration Agreements.
- (c) Onerous Gift.
- (d) Res Judicata.

(4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

Distinguish between the following :

- (i) Hypothecation and Pledge.
- (ii) Legal Set-off and Equitable Set-off.
- (iii) Appeals in Constitutional cases and Appeals in Civil cases.
- (iv) Annual General Meeting and Extra-ordinary General Meeting.

(4 marks each)

Answer 2(a)

Notice of adjourned of Meeting

General Meetings

If a Meeting is adjourned *sine-die* or for a period of thirty days or more, a Notice of the adjourned Meeting shall be given in accordance with the relevant provisions contained in Secretarial Standard -2(SS-2) and Companies Act, 2013 relating to Notice.

If a Meeting is adjourned for a period of less than thirty days, the company shall give not less than three days' Notice specifying the day, date, time and venue of the Meeting, to the Members either individually or by publishing an advertisement in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and in an English newspaper in English language, both having a wide circulation in that district.

If a Meeting is adjourned for a period not exceeding three days and where an announcement of adjournment has been made at the Meeting itself, giving in the details of day, date, time, venue and business to be transacted at the adjourned Meeting, the company may also opt to give Notice of such adjourned Meeting either individually or by publishing an advertisement, as stated in SS-2.

Further, According to section 103(2) of the Companies Act, 2013, if the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine. In this case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Board Meeting

According to Secretarial Standard – 1(SS-1), notice of an adjourned Meeting shall be given to all Directors including those who did not attend the Meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the Meeting.

Answer 2(b)

Arbitration Agreement

According to the Arbitration and Conciliation Act, 1996, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

An arbitration agreement shall be in writing.

An arbitration agreement is in writing if it is contained in—

- (a) a document signed by the parties;
- (b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
- (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

The important ingredient of the arbitration agreement is the consent in writing to submit dispute to arbitration. Consent in writing implies the application of mind to the reference of dispute to arbitration in accordance with Arbitration and Conciliation law and the binding nature of the award made thereunder.

An arbitration agreement stands on the same footing as any other agreement. It is binding upon the parties unless it is intended with fraud, undue influence etc., in which case it can be avoided like any other agreement.

An agreement rests on mutual voluntary agreement of the parties to submit their differences to selected persons whose determination is to be accepted as a substitute for the judgement of a court. The object is the final determination of differences between parties in a comparatively less expensive, more expeditious and less formal manner than is available in ordinary court proceedings.

Answer 2(c)

Onerous Gift

Section 127 of the Transfer of Property Act, 1882(the Act) describes onerous gift. It states that where a gift is in the form of a single transfer to the same person of several things of which one is and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Besides, a donee not competent to contract and accepting the property burdened by any obligation is not bound by his acceptance but if after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound, subject to these provisions of Section 127 of the Act.

Where a gift consists of the donor 's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of property comprised therein.

Answer 2(d)

The principle of res judicata aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim. The principle of res judicata applies under following circumstances:

- (i) The matter directly and substantially in issue has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.
- (ii) The matter is in the court competent to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.

The word former suit means suit decided prior, irrespective of the date of institution. The matter must be decided on merits i.e. the issue was alleged by one party and denied by the other. The principle of res judicata is one of convenience and not one of absolute justice and it should not be unduly conditioned and qualified by technical interpretations.

OR Alternate question to Q. No. 2

Answer 2A(i)

Distinguish between Hypothecation and Pledge

Hypothecation is a form of transfer of property in goods. In hypothecation, there must be an intention of the parties to create a security on the property on which the money has been lent.

A hypothecation not merely of moveable existing on the premises at the time also in respect of moveable which might be subsequently acquired and brought there, is valid though it is not governed by the Transfer of Property Act, 1882 or by the Indian Contract Act, 1872. An oral or written hypothecation is permitted under the law in India.

Pledge has been defined by the Indian Contract Act, 1872. Under Section 172, a pledge is a bailment of the goods as security for payment of a debt or performance of a promise. Section 172 entitles a Pawnee to retain the goods pledged as security for payment of a debt and under Section 175 he is entitled to receive from the pawnor or the pledger any extra-ordinary expenses he incurs for the preservation of the goods pledged with him. Section 176 deals with the rights of a Pawnee and in case of default by the pawnor, the Pawnee has the right to sue upon the debt to retain the goods as collateral security and to sell the goods after reasonable notice of the intended sale to the pawnor.

In hypothecation delivery of possession of goods is not essential. In pledge delivery of possession of goods is essential. As against pledge of goods, the transfer of legal title in the goods in the case of a hypothecation, the rights of the lender and the borrower are strictly governed by the terms and conditions of the hypothecation agreement executed by the parties.

Answer 2A(ii)

Distinguish between Legal Set-off and Equitable Set-off

- I. The legal set-off is limited to ascertained sum only whereas the equitable set-off is not so restricted. Equitable set-off can be allowed with respect to an unascertained sum of money.
- II. In the case of legal-set off the court is bound to give judgement on the question of set-off but in an equitable set-off the Court is not bound to give the finding upon it. It is within the discretion of the Court to consider or not to consider the equitable set-off in certain cases.
- III. In the case of legal set-off, the amount should not be barred by the law if limitation at the date of the suit and it must be legally recoverable while a claim of equitable set- off may be allowed after it is barred by the time at the date of the suit.
- IV. In the case of legal set-off it is not necessary that the cross-demands must arise out of the same transaction whereas under equitable set-off it is very essential that the cross demand must arise out of the one and the same transaction.

Answer 2A(iii)

Appeals in Constitutional Cases

Constitutional Provision:

- Appeals in constitutional cases are governed primarily by Article 132 of the Constitution of India.
- Article 132(1) stipulates that an appeal shall lie to the Supreme Court from any judgment, decree, or final order of a High Court in the territory of India if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of the Constitution.

Key Elements:

1. Substantial Question of Law:
 - The High Court must certify that the case involves a substantial question of law concerning the interpretation of the Constitution.

2. Certification by High Court:

- The High Court must provide a certificate under Article 134A that such a substantial question of law exists.

3. Scope:

- Appeals in constitutional cases can arise from any judgment, decree, or final order in civil, criminal, or other proceedings if it involves a constitutional question.

4. Purpose:

- These appeals ensure that significant questions of constitutional interpretation are addressed by the highest court, ensuring uniformity and consistency in constitutional law.

Appeals in Civil Cases

Constitutional and Statutory Provision:

- Appeals in civil cases are primarily governed by Article 133 of the Constitution of India and various provisions under the Code of Civil Procedure, 1908 (CPC).

Key Elements:

1. Judgment, Decree, or Final Order:

- Article 133(1) allows an appeal to the Supreme Court from any judgment, decree, or final order in a civil proceeding of a High Court.

2. Conditions for Appeal:

- The High Court must certify:
 - The case involves a substantial question of law of general importance.
 - In the opinion of the High Court, the question needs to be decided by the Supreme Court.

3. Second Appeals:

- Under Sections 100 to 103 of the Civil Procedure Code, 1908 (CPC), second appeals lie to the High Court from appellate decrees of subordinate courts if substantial questions of law are involved.
- The High Court formulates the substantial question of law and hears the appeal on that question.

4. First Appeals:

- Appeals from original decrees can be preferred from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from such decisions on points of law as well as facts (Sections 96 to 99 and Order XLI of CPC).

5. Appeals from Orders:

- Appeals lie from specific orders under Sections 104 to 106 and Order XLIII of the CPC on grounds of defect or irregularity in law.

6. Special Leave Petitions:

- Additionally, under Article 136, the Supreme Court may grant special leave to appeal from any judgment, decree, or order in any cause or matter passed or made by any court or tribunal in the territory of India.

Comparative Analysis

Certification Requirement:

- Both types of appeals require certification from the High Court; however, in constitutional cases, the certification pertains specifically to the substantial question of law regarding the interpretation of the Constitution.
- In civil cases, the certification pertains to a substantial question of law of general importance.

Scope of Issues:

- Constitutional appeals can emerge from any type of proceeding (civil, criminal, or otherwise) as long as it involves a constitutional question.
- Civil appeals are confined to judgments, decrees, or final orders in civil proceedings.

Purpose and Impact:

- Constitutional appeals focus on ensuring the correct interpretation and application of the Constitution, affecting a broad spectrum of legal and public policy issues.
- Civil appeals generally focus on ensuring the correct interpretation of civil law, impacting private rights and obligations.

Appeal Hierarchy:

- In civil cases, there is a well-defined hierarchy with first appeals, second appeals, and appeals from orders, providing multiple layers of judicial scrutiny.
- Constitutional appeals, by their nature, generally proceed directly to the Supreme Court if the certification criteria are met.

Statutory Basis:

- Civil appeals are extensively codified under the CPC, providing detailed procedures and grounds for various types of appeals.
- Constitutional appeals are governed by the relatively succinct provisions of the Constitution, emphasizing their special and overarching nature in the judicial system.

Procedural Aspects:

- Civil appeals involve comprehensive procedural rules under the CPC, including filing of memorandum of appeals, grounds for appeals, and the process of hearing.
- Constitutional appeals, while also involving procedural aspects, primarily focus on the constitutional question certified by the High Court.

Conclusion

Understanding the distinctions between appeals in constitutional cases and appeals in civil cases is crucial for legal practitioners. While both aim to provide judicial recourse for grievances, they operate under different legal frameworks, address different types of questions, and serve distinct purposes within the judicial system. The procedural and substantive nuances between these types of appeals underscore the importance of adhering to the specific requirements and grounds applicable to each, ensuring that the legal issues are appropriately and effectively addressed at the highest judicial level.

Answer 2A(iv)

Distinguish between Annual General Meeting and Extra-ordinary General Meeting

Annual General Meeting: Every company shall hold its first Annual General Meeting (AGM) within nine months from the date of closing of the first financial year of the company and thereafter in each Calendar Year within six months of the close of the financial year with an interval of not more than fifteen months between two successive AGM.

The aforesaid period of six months or interval of fifteen months may be extended by a period not exceeding three months with the prior approval of the Registrar of Companies, in case of any AGM other than the first AGM. If a company holds its first AGM, as aforesaid, it shall not be necessary for the company to hold any AGM in the Calendar Year of its incorporation.

Extra - Ordinary General Meeting: Extra-ordinary General Meeting may be held as and when required between two consecutive Annual General Meetings. Items of business other than ordinary Business may be considered at an Extra-Ordinary General meeting. The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Further, the Board shall, at the requisition made by,–

- (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
- (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote,
call an extraordinary general meeting of the company within the period specified in section 100(4).

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

Question 3

Write short notes on the following :

- (i) Framing of Issues.
- (ii) Do's and Don'ts while drafting the documents.
- (iii) Six persons are the only members of a Private Company. All of them met with an accident on the highway while on pleasure trip and all of them died in accident. In light of the case laws write a short note on the existence of the company after the accident ?
- (iv) A 'Will' does not require any stamp duty.

(4 marks each)

OR (Alternate question to Q. No. 3)

Question 3A

Distinguish between the following :

- (a) Testatum and Consideration.
- (b) Deed and Documents.
- (c) Counter Guarantee and Fidelity Guarantee.

(d) Probate and Letters of Administration.

(4 marks each)

Answer 3(i)

Framing of Issues

The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.

Court is required to pronounce judgement on all the issues. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party. If the court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may first try it, if issue relates to:

- (i) Jurisdiction of the court,
- (ii) Bar to the suit created by law for the time being in force.

Where the parties are at issue on some question of law or fact and issues have been framed by the court as herein-above provided, if the court is satisfied that no further argument or evidence than what the parties can at once adduce is required upon such of the issues as may be sufficient for decision of the suit and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues and if the finding thereon is sufficient for the decision, may pronounce judgement accordingly.

Answer 3(ii)

Do's and Don'ts while drafting the documents

Some Do's while drafting the documents

1. Reduce the group of words to single word;
2. Use simple verb for a group of words;
3. Avoid round-about construction;
4. Avoid unnecessary repetition;
5. Write shorter sentences;
6. Express the ideas in fewer words;
7. Prefer the active to the passive voice sentences;
8. Choose the right word;
9. Know exactly the meaning of the words and sentences you are writing, and
10. Put yourself in the place of reader, read the document and satisfy yourself about the content, interpretation and the sense it carries.

Some Don'ts while drafting the documents

The following things should be avoided while drafting the documents:

- a) Avoid the use of words of same sound. For example, the words "Employer" and "Employee";
- b) When the clause in the document is numbered it is convenient to refer to any one clause by using single number for it.
- c) Negative in successive phrases would be very carefully employed.

- d) Draftsman should avoid the use of words "less than" or "more than", instead, he must use "not exceeding"
- e) If the draftsman has provided for each of the two positions to happen without each other and also happen without, "either" will not be sufficient; he should write "either or both" or express the meaning of the two in other clauses.

While writing and typing, the following mistakes generally occur which should be avoided:

1. "And" and "or";
2. "Any" and "my";
3. "Know" and "now";
4. "Appointed" and "Applied";
5. "Present" and "Past" tense.

Answer 3(iii)

In the hypothetical scenario given where all six members of a private company die in an accident, the continuation of the company's existence can be analyzed through the lens of established company law principles and landmark case laws, such as *Salomon v. A. Salomon & Co. Ltd*. The core issue revolves around the nature of a company as a separate legal entity and the implications of having no surviving members.

Legal Entity and Separate Existence

A company, once incorporated, becomes a separate legal entity distinct from its members. This principle was firmly established in the case of *Salomon v. A. Salomon & Co. Ltd* [1897] AC 22. In this case, the House of Lords held that a company has a separate legal personality from its shareholders. The key elements derived from this ruling are:

1. Separate Legal Entity: The company continues to exist independently of the life or death of its shareholders.
2. Perpetual Succession: The company's existence is not affected by changes in its membership.

Implications for the Private Company

In the context of the given scenario, even if all the members of the private company die, the company as a legal entity does not cease to exist. The company's assets, liabilities, and obligations remain intact. The company can continue to operate, enter into contracts, and sue or be sued in its name.

Legal Mechanisms for Continuation

1. Appointment of New Members: The company's articles of association typically provide mechanisms for the appointment of new members. If the articles are silent, the Companies Act provides for the appointment of new members by the personal representatives of the deceased members.
2. Transfer of Shares: The shares of the deceased members can be transferred to their legal heirs or sold to new investors, ensuring that the company continues to have members.
3. Role of Directors: The directors of the company continue to manage its affairs even in the absence of members. They can take steps to ensure the continuity of the company by facilitating the transfer or issuance of shares.

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Case Law Reference: *Salomon v. A. Salomon & Co. Ltd*

- Veil of Incorporation: The case reinforces that a company is an artificial person with a separate legal identity from its shareholders.
- Perpetual Succession: The death of members does not affect the company's perpetual succession.

Practical Steps Post-Accident

- Legal Representatives: The personal representatives of the deceased members must take immediate action to transfer the shares according to the provisions in the articles of association or under the Companies Act.
- Corporate Resolutions: The remaining board of directors, if any, should pass resolutions to manage the transition smoothly.
- Court Intervention: If there are disputes or the articles do not provide clear guidance, the court may be approached for directions on managing the company's affairs.

Conclusion

The tragic death of all members of a private company does not lead to the dissolution of the company itself. Leveraging the principles established in *Salomon v. A. Salomon & Co. Ltd*, the company remains a going concern, capable of fulfilling its obligations and continuing its operations. The legal framework provides robust mechanisms to ensure that the company can appoint new members and continue to function, maintaining its separate legal entity and perpetual succession.

The company's continuity is thus preserved through the transfer of shares, the role of directors, and, if necessary, court intervention to manage the transition and ensure that the company remains operational and compliant with statutory requirements.

Existence of a company after the death of all the members of a company. The Company is an artificial person. It has separate legal entity and common seal or separate legal existence which is independent of its shareholders. This principle of separate entity has been recognized in -

Solomon v. Solomon & Co. Ltd.

In the given situation, it can be said that even if all the members of the company are dead the company will continue as a legal entity because it has a perpetual succession.

Answer 3(iv)

A Will does not require any stamp duty. Registration of Will is not mandatory. It is optional under Section 18(c) Registration Act, 1908. However, a registered Will has certain advantages. Any testator may, either personally or by duly authorized agent deposit with any Registrar his Will in a sealed cover super-scribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document as per Section 42 of Registration Act, 1908. The testator, or after his death, any person claiming as executor or otherwise under a Will, may present it to any Registrar or Sub-Registrar for registration under section 40 of the Registration Act, 1908.

OR (Alternate question to Q. No. 3)

Answer 3A(a)

Testatum and Consideration

Testatum

This is the "witnessing" clause which refers to the introductory recitals of the agreement, if any, and also states the consideration, if any, and recites acknowledgement of its receipt. The witnessing

clause usually begins with the words "NOW THIS DEED WITNESSES". Where there is more than one observation to be put in the clause the words, "NOW THIS DEED WITNESSES AS UNDER" are put in the beginning and then paragraphs are numbered.

Consideration

Consideration is very important in a document and must be expressed. Mention of consideration is necessary otherwise also, for example, for ascertaining stamp duty payable on the deed under the Indian Stamp Act, 1899. There is a stipulation of penalty for non-payment of stamps, but non-mention of consideration does not invalidate the document. In the absence of mention of consideration, the evidentiary value of document is reduced that the document may not be adequately stamped and would attract penalty under the Indian Stamp Act, 1899.

Answer 3A(b)

Deed and Documents

DEED: In legal sense, a deed is a solemn document. Deed is the term normally used to describe all the instruments by which two or more persons agree to affect any right or liability. To take for example Gift Deed, Sale Deed, Deed of Partition, Partnership Deed, Deed of Family Settlement, Lease Deed, Mortgage Deed and so on. Even a power of Attorney has been held in old English cases to be a deed. A bond is also included in the wide compass of the term deed.

A deed may be defined as a formal writing of a non-testamentary character which purports or operates to create, declare, confirm, assign, limit or extinguish some right, title, or interest. One of the most suitable and comprehensive definition has been given by Norten on 'Deeds' as follows:

A deed is a writing -

- a) on paper, vellum or parchment,
- b) sealed, and
- c) delivered, whereby an interest, right or property passes, or an obligation binding on some persons is created or which is in affirmance of some act whereby an interest, right or property has been passed.

Document

"Document" as defined in Section 3(18) of General Clauses Act, 1897 means any matter expressed or described upon any substance by means of letters, figures or marks, or by the more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Examples and Illustrations of documents

1. Writing is a document.
2. Words printed, lithographed or photographed are documents. A map or plan is a document.
3. An inscription on a metal plate or stone is a document. A caricature is a document. Thus, document is a paper or other material thing affording information, proof or evidence of anything.
4. All deeds are documents. But it is not always that all documents are deeds. A document under seal may not be a deed if it remains undelivered, e.g., a will, an award, a certificate of admission to a learned society, a certificate of shares or stocks and share warrant to bearer, an agreement signed by directors and sealed with the company's seal, license to use a patented article, or letters of co-ordination.

5. Documentary evidence as such is an important piece of evidence of which the Courts and Tribunals take judicial cognizance.

Answer 3A(c)**Counter Guarantee and Fidelity Guarantee****Counter Guarantee**

A guarantee given by the principal debtor to the surety providing him continuing indemnity against any loss or damage that the surety may suffer on account of default on the part of the principal debtor, is called "counter- guarantee".

Counter-guarantee means any guarantee, bond or other payment undertaking of the instructing party, however named or described, given in writing for the payment of money. Counter-Guarantee provides security (it is a guarantee commitment) in favour of the guarantor. The guarantor can be a bank or surety company. The Counter-Guarantee relieves the guarantor in large part of the risk that he is unable to successfully take recourse for compensation to the exporter.

Fidelity Guarantee

A guarantee, guaranteeing an employer against the misconduct of an employee or to answer for the debt or default of another, is called a "fidelity guarantee".

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

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

Answer 3A(d)**Probate and Letters of Administration****Probate**

Probate is a certificate granted under the seal of Competent Court, certifying the Will (a copy whereof is annexure thereto) as the Will of the testator and granting the administration of the estate of the deceased in accordance with that Will to the executor named under the Will.

Letters of Administration

A letter of administration can be obtained from the Court of competent jurisdiction in cases where the testator has failed to appoint an executor under a will or where the executor appointed under a will refuses to act or where he has died before or after proving the Will but before administration of the estate. Letters of Administration are not always necessary in cases of intestacy of Hindus, Mohammedans, Buddhists, Sikhs, Jains, Indian Christians or Parsis. Letter of Administration is always necessary where a person (governed by the Indian Succession Act, 1925) dies intestate.

Question 4

- (a) Explain the Rights and Liabilities of Mortgagee.
- (b) Mrs. Sonal Shankregauda was a shareholder in Skyscrapers Limited. She died after executing a will under which Dhiren, a son of Mrs. Sonal Shankregauda, was to inherit all his properties including the shares held by her. The Articles of Association of Skyscrapers Limited vested with the Board of Directors absolute discretion in regard to registration of transfer of shares. The Board of Directors refused to register the transmission of shares to Dhiren on the ground that Dhiren is a known criminal.
 - (i) What are the documents Dhiren has to submit for transmission of shares in his name ?
 - (ii) Is the refusal to register the transmission of shares by the Board of Directors of the company, correct ?
 - (iii) What are the remedies available to Dhiren ?
- (c) Draft a Power of Attorney to Sell Immovable Property. Assume necessary facts, if required.
- (d) Write a note on Shareholders Agreements.

(4 marks each)

Answer 4(a)**Rights and Liabilities of Mortgagee****Rights of Mortgagee**

- 1) Right to Sell: If borrower fails to return the loan in time, then the mortgagee has the right to sell the property of the mortgagor but the same can only be sold through auction subject to approval from the court.
- 2) Right to Recover Shortfall: In case the amount to be recovered falls short after selling the property, mortgagee shall have the right to recover the balance due.
- 3) Refusal of Debt: Mortgagee shall have the right to get a foreclosure decree from the court.

Liabilities of mortgagee

- 1) Property should be protected to the best possible extent.
- 2) Proper Insurance Cover against the property.
- 3) No alteration to the property.
- 4) All taxes, revenues levied by government should be paid.

Answer 4(b)

- (i) Letter of Request accompanied by Probate/Letters of Administration and any other documents as may be required by the Company in accordance with its Articles of Association.
- (ii) The refusal to register transmission of shares by the Board is not correct and it must register the transmission of shares once Dhiren produces the proof of succession.
- (iii) Dhiren can send a legal notice to the company citing the legal provisions and requiring the company to register the shares in his name. Failing this, he can institute proceedings to redress his grievance against Skyscrapers Ltd. before the concerned authority under the Companies Act, 2013.

Answer 4(c)**Power of Attorney**

TO ALL TO WHOM THESE POWERS SHALL COME, I, XYZ, of Mumbai, Indian inhabitant, send greetings;

WHEREAS I am the owner of the land, hereditaments and premises situate at, and more particularly described in the Schedule hereunder written;

AND WHEREAS I am desirous of disposing of the said property, but am unable to attend to the sale of the said property;

AND WHEREAS I am desirous of appointing some fit and proper person to act for me and on my behalf to do all necessary acts, deeds and things in connection with the sale of my said property;

NOW KNOW ALL AND THESE PRESENTS WITNESSETH that I XYZ, do hereby nominate, constitute and appoint Mr. ABC, residing at....., to be my true and lawful attorney to do the following acts, deeds and things for me and on my behalf, namely, -

1. To negotiate for the sale of the said property, more particularly described in the Schedule hereunder written with intending purchasers, to issue advertisements for this purpose, and to sign the Agreement for Sale of the said property, to receive the earnest money from the purchaser, and give proper receipts and discharges for the same.
2. To appoint Solicitors in connection with the sale of the said property and to pay their fees.
3. To apply for, and obtain, all necessary permissions from all relevant authorities, including authorities appointed under the Act,, and to appear before such authorities, if necessary.
4. On receiving the balance of the sale price, to sign and execute the Conveyance and other documents and assurances, in favour of the purchaser, and to do all other acts, deeds and things in this connection.
5. To apply for, and obtain, the Income-tax Clearance Certificate under the Income-tax Act, 1961, in respect of the said property, and to do all other things as may be necessary for this purpose.
6. To appear before the Sub-Registrar of Assurances, and lodge the necessary documents for registration, and to admit execution of such documents.
7. To do all other acts, deeds and things, and to appear before all relevant authorities for effectuating the transfer of the said property in favour of the purchaser.

AND I DO HEREBY, for myself, my heirs, executors and administrators, RATIFY AND CONFIRM, AND AGREE TO RATIFY AND CONFIRM, all and whatsoever my said Attorney shall do, or cause to be done, by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand at Mumbai thisday of, 20....

THE SCHEDULE ABOVE REFERRED TO:

SIGNED and DELIVERED by the within

named XYZ, in the presence of:

Sd/-

(witnesses)

Before Sd/-.....

Answer 4(d)

Shareholders Agreements (SHA) are very popular in newly formed business. There are numerous situations where such agreements are entered into family companies, venture capital investments etc.

Shareholder's agreement is a contractual arrangement between the shareholders of a company describing how the company should be operated and the defining inter-se shareholders rights and obligations.

Shareholder's agreements are the result of mutual understanding among the Shareholders of a company to which the company generally becomes a consenting party. Such agreements are specially drafted to provide specific rights, impose definite restrictions over and above those provided by the Companies Act.

A SHA creates personal obligation between the members signing such agreement however, such agreements do not become a regulation of the company in the way the provisions of Articles are unless the Articles are amended to incorporate the provisions of the SHA.

Question 5

- (a) Draft a deed of Surrender of Lease. Assume necessary facts and data.
- (b) A, B and C are three partners in a Partnership firm and they have filed the requisite notice with the Register of firms notifying the dissolution of the partnership for suffering losses for the last five years. You are required to draft a deed of dissolution of the said partnership firm. Assume necessary facts, if required.

(8 marks each)

Answer 5(a)**Deed of Surrender of Lease**

THIS DEED OF SURRENDER OF LEASE made the day of, at

BETWEEN

XY of, etc. (the lessee), of the one part

AND

PQ of, etc. (the lessor) of the other part. day of the other part.

WHEREAS by an Indenture dated made between the parties hereto and registration in it was witnessed that the said PQ did in consideration of the rent thereby and thereunder reserved and of the covenants and conditions to be observed and performed on the part of the said XY as therein contained granted and demised by way of lease the property fully mentioned and described in the schedule hereto for a term of years.

AND WHEREAS such lease is in full force and virtue and all rents and conditions reserved by and contained there under on the part of the lessee to be paid, observed and performed by the said XY up to the date of these presents.

AND WHEREAS the lessee was at all material times and is presently in possession of the property since the execution of the lease.

AND WHEREAS for personal reasons and consideration, the said XY having desired to be relieved from any further payment of such rent and performance of the covenants and conditions approached the said PQ for a surrender of the said lease and delivery of the possession of the property.

AND WHEREAS the said PQ has agreed to accept from the said XY a surrender of the aforesaid lease of the said premises.

NOW THE DEED WITNESSES that in pursuance of the said agreement and consideration of a sum of Rs..... being the token consideration paid by the said PQ to XY, the said XY as beneficial user of the said property do hereby give up and relinquish all his leasehold estate and interest in and surrender and deliver possession to the said PQ of the premises comprised in and by the said deed of lease TO HOLD the same as before execution of the lease by the said PQ TO HOLD THE INTENT and object that the same shall stand determined to all intents and purposes and that the residue of the said XY in the said term of years created by the said deed of lease and all other rights and interests of the said XY in the said premises under or by virtue of the said deed shall stand extinguished and merged in the reversion freehold and inheritance of the premises with immediate effect as if the said lease was never granted nor intended.

AND THIS INDENTURE further witnesses that in consideration of the surrender of the lease which is accepted by the lessor he the said PQ do hereby release and discharge the lessee XY, his successor and estate from all claims, demands and liabilities on account of future rent and or arising but of performance or non- performance or hereinbefore recited Indenture of lease.

IN WITNESS WHEREOF the parties above named have put their signatures the day and year above.

Signed, sealed and delivered

XY

PQ

The Schedule above referred to:

Answer 5(b)

DEED OF DISSOLUTION OF PARTNERSHIP

THIS DEED OF DISSOLUTION OF PARTNERSHIP is made on the day of..... 20.... at

BETWEEN

A..... of the first part,

AND

B..... of the second part,

AND

C..... of the third part.

WHEREAS the partners hereto under a deed of partnership dated..... made between them formed themselves into a business firm and carried on business under the name and style of..... pursuant to the covenants, stipulations and provision contained in the said deed;

AND WHEREAS the said business has been suffering losses for the last five years it has been mutually decided between the parties that the said partnership shall be dissolved, and the said trade and business shall be wound up and the stock-in-trade, assets and credits realized and called in, and the net proceeds after payment and satisfaction of all debts and liabilities divided between the partners according to the covenants in this behalf appearing in the deed of partnership.

NOW THIS DEED WITNESSES that in pursuance of the said agreement it is hereby declared and agreed by and between the parties hereto as follows, that is to say:

1. The said partnership between the partners hereto under the deed, dated.....

hereunto appended shall be determined and stand dissolved as from the day of..... 2024. And the parties hereto singly or jointly shall not carry on the business of the said firm of..... under the said name and style for a period of years hence.

2. The parties hereto shall on the aforesaid date of..... sign notices of the dissolution and forthwith advertise in the local Official Gazette the fact of dissolution as required by Section 45 of the Indian Partnership Act AND shall also intimate the fact of dissolution to the Registrar of Firms under the provision of Section 63 of the said Act.
3. Within..... days after the dissolution of the partnership a full and general account and balance sheet shall be taken and made of the property, assets and liabilities of the partnership; and a full and particular inventory and valuation of all the machinery, plants, tools, utensils, stock in hand, office equipment, materials and effects belonging to the firm shall be made by the parties or such other person as the partners may choose to appoint, whose decision shall be final and binding upon the partners, and all debts owing to the firm shall be collected and got in by the parties or such other persons as the parties may by instrument in his behalf appoint.
4. That as soon as may be, after the property, assets and liabilities have been got in and disbursed the parties or such other person or persons whom the parties may have appointed under the foregoing clause shall divide and apportion the share of the parties, in the proportion of the contribution of the parties towards the capital. In such division any amounts paid earlier or due to the parties according to the books of the partnership shall be taken into account. That the cost of liquidation proceedings shall also be deemed to be a liability of the partnership and paid from the funds of the partnership.
5. That in case the winding up shows a loss or the assets of the partnership are insufficient to meet the liabilities and debts of the partnership then the partners shall forthwith pay such losses in the proportion of their contribution to the capital.
6. Each of the parties shall, so soon as the others or any of them, or their or his representatives, shall have executed and done all the assurances, acts or things hereby agreed to be done by them respectively and at the request and cost of such other or others, or their or his representatives execute to them or him such releases, indemnifies, and assurances as may be reasonable and proper;

IN WITNESS WHEREOF the said A, B and C have hereto signed and executed this agreement of dissolution and appended it to the said deed of partners, dated.....

WITNESSES:

1. Sd/- A
2. Sd/- B
3. Sd/- C

Question 6

- (a) Write a note on the vacation of the office of the director.
- (b) Draft a specimen deed of Usufructuary Mortgage. Assume necessary facts, if required.
- (c) Draft an application for appointment of a Receiver.
- (d) Write a note on appellate authorities under Real Estate (Regulation and Development) Act 2016.

(4 marks each)

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Answer 6(a)

Vacation of the office of the Director

The office of a Director shall become vacant in case the Director absents himself from all the Meetings of the Board held during a period of twelve months with or without seeking leave of absence of the Board of Directors. For the purpose of counting of the Board Meetings held, the counting should commence from the date of the first Board Meeting held immediately after the meeting which the director concerned last attended.

A Board Resolution need not be passed to show that office of Director has been vacated by a particular Director. Vacation of office is automatic as soon as a Director is found to have incurred disability as contemplated by clause (b) of sub section (1) of Section 167 of the Companies Act, 2013.

As a matter of good governance, due intimation of such vacation should be sent to such Director forthwith and the board may take note of such vacation at its next Meeting.

Answer 6(b)

Specimen deed of Usufructuary Mortgage

THIS MORTGAGE, made on ...day of..... 2024 at

BETWEEN

'AB' of etc. (hereinafter called "the Mortgagor") of the One Part,

AND

'CD' of etc. (hereinafter called "the Mortgagee") of the Other Part,

WITNESSES that on consideration of the sum of Rs. now paid to the Mortgagor by the Mortgagee (the receipt whereof the Mortgagor does hereby acknowledge), said 'AB' hereby conveys to the said 'CD'. All that etc. (describe the property): from this day AND THAT the Mortgagee shall be in possession of the mortgaged property under the terms of the deed for securing payment on the ... day of 2020, of the principal sum secured, with the interest thereon at per cent per annum, which mortgage money will be set off against the usufruct of the mortgaged property, and the Mortgagee does hereby promise to keep clear accounts thereof.

THE MORTGAGOR hereby agrees that the Mortgagee shall retain possession of the mortgaged property until the principal sum together with the interest due be paid off out of the proceeds of the property and on payment of the aforesaid sum, the Mortgagee shall execute and register a release of the mortgaged property in favour of the Mortgagor, AND THAT the Mortgagee also shall not to, execute, perform nor suffer to the contrary any act deed or thing whereby or by reason or means whereof the value of the said property in his possession may be diminished or the same may otherwise be prejudiced in title or estate.

THE MORTGAGOR does also agree to pay the Government revenue and the municipal tax of the said property regularly and in case he fails to make such payment, the Mortgagee shall be at liberty to pay such revenue and taxes, and such sum paid shall be considered an additional principal sum advanced to the Mortgagor, and shall carry interest at the rate stipulated above.

AND LASTLY, the Mortgagor also agrees that if he, the Mortgagor, does not pay the principal sum with the interest then due on the stipulated date, this conveyance will become absolute and the Mortgagee will be entitled to foreclose the mortgaged property, and thereafter the Mortgagor, his

heirs, executors, administrators or assigns shall be absolutely debarred of all the rights to redeem the same.

IN WITNESS WHEREOF the parties herein under have set their hands on the date and year hereinabove mentioned in the presence of:

Witnesses:

- 1.
- 2.

.....'AB'

.....'CD'

Answer 6(c)

Application for appointment of a Receiver

Application for appointment of a Receiver (in a partition suit)

(Under Order. 40, rule. 1 of the Code of Civil Procedure, 1908)

In the Court of the Asst. District Judge...

Title Suit No.of 20.....

A.B.

Plaintiff

Versus

C.D. and 10 others

Defendants

Petition under Order 40, rule 1 of Civil Procedure Code, 1908

The above-named plaintiff states as follows:

1. That the plaintiff is the owner of 66 acres of land (vide Schedule "C" of the plaint) by purchase by a registered at from Defendant No. 2, a co-sharer of the holding.
2. That the said land in Schedule C is separated from the rest of the holding by clear and defined boundaries and is so mentioned in the plaintiff-petitioner's title deed.
3. That the plaintiff has been in possession thereof. All the defendants excepting Defendants No. 5 to 8 have submitted a joint written statement confirming plaintiffs' possession over the "C" Schedule land.
4. That Defendants No. 5 to 7 are denying the plaintiff's possession. The plaintiff has sought for relief of partition in the above suit.
5. That for undue interference by Defendants No. 5 to 7, the plaintiff apprehends breach of peace and molestation if cultivation by the plaintiff is resorted to. On the contrary, the plaintiff would lose crops if the land is not cultivated and tilled immediately.
6. That in the circumstances of the case, a Receiver should be appointed for bringing the land in Schedule C under cultivation and to reap and harvest the future crop under the court's orders, even if the said Defendants No. 5 to 7 claims falsely possession over the land in Schedule C.

Affidavit

I, A.B, aged.....years, son of late.....by occupation agriculturist, residing at village P.S. Dist..... solemnly declare and affirm as follows:

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- a) That I am the plaintiff of the above numbered title suit. I know facts of the case and I am competent to swear this affidavit. This is true to my knowledge.
- b) That the contents in paras 1 to 6 herein above are true to my knowledge.

Declared by Sri A.B., before the Commissioner of Affidavits.

Deponent is identified by me:

Answer 6(d)

Appellate Authorities under Real Estate (Regulation and Development) Act, 2016

The Real Estate (Regulation and Development) Act, 2016 (the Act) was enacted to protect home buyers and boost investments in the real estate sector. The Act establishes several authorities and bodies to ensure effective regulation and dispute resolution. Among these are the Real Estate Regulatory Authority (RERA) and the Real Estate Appellate Tribunal (REAT).

Real Estate Appellate Tribunal (REAT)

According to section 2(f) of Real Estate (Regulation and Development) Act, 2016, "Appellate Tribunal" means the Real Estate Appellate Tribunal established under section 43.

Section 43 of the Act provides for the establishment of the Real Estate Appellate Tribunal. It is a quasi-judicial body that hears appeals against the decisions, directions, or orders of the Real Estate Regulatory Authority or the adjudicating officers. Key features of REAT include:

1. Hearing of Appeals:
 - Empowered to hear appeals from orders/decisions of RERA or adjudicating officers.
2. Procedural Rules:
 - The form, manner, and fees for filing appeals are prescribed by rules made by the appropriate government.
3. Quasi-Judicial Authority:
 - Acts as a quasi-judicial body, providing a forum for expeditious resolution of disputes.
4. Decision Making:
 - Its decisions are binding, ensuring compliance with the regulatory framework established by the Act.

The establishment of the Real Estate Regulatory Authority and the Real Estate Appellate Tribunal under the Real Estate (Regulation and Development) Act, 2016, ensures a robust mechanism for regulation, compliance, and dispute resolution in the real estate sector. These authorities play a vital role in maintaining transparency, protecting the interests of stakeholders, and promoting the development of a healthy and competitive real estate market.

Lecture Kart