Downloaded from LectureKart.com Downloaded from LectureKart.com

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

Syllabus 2022

JUNE 2025

GROUP 2

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)
ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003
tel 011-4534 1000 **email** info@icsi.edu **website** www.icsi.edu

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

These answers have been written by competent persons and the Institute hope that the GUIDELINE ANSWERS will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

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

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

CONTENTS

Group 2

		Page No.
5.	Strategic Management & Corporate Finance	1
6.	Corporate Restructuring, Valuation and Insolvency	26
7.	**Elective 2**	
7.1	Arbitration, Mediation & Conciliation	53
7.2	Goods and Services Tax (GST) & Corporate Tax Planning	83
7.3	Labour Laws & Practice	111
7.4	Banking & Insurance – Laws & Practice	125
7.5	Insolvency and Bankruptcy – Law & Practice	146

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

STRATEGIC MANAGEMENT AND CORPORATE FINANCE

GROUP 2 PAPER 5

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

NOTE : *Answer All Questions.*

PART-I

Question 1

1. Case Study :

(a) UKD Steel's Vision strikes a balance between economic value as well as ecological and societal value by aspiring to be ''A Global Benchmark in Value Creation and Corporate Citizenship''. Since its inception, UKD Steel's CSR interventions have been more of a 'provider' to society, where the community was given support for its overall needs, both for sustenance and development. Gradually, the shift in approach led to UKD Steel being an 'enabler' focusing on building community capacity through training programs. The Company supports and propagates the principles of the United Nations Global Compact as a Founder Member. It acts as a signatory to the World Steel Sustainability Charter and supports the Affirmative Action program of the Confederation of Indian Industry. UKD Steel's approach to business has evolved from the concept that the wealth created must be continuously returned to society. The responsibility of combining the three elements of society—social, environmental, and economic— is of utmost importance to the way of life at UKD Steel. Today UKD Steel's CSR activities in India encompass the Company's Steel Works, Iron ore mines, and collieries, reaching out to the cities of Jharkhand, Odisha, and West Bengal.

UKD Steel's CSR Initiatives :

Community involvement is a characteristic of all UKD Group companies around the world. It can take the form of financial support, provision of materials, and the involvement of time, skills, and enthusiasm of employees. The Group contributes to a very wide range of social, cultural, educational, sporting, charitable, and emergency assistance programs. The Group works in partnership with the Government, national and international development organizations, local NGOs, and the community to ensure sustainable development. The Corporate Social Responsibility Division of UKD Steel delivers these responsibilities through several institutionalized bodies :

UKD Steel Rural Development Society (URDS)

UKD Steel Rural Cultural Society (URCS)

UKD Steel Family Welfare Foundation (UFWF)

UKD Steel Skill Enhancement Federation (USEF)

Recent Developments :

In its recently concluded Board meeting, the directors of UKD Steel have approved the appointment of Mr. Kumar as a Consultant to the Board. Mr. Kumar has a rich experience in the field of Corporate Governance and CSR. Further, Mr. Nimeet has been appointed by UKD Steel to act as the Company Secretary. His appointment comes against the backdrop of the recent concerns pointed out by the Independent Director Mr. Shobhit about the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Corporate Governance practices within UKD Steel. The Board of UKD Steel wishes to seek professional guidance and leverage the expertise of Mr. Kumar in the areas of CSR and Corporate Governance.

A special board meeting was scheduled on 25th May 2025 where Mr. Kumar was invited to brief the board on certain matters. The agenda for the meeting was as under :

(A) To discuss about Mr. Kumar's report to the Board on the factors influencing the CSR activities undertaken by UKD Steel.

(B) To receive a briefing from Mr. Kumar on the interface between CSR and Corporate Governance.

(C) To discuss the steps to be undertaken in the implementation of a robust corporate governance framework within UKD Steel.

Required :

(i) As a newly qualified company secretary, assist Mr. Kumar in compiling a report giving an account of the factors that shall influence the CSR activities undertaken by UKD Steel.

(ii) List out the important matters related to CSR where the Board of Directors of the Company takes decision.

(iii) Assuming yourself as Mr. Nimeet, kindly list down the points, which according to you, define the role of a Company Secretary in the implementation of a robust Corporate Governance framework.

(5+2+3=10 marks)

(b) Manmeet Motor Company (MMC) was started in 1984 to manufacture and sell motorcars across India and the globe. Manmeet Motor Company's Total Quality Management (TQM) practices started in 1986. Mr. Arvind Singh, the founder of MMC had given the slogan "Quality is our Top Priority" which laid the foundation for implementation of TQM within MMC. Mr. Avadesh Singh took over as the new Managing Director of MMC in 2024.

Total Quality Management at MMC :

Quality has been a pioneering element in the success of MMC since its foundation. During the initial years, MMC's business was impacted by global tariffs on automobile spare parts which led to an increase in the cost of production for MMC and a subsequent decline in its margins. To combat this situation, Mr. Arvind initiated the TQM movement across MMC. The results of this movement were stunning at MMC. After racking up ₹ 3 crore in losses from 1984 to 1986, MMC started trial runs to manufacture the spare parts in-house to reduce the cost of production. By 1989, on completion of three years after the implementation of TQM principles in its value chain, MMC had turned into the most profitable company in the automobile segment with margin percentages beating the industry standards considerably.

Current Developments at MMC :

A series of setbacks are tarnishing MMC's hard-won reputation for quality. There has been a media controversy over substantial environmental degradation due to the in-house production of spare parts. Further, the recent customer survey also revealed that the customer satisfaction index proved to be below industry standards, which was detrimental to MMC's reputation. In light of these developments, Mr. Avadesh attended a symposium at NYU Stern on the success of Six Sigma implementation in mature enterprises. He was impressed by the ideology and felt its relevance for MMC. On his return to India, he asked Ms.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Nivedita, his Executive Assistant to schedule a roundtable of all the Senior Executives of MMC to deliberate on the Six Sigma implementation in MMC. Ms. Nivedita is a recently qualified management graduate from the Indian Institute of Management Bangalore and has joined as an Executive Assistant to Mr. Avadesh at MMC. Considering her recent academic stint, Mr. Avadesh has specifically asked her to present her views in the roundtable.

Required :

(i) Assuming yourself as Mr. Avadesh, explain the principles of TQM to the senior executives that led to the success of TQM at MMC.

(ii) Assuming yourself as Mr. Rolston, a Senior Vice President and a member of the roundtable, state the reasons that necessitate the adoption of Six Sigma at MMC.

(iii) Assuming yourself as Ms. Nivedita, brief the members of the roundtable on the steps involved in the implementation of Six Sigma using the DMAIC approach.

(5+3+2=10 marks)

Answer 1(a)(i)

Factors that shall influence the CSR activities undertaken by UKD Steel are as under:

1. Globalization coupled with a focus on cross-border trade, multinational enterprises, and global supply chains is increasingly raising CSR concerns related to human resource management practices environmental protection, and health and safety, among other things.
2. Governments and intergovernmental bodies such as the United Nations, the Organization for Economic Co-operation and Development (OECD), and the International Labour Organization (ILO) have developed compacts, declarations, guidelines, principles, and other instruments that outline social norms for acceptable conduct.
3. Advances in communications technology, such as the Internet, cellular phones and personal digital assistants, are making it easier to track corporate activities and disseminate information about them. Non-governmental organizations now regularly draw attention through their websites to business practices they view as problematic.
4. Consumers and investors are showing increasing interest in supporting responsible business practices and environmental issues.
5. Numerous serious and high-profile breaches of corporate ethics have contributed to elevated public mistrust of corporations and highlighted the need for improved corporate governance, transparency, accountability and ethical standards. However, being ethical and being socially responsible in making positive measurable contribution to society may not be same.
6. There is an increasing awareness of the limits of government legislative and regulatory initiatives to effectively capture all the issues that corporate social responsibility addresses.
7. Citizens in many countries are making it clear that corporations should meet standards of social and environmental care, no matter where they operate.
8. CSR has become a significant part in boosting the social image of a company, particularly a listed entity.
9. The legal mandate cast on directors under Section 166(2) of the Companies Act, 2013 is also taken care of in a way to an extent a company should take its CSR activities seriously.
10. Businesses are recognizing that adopting an effective approach to CSR can reduce risk

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

of business disruptions, open up new opportunities, and enhance brand and company reputation.

11. Ethical persons shall be attracted to join the company.
12. Effective CSR will depend on the mindset of executives of the corporate who are taking up CSR initiatives.
13. CSR also depends on the implementing agencies with regard to their seriousness, integrity, honesty and attitude.

Answer 1(a)(ii)

The Board of Directors of the Company also takes decision on the following important matters related to CSR:

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

Answer 1(a)(iii)

Role of a Company Secretary (CS) in the implementation of a robust Corporate Governance framework are as under:

1. Company Secretary acts as the vital link between the company and its Board of Directors, shareholders and other stakeholders, and regulatory authorities.
2. The Company Secretary plays a key role in ensuring that the Board procedures are followed and regularly reviewed.
3. The Company Secretary provides the Board with guidance as to his duties, responsibilities, and powers under various laws, rules, and regulations.
4. The Company Secretary acts as a compliance officer as well as an in-house legal counsel to advise the Board and the functional departments of the Company on various corporate, business, economic, and tax laws.
5. The Company Secretary is an important member of the corporate management team and acts as the conscience keeper of the company.
6. CS has a legal mandate under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, to be a compliance Officer in which case the CS is responsible for governance requirements under the Regulations.

Answer 1(b)(i)

The following are the principles of Total Quality Management (TQM) that led to its success at Manmeet Motor Company (MMC):

a) **Customer-Focused Approach**: The customer ultimately determines the level of quality. No matter what an organization does to foster quality improvement, training employees,

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

integrating quality into the design process, upgrading computers or software, or buying new measuring tools, the customer determines whether the efforts are worthwhile.

b) **Total Employee Involvement**: All employees participate in working towards common goals. Total employee commitment can only be obtained after fear has been driven from the workplace when empowerment has occurred, and management has provided the proper environment. High-performance work systems integrate continuous improvement efforts with normal business operations. Self-managed work teams are one form of empowerment.

c) **Process-centered Approach**: A fundamental part of TQM is a focus on process thinking. A process is a series of steps that take inputs from suppliers (internal or external) and transform them into outputs that are delivered to customers (again either internal or external). The steps required to carry out the process are defined and performance measures are continuously monitored to detect unexpected variation.

d) **Integrated Systems**: Although an organization may consist of many different functional specialties often organized vertically structured departments, it is the horizontal processes interconnecting these functions that are the focus of TQM.

e) **Strategic and Systematic Approach**: A critical part of the management of quality is the strategic and systematic approach to achieving an organization's vision, mission and goals. This process, called strategic planning or strategic management, includes the formulation of a strategic plan that integrates quality as a core component.

f) **Training and Education: This approach** is utmost important in determining the success of Total quality management. Employees should receive formal, systematic quality management induction and training. Education and training programs ought to be organised for the purpose.

g) **Continual Improvement:** A major thrust of TQM is continual process improvement. Continual improvement drives an organization to be both analytical and creative in finding ways to become more competitive and more effective at meeting stakeholder expectations.

h) **Fact-based Decision Making:** In order to know how well an organization is performing, data on performance measures are necessary. TQM requires that an organization continually collect and analyze data in order to improve decision making accuracy, achieve consensus, and allow prediction based on past history. I Communications During times of organizational change, as well as part of day-to-day operation, effective communications play a large part in maintaining morale and in motivating employees at all levels. Communications involve strategies, method, and timeliness.

Answer 1(b)(ii)

With the budding costs cost of resources and rise in other factors such as competition, the organizations are forced to look around for alternative methods which add to efficiency. Adoption of Six Sigma methodology helps in improving efficiency in any organization as it meticulously identifies defects and minimizes the variations within a process. This is because, each Six Sigma project is supposed to follow a defined sequence of steps and includes specific improvement targets. The reasons for adoption of Six Sigma at Manmeet Motor Company are:

a) Decrease in process cycle time.

b) Decrease of scrap generated by a process.

c) Growing customer satisfaction.

d) Decline in the number of factory defects.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

e) Decrease or elimination of costly reworks

f) Cost Reduction

g) Quality Improvement

h) Improved Customer Satisfaction

i) Take steps to lower the environmental impact due to in-house production of spare parts

Answer 1(b) (iii)

Steps involved in the implementation of Six Sigma using the DMAIC approach at MMC are as under:

- Define the problem statement process goals in terms of key critical parameters on the basis of customer requirements or Voice Of Customer (VOC) and setting project boundaries.;
- Measure a complete picture of the current state of the process and establishes a baseline through measurement of the existing system in context of goals and collecting the data regarding possible causal factors.
- Analyze the current scenario in terms of causes of variations and defects and determining the root cause.
- Improve the process by systematically reducing variation and eliminating defects and root causes.
- Control the future performance of the process and support and maintain the gains realized.

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

Question 2

(a) The concept of Strategic planning gained prominence in strategic management in corporate sector and it has maintained its importance in contemporary times too. It follows a cycle known as the strategic planning cycle.

Explain the steps followed in the strategic planning cycle and how strategic planning can help your organization ?

(*5 marks*)

(b) The term business environment is defined by several business experts and economists. What is the definition given by Keith Davis in this context ?

How can the demographic environment influence business growth ?

(*5 marks*)

(c) Vision leads to mission and mission leads to objectives (which are designed to achieve the mission), objectives lead to goals (which are designed to achieve the objectives) and goals lead to targets (which are set to achieve the goals). How will you compare the Vision and Mission statements of a business unit ?

(*5 marks*)

(d) BCG analysis is mainly used for Multi-Category/Multi Product companies. All categories and products together are said to be the part of Business Portfolio. It aims to evaluate 1/2025/ SMCF/NS Contd each product, i,e., the goods and services of the business in two dimensions and the combination of both dimensions creates a matrix into which the products from the portfolio are placed below :

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Business growth rate	Product category	Product category
High	STAR	QUESTION MARK
LOW	CASH COW	DOG
Market share	High	Low

Name the two dimensions and explain the terms ''STAR, QUESTION MARK, CASH COW and DOG''.

(*1+4=5 marks*)

Answer 2(a)

In 1960s, the concept of Strategic planning gained prominent in strategic management in corporate sector and it has maintained its importance in contemporary times too. It follows a cycle known as the strategic planning cycle.

Although, strategic planning process may be unique as per the specific requirements of any organisation, yet the Strategic Planning process contains the steps most commonly followed by most of the organisations:

- Deliberating mission of the organisation;
- Developing goals based on chosen mission;
- Examining internal environment (strengths and weaknesses);
- Examine external environment (opportunities and threats);
- Summarize findings of SWOT analysis;
- Formulate final strategy based on SWOT.

Strategic planning is an iterative process and it may begin with one mission and end with another, depending on the outcomes of the process.

Strategic planning can help your organization in a number of critical ways:

- Improved results and confidence: A proper plan may positively influence organizational performance and can contribute to a greater sense of purpose, progress and accountability among its team.
- Focus: Good strategic planning forces future thinking and can refocus and re-energise a disorientated organization.
- Problem solving: Strategic planning focuses on an organization's most critical problems, choices and opportunities.
- Teamwork: Strategic planning provides an excellent opportunity to build a sense of teamwork, to promote learning, and to build commitment across the organization.
- Communication: All stakeholders have an interest in knowing the direction in which organisation is heading and also how their contribution will fit in overall plan.
- Greater control: Strategic planning can provide an organisation greater control the environment in which it operates.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 2(b)

According to Keith Davis, "Business environment is aggregate of all conditions, events and influences that surround and affect the business".

The Demographic environment influence business growth in the following way:

The demographic environment includes the gender ratio, size and growth of population, life expectancy of the people, rural-urban distribution of population, the technological skills, educational levels and language skills of labour force. All these demographic features have an important bearing on the functioning of business firms. For example, huge populated countries such as India and China can adopt labour-intensive technologies than capital intensive ones to give employment to its labour force. Similarly, the population of kids will decide product range and space for such products to be offered in a mall while planning logistics.

Social Cultural and Demographic Factors influencing business are as under:

- Birth and death rates
- Life expectancy rates
- Attitude towards work and organization
- Attitude towards government
- Attitude towards authority
- Ethical norms
- Value system
- Composition of work force
- Attitude towards income, savings and capital formation
- Social ethos towards work and organization.

Answer 2(c)

Vision serves the purpose of stating what an organization wishes to achieve in the long run. It articulates the position that the organisation would like to occupy in future. The vision is about looking forward and about formalizing where the business is going, while a mission statement is an enduring statement of purpose that distinguishes one business from other similar firms. A mission statement identifies the scope of a firm's operations in product and market terms. In nutshell, A vision is the "what" (what the entity wants to become, achieve), and the mission is the "why" and "how" (why does the entity exist in the first place).

The vision and mission statements compared as follows:

Mission Statement Vs. Vision Statement		
	Mission Statement	**Vision Statement**
About	A Mission statement talks about HOW you will get to where you want to be. Defines the purpose and primary objectives related to your customer needs and team values.	A Vision statement outlines WHERE you want to be. Communicates both the purpose and values of your business.
Answer	It answers the question, "What do we do? What makes us different?"	It answers the question, "Where do we aim to be?"

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Time	A mission statement talks about the present leading to its future.	A vision statement talks about your future.
Function	It lists the broad goals for which the organization is formed. Its prime function is internal; to define the key measure or measures of the organization's success and its prime audience is the leadership, team, and stockholders.	It lists where you see yourself some years from now. It inspires you to give your best. It shapes your understanding of why you are working here.
Developing a statement	What do we do today? for whom do we do it? What is the benefit? In other words, Why we do? what we do? Questions on What, for Whom and Why?	Where do we want to be going forward? When do we want to reach that stage?
Features of an effective statement	Purpose and values of the organization: Who are the organization's primary "clients" (stakeholders)? What are the responsibilities of the organization towards the clients?	Clarity and lack of ambiguity: Describing a bright future (hope); Memorable and engaging expression; realistic aspirations, achievable; alignment with organizational values and culture.

Answer 2(d)

BCG analysis aims to evaluate each product, i.e. the goods and services of the business in two dimensions which are as follow:

i) Market growth

ii) Market share

CASH COW

Cash cows are products which have a high market share in a low growing market. As the business growth rate of market is low, cash cow gains the maximum advantage by generating maximum revenue due to its higher market share. Therefore, for any company, the cash cows is the category of products which require minimal investment but ensure higher returns. These higher returns raise the level of overall profitability of the firm because such excess revenue generation can be used in other businesses which carry products falling in the category of Stars, Dogs or Question marks.

STAR

The products or services falling in this category are best products/services in the product portfolio of any company. This is so because, for such category of products, both markets share as well as growth rate is high. Unlike cash cows, Stars cannot be complacent when they are top on because they can immediately be overtaken by another company which capitalizes on the market growth rate. However, if the strategies are successful, a Star can become a cash cow in the long run.

QUESTION MARK

Several times, a company might come up with an innovative product which immediately gains good growth rate. However, the market share of such a product is unknown. The product might lose customer interest and might not be bought anymore in which case it will not gain market share, the growth rate will go down and it will ultimately become a Dog.

On the other hand, the product might increase customer interest and more and more people might buy the product thus making the product a high market share product. From here the product can

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

move on to be a Cash Cow as it has lower competition and high market share. Thus, Question marks are products which may give high returns but at the same time may also flop and may have to be taken out of the market. This uncertainty gives the quadrant the name "Question Mark". The major problem associated with having Question marks is the amount of investment which it might need and whether the investment will give returns in the end or whether it will be completely wasted.

DOG

Relative Market Share = Your firm's market share (or revenues) ÷ Largest competitor's market share (or revenues)

Products are classified as dogs when they have low market share and low growth rate. Thus, these products neither generate high amount of cash nor require higher investments. However, they are considered as negative profitability products mainly because the money already invested in the product can be used somewhere else. Thus, over here businesses have to take a decision whether they should divest these products or they can revamp them and thereby make them saleable again which will subsequently increase the market share of the product.

OR (Alternative question to Q. No. 2)

Question 2A

(i) Blockchain technology is an advanced database mechanism that allows transparent information sharing within a business network. A blockchain database stores data in blocks that are linked together in a chain. Name the three pillars of Blockchain Technology and also list out any seven new business applications that block chain gives to internet users.

(1.5+3.5=5 marks)

(ii) Prax Ltd. wants to expand its supply chain operations to Europe and USA where company has its strong customer base and need to form a logistics strategy for ease of operations. Advise the company on the elements to be included in its effective logistics strategy plan.

(5 marks)

(iii) "Financial Technology (Fintech) has emerged in the 21st Century as a new tech that seeks to improve and automate the delivery and use of financial services''. Name the four broad categories of users for fintech. What are the most active areas of fintech innovation ?

(2+3=5 marks)

(iv) Michael Porter's five forces model is an analysis tool that uses five industry forces to determine the intensity of competition in an industry and its profitability level which has turned into one of the most popular and highly regarded business strategy tools. Among those tools, strategies to face the threat of new entrants is very important. Explain the situations where the threat of new entrants is very high.

(5 marks)

Answer 2(i)

The three pillars of Blockchain Technology are:

i) Decentralisation

ii) Transparency

iii) Immutability

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

The blockchain gives internet users the ability to create value and authenticates digital information. Following new business applications will result from this:

1. Smart contracts.
2. The sharing economy.
3. Crowdfunding.
4. Governance.
5. Supply chain auditing.
6. Decentralizing file storage.
7. Prediction markets.
8. Protection of intellectual property.
9. Internet of Things (IoT).
10. Neighbourhood Microgrids.
11. Identity management.
12. Anti-money laundering (AML) and know your customer (KYC).
13. Data management.
14. Land title registration.
15. Stock trading

Answer 2A(ii)

Prax Ltd. can include the following elements in its Logistics Strategy plan to make it more effective:

1. ***Customer service policy*** – The appropriate level of service for customers, by product group or market segment; considering: order fulfilment requirements, enquiry and investigation capability and the available information. The customer service policy informs the nodes and links of the supply network.
2. ***Inventory location policy (Supply Network nodes) –*** Centralised or decentralised inventory; whether to differentiate facilities by fast- and slow-moving stock; location of sites; use of specific technologies and layouts; company-owned or contracted facilities.
3. ***Inventory policy –*** Form and function of inventory by location; the appropriate amount of stock to hold for various groups of inventories; planning structure that links outbound and inbound materials.
4. ***Cost plan –*** Trade-off analysis between cost and service level requirements; cost of Logistics operations.
5. ***Transport and distribution (Supply Network links) policy –*** Affected by whether enterprise imports or exports and the size and structure of conurbations being served. This incorporates transport modes, delivery pattern and storage location considerations, based on the time taken for deliveries.
6. ***IT and Communications capability-*** Technologies (including software) that will be internally developed; buy planning and scheduling applications from single supplier or obtain 'best of breed' applications.
7. ***Logistics organisation structure-*** Function or flow based; allocation of responsibilities; managed or self-managed teams.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

8. ***Logistics Targets and metrics-*** Measures of performance and achievement targets; operations improvements process and management

Answer 2A(iii)

There are four broad categories of users for fintech:

(i) B2B for banks,

(ii) Business clients,

(iii) B2C for small businesses, and

(iv) Consumers.

Some of the most active areas of fintech innovation include or revolve around the following areas:

1. Cryptocurrency and digital cash.
2. Blockchain technology, including Ethereum, a distributed ledger technology (DLT) that maintain records on a network of computers, but has no central ledger.
3. Smart contracts, which utilize computer programs (often utilizing the blockchain) to automatically execute contracts between buyers and sellers.
4. Open banking, a concept that leans on the blockchain and posits that third-parties should have access to bank data to build applications that create a connected network of financial institutions and third-party providers. An example is the all-in-one money management tool Mint.
5. Insurtech, which seeks to use technology to simplify and streamline the insurance industry.
6. Regtech, which seeks to help financial service firms meet industry compliance rules, especially those covering Anti-Money Laundering and Know Your Customer protocols which fight fraud.
7. Robo-advisors, such as Betterment, utilize algorithms to automate investment advice to lower its cost and increase accessibility.
8. Unbanked/underbanked, services that seek to serve disadvantaged or low-income individuals who are ignored or underserved by traditional banks or mainstream financial services companies.
9. Cybersecurity, given the proliferation of cybercrime and the decentralized storage of data, cybersecurity and fintech are intertwined
10. Atomic settlement, when applied to blockchain, means that a transaction either fully completes or is rejected entirely, ensuring that all parts of the agreement are settled simultaneously.
11. Suptech or supervisory technology is the use of technology by regulatory and supervisory authorities to enhance their oversight and enforcement of financial regulations. Regulators use innovative technology monitor, analyze, and supervise financial institutions.
12. Fraud detection and prevention: Utilizing AI and machine learning to detect and prevent fraudulent activities.

Answer 2A(iv)

Threat of new entrants

This force determines the ease of new entrants to enter a particular industry. If an industry is profitable and there are hardly any barriers to enter, competition intensifies rapidly. Therefore, with the entry of more rivals, firms begin to compete for the fixed market share, profits start to decline. Hence, it

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

is critical for existing organizations in the industry to build high barriers to enter to discourage new entrants. Threat of new entrants is high when:

- Smaller capital is required to make an entry;
- Existing companies are not influential/dominant to prevent new entrants;
- Existing firms do not have patents, trademarks or do not strong brand value;
- There is no/little government regulation;
- Customer switching costs are low;
- There is low customer loyalty;
- Products are not being able to be differentiated; and
- Economies of scale can be effortlessly acquired.

PART-II

Question 3

(*a*) Casino Ltd. is a newly incorporated manufacturing company in Gujarat desiring to procure raw materials (RM) from within the country and some machine tools from Japan. They have entered into an agreement with a leading public sector bank for letter of credit for the said purpose. Up to 80% of the purchases will be under LC of which 30% shall be used for imports and balance for inland purchases.

On the basis of the information provided, calculate the limit of LC for the financial year 2025-26 :

Sl. No.	Particulars	Amount ₹
1	RM to be procured during the year	400 crore
2	Lead time for purchases within India Lead time for imports	1 month 2 months
3	Goods will be in transit – for domestic purchases – for imports	1 month 2 months
4	Credit available from – Indian suppliers – Japanese suppliers	1 month 3 months

(*5 marks*)

(b) Casino Ltd. in another incidence has given the loan details extracted from its Balance Sheet as on 31st March, 2025 and other available information.

Calculate the fund based and non-fund-based facilities availed from bank/financial institutions :

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Sl. No.	Loan facilities	₹ In crore
1	Bank Guarantee (against 75% cash margin)	2
2	Cash Credit (against hypothecation of book debts)	4
3	Vehicle loan (availed from Reliant Finance Ltd. an NBFC)	0.50
4	Housing Loan (availed from TALA Housing Finance Ltd. – house mortgaged)	2
5	Key Loan Cash Credit (godown jointly opened by Bank & company)	5
6	Performance bank guarantee (for contracts executed). Period expired & bank reversed the entry in its books	5.50
7	Standby letter of credit	2.50
8	Pre-shipment packing credit	3
9	Supplier's credit	4
10	Bank Guarantee invoked by the beneficiary	2
11	Bill discounting facility with a limit of ₹ 2 crore. At present Bill discounted for ₹ 50 lakhs yet to be realised and Rs. 25 lakhs worth bills were sent for collection	
12	The company is in discussion with a group of consortium banks for a project loan (documents yet to execute) (3 crore Bank Guarantee & 7 crore term loan.)	10

(5 marks)

(c) In Board Meeting of Casino Ltd., it was decided to raise ₹ 10 crore by issuing 200000 shares through a book building process. As the Company Secretary advise the Board on the following :

(a) What would be the allocation pattern if the company fulfils the eligibility criteria regarding net tangible assets, average operating profit, net worth etc. ?

(b) Will there be any change in allocation, if the company does not fulfil the above mentioned criteria ?

(3+2=5 marks)

Answer 3(a)

Calculation of ILC & FLC limits of Casino Ltd for FY 2025-26

Raw material required for FY 2025-2026 is ₹ 400 crore, of which 80% is procured through LC i.e. ₹ 320 crore

Particulars	ILC(Amount in ₹ crore)	FLC (Amount in ₹ crore)
LC used for	70% of 320 i.e. ₹224	30% of 320 i.e. ₹ 96
Monthly consumption	224÷12 = 18.667	96÷12 = 8
Lead time	1 month	2 months
Transit time	1 month	2 months

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Particulars	ILC(Amount in ₹ crore)	FLC (Amount in ₹ crore)
Credit period available	1 month	3 months
Total period	3 months	7 months
LC limit required	3 x 18.667 = 56	7 x 8 = 56

Total LC limit required for the year = 56+56= ₹ 112 crore.

Answer 3(b)

Calculation of fund based & non-fund-based credit facilities availed by Casino Ltd (₹ in crore) as on 31.03.2025

S. No.	Loan Facilities	Fund based ₹ in Crore	Non fund based ₹ in Crore
1	Bank Guarantee		2
2	Cash Credit	4	
3	Vehicle Loan	0.50	
4	Housing Loan	2	
5	Key Loan Cash Credit	5	
6	Performance Bank Guarantee		-
7	Standby letter of credit		2.50
8	Pre-shipment packing credit	3	
9	Supplier's credit		4
10	Bank Guarantee invoked by beneficiary	2	
11	Bill Discount	0.50	
Total		**17**	**8.50**

Note: As on 31.03.2025, the company has availed fund-based limit of ₹ 17 crore & non-fund-based facilities of ₹ 8.50 crore.

Project loan is not yet availed & Bill discounting outstanding is only ₹ 50 lakhs, bills for ₹ 25 lakhs sent for collection is not funded.

Answer 3(c)

a) Regulation 32 (1) and 129 (2) of SEBI(ICDR) Regulations, 2018 provides that in a book-built offer, where the issuer fulfils the eligibility criteria regarding net tangible assets, average operating profit, net worth etc, the allocation pattern of the net offer shall be as follows:

1. Not less than 35% to retail individual investors
2. Not less than 15% to non-institutional investors
3. Not more than 50% to QIBs of which 5% shall be reserved for mutual funds.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

However, the unsubscribed portion in category 1 & 2 above may be allocated to applicants in any other category.

Further in addition to 5% allocation available in terms of 3 above, mutual funds shall be eligible for allocation under the balance available for QIBs.

b) In case the criteria are not fulfilled

As per the above regulations if the company does not meet the eligibility criteria, the allocation pattern shall be as follows:

i) Not more than 10% to the retail individual investors

ii) Not more than 15% to non-institutional investors

iii) Not less than 75% to the QIBs of which 5% shall be reserved for MFs.

However, the unsubscribed portion in either of the categories specified in i) & ii) above may be allocated to applicants in the other category. Further in addition to 5% allocation available in terms of clause iii) above mutual funds shall be eligible for allocation under the balance available for QIBs.

Question 4

(a) An Infrastructure Investment Trust (InvITs) is a Collective Investment Scheme similar to a mutual fund, which enables direct investment of money from individual and institutional investors in infrastructure projects to earn a small portion of the income as return.

Is it mandatory to list InvITs as per SEBI (Regulations) ? What are the situations when delisting of InvIT units are permitted ?

(5 marks)

(b) Renaissance Ventures Ltd announced issue of bonus shares in the ratio of 1 : 4 (1 share for every 4 shares held). At present the shares have a market value of ₹ 1000 per share. Besides the bonus issue, company also announced to split the shares by reducing the face value from ₹ 10 to ₹ 2.

Calculate the value per share if :

(i) Bonus shares were issued before splitting the shares.

(ii) Bonus shares were issued after splitting the shares.

Determine the difference between above scenarios and comment on price.

(2+2+1=5 marks)

(c) What is Special Purpose Acquisition Company (SPAC). What are the eligibility criteria for listing of SPAC ?

(5 marks)

Answer 4(a)

Listing of InvITs

In accordance with the SEBI (Infrastructure Investment Trusts) Regulations, 2014, it shall be mandatory for units of all InvITs to be listed on a recognized stock exchange having nationwide trading terminals, whether publicly issued or privately placed. However, this shall not apply if the initial offer does not satisfy the minimum subscription amount or the minimum number of subscribers as prescribed under the SEBI (Infrastructure Investment Trusts) Regulations, 2014.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Delisting of InvIT units

SEBI (Infrastructure Investment Trusts) Regulations, 2014 stipulates that the investment manager shall apply for delisting of units of the InvIT to SEBI and the designated stock exchanges if: -

a) the public holding falls below the specified limit under the SEBI (Infrastructure Investment Trusts) Regulations, 2014.

b) the number of unit holders of the InvIT falls below the limit as prescribed in the SEBI (Infrastructure Investment Trusts) Regulations, 2014.

c) if there are no projects or assets remaining under the InvIT for a period exceeding six months and InvIT does not purpose to invest in any project in future. The period may be extended by further 6 months, with the approval of unit holders.

d) SEBI or the designated stock exchanges require such delisting for violation of the listing agreement or SEBI (Infrastructure Investment Trusts) Regulations, 2014 or the SEBI Act, 1992.

e) the trustee and investment manager requests such delisting and such request has been approved by unit holders

f) unit holders apply for such delisting in accordance with SEBI (Infrastructure Investment Trusts) Regulations, 2014.

g) SEBI or the designated stock exchanges require such delisting in the interest of the unit holders. Provided that exit shall be provided to dissenting unitholders.

If clause (a) or (b) is breached, the trustee may provide a period of six months to the investment manager to rectify the same, failing which it shall apply for such delisting.

In case of PPP projects, such delisting shall be subject to relevant clauses in the concession agreement.

Answer 4(b)

Case (i) In case bonus shares were issued before splitting the face value

Particulars	**Amount (₹)**
Market value of 4 shares required to be held by the shareholder = 4 x ₹ 1000	4000
Add: Value of 1 bonus share	0
Total market value of 5 shares	4000
No. of shares post- split of face value(₹ 10 share split to ₹ 2) 5 x 5	25 shares
Average price per share 4000/25	160

Case (ii) if stock split happens before bonus issue

Particulars	**Amount ₹**
Market value of shares required to be held by shareholder- 4 x ₹ 1000	4000
Number of shares post- split 4 x 5	20
Number of bonus shares to be received 20/4	5

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Particulars	Amount ₹
Total shares after bonus issue	25
Value of 25 shares	4000
Average price per share 4000/25	160

Conclusion – There is no change in the value of shares, whether the bonus issue happens before or after the split of face value.

Answer 4(c)

Special Purpose Acquisition Company (SPAC)

In terms of the IFSCA (Listing) Regulations, 2024, SPAC is defined as a company which does not have any operating business and has been formed with the primary objective to affect a business combination.

Eligibility criteria for listing of SPACs

A SPAC is eligible to raise capital through initial public offer of specified securities on the recognised stock exchange(s), only where:

a) the target business combination has not been identified prior to the IPO;

b) The SPAC has the provisions for redemption and liquidation in line with IFSCA (Listing) Regulations, 2024; and

c) The sponsor of the SPAC issuer has a good track record in SPAC transactions, business combinations, fund management or investment banking activities and the same shall be disclosed in the offer document.

A SPAC shall not be eligible to list specified securities under IFSCA (Listing) Regulations, 2024if the issuer or any of its sponsors is:

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

Question 5

(a) The annual sales of ABC Ltd. are ₹ 60 lakhs of which 20% is on cash and balance on credit. Debtors are allowed one month to clear off the dues. A factor is willing to advance 90% of the book debts for a fee of 1% per month plus a commission of 4% on total debtors (besides the interest charged). If this arrangement is made, the company is able to make a gain of ₹ 21,600 annually in debt management costs and bad debts of 1%. Factor charges interest on the loans. Bank offers working capital finance against book debts with 10% margin at 12% interest per annum and a processing fee of 2% on total debts.

As the CFO of the company, advise the company on the best option.

(b) Globalisation has opened doors and opportunities that were never explored before. International Financing is also known as International Macroeconomics as it deals with finance on a global level.

In the light of above statements, explain the importance of External Commercial Borrowing (ECB). Which are the areas where the ECB proceeds can be parked ?

(2+3=5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(c) Intermediaries are an integral part of securities market. They are the facilitators ensuring seamless functioning of securities market. SEBI regulates various intermediaries in the primary markets through Regulations for these intermediaries. These Regulations allow SEBI to inspect the functioning of these intermediaries and to ensure that their conduct is market appropriate and fair.

Based on the above statements answer the following questions :

(i) Whether insurance agent or insurance broker is exempted from obtaining registration under SEBI (Investment Advisers) Regulations 2013.

(ii) Whether a person acting in multiple capacities such as insurance agent, pension advisor, mutual fund distributor, etc. is exempted from obtaining registration under IA Regulations ?

(iii) How does an Investment Advisor redress grievance of the investor clients ?

(2+2+1=5 marks)

Answer 5(a)

1. **Computation of amount financed (Amount ₹)**

Annual Sales = ₹ 60 lakh

Cash sales 20% (₹12 lakh), credit sales 80% = ₹48 lakh

Credit sales per month = 48/12= ₹4 lakh

Finance available in both the situation 90% of credit sales= ₹3.60 lakh (per month)

2. **Factoring Cost**

Fees payable to the factor = ₹ 3.60 lakh x 1% = ₹ 3,600

Processing charges = 4% on monthly debtors= ₹ 4 lacs x 4% =₹ 16,000

Total cost = ₹ 16,000 + ₹ 3,600 = ₹ 19,600

Less: Savings in debt management costs = ₹ 21600 per year or 21600/12

= ₹ 1,800 per month

Savings in book debts = 1% of total debtors = ₹ 4 lakh x 1% = ₹ 4,000

Hence, Net factoring cost= ₹ 19,600 – (₹ 1,800 + ₹ 4,000) = ₹ 13,800

3. **Cost of Bank borrowing (working capital against book debts)**

Limit sanctioned = 90% of book debts = 90% x ₹ 4,00,000 = ₹ 3,60,000

Interest payable @ 12% = ₹ 3,60,000 x12% = ₹ 43,200

Per month interest payable= 43,200/12 = ₹ 3,600

Processing fee = 2% x ₹ 4,00,000 = ₹ 8,000

Total cost of bank finance = ₹ 3,600 + ₹ 8,000 = ₹ 11,600

Advice: Since cost of Bank finance is less than that of cost of factoring, company can opt for bank funding.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 5(b)

Importance of External Commercial Borrowing (ECB)

ECBs are commercial loans raised by eligible resident entities from recognised non-resident entities and should conform to parameters such as minimum maturity, permitted and non-permitted end-uses, maximum all-in-cost ceiling, etc. The parameters apply in totality and not on a standalone basis. ECBs are either in freely convertible foreign currencies or in Indian rupees. It will be in the form of loans/equities/debts.

Parking of ECB proceeds

ECB proceeds are permitted to be parked abroad as well as domestically in the manner given below:

a) **Parking of ECB proceeds abroad**

ECB proceeds meant only for foreign currency expenditure can be parked abroad pending utilization. Till utilisation, these funds can be invested in the following liquid assets (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/ Fitch IBCA or Aa3 by Moody's; (b) treasury bills and other monetary instruments of one-year maturity having minimum rating as indicated above and (c) deposits with foreign branches/ subsidiaries of Indian banks abroad.

b) **Parking of ECB proceeds domestically**

ECB proceeds meant for Rupee expenditure should be repatriated immediately for credit to their Rupee accounts with AD Category I banks in India. ECB borrowers are also allowed to park ECB proceeds in term deposits with AD Category I banks in India for a maximum period of 12 months cumulatively. These term deposits should be kept in unencumbered position.

Answer 5(c)(i)

Registration under SEBI (Investment Advisers) Regulations, 2013

Regulation 4 of the SEBI (Investment Advisers) Regulations, 2013 provides that any insurance agent or insurance broker who offers investment advice solely in insurance products and is registered with Insurance Regulatory and Development Authority for such activity shall not be required to seek registration under the under SEBI (Investment Advisers) Regulations, 2013. Insurance Agents or Insurance Brokers registered with IRDA who provide advice in various insurance products across manufacturers shall be regulated by IRDA only. If such Insurance Agents or Insurance Brokers expand their activities to include investment advice on other financial products, then they shall register and be regulated under the SEBI (Investment Advisers) Regulations, 2013 for financial products other than insurance products.

Answer 5(c)(ii)

Registration if acting in multiple capacities

A person acting in multiple capacities such as insurance agent, pension advisor, mutual fund distributor, etc. planning to expand his/her scope of activities to include investment advice on other financial products or engaged in the financial planning of the clients shall be registered and regulated under the SEBI (Investment Advisers) Regulations, 2013for advising on such other financial products or financial planning of the clients.

Answer 5(c)(iii)

Redressal of client grievances

- An investment adviser shall redress client grievances promptly but not later than twenty-one calendar days from the date of receipt of the grievance.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

- An investment adviser shall have adequate procedure for expeditious grievance redressal.
- Client grievances pertaining to financial products in which investments have been made based on investment advice, shall fall within the purview of the regulator of such financial product.
- Any dispute between the investment adviser and his client shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration in accordance with the procedure specified by SEBI or through Ombudsman authorized or appointed for the purpose by any regulatory authority, as applicable.

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

Question 6

(a) A company came out with an issue of 1000 shares at a price band of ₹ 300 to ₹ 360. The minimum lot size is 50. The company received the following bids :

Bid	Number of Shares	Bid Price per share (₹)
1	250	360
2	250	355
3	100	350
4	450	360
5	150	330
6	250	320
7	150	300

From the above :

(i) Decide how the allotment shall be made to each applicant under Book Building process, if the final issue price is ₹ 300.

(ii) What is the amount to be charged from the applicant of Bid I and Bid 3 ?

(3+2=5 marks)

(b) Sun Ltd. offers new shares of ₹ 100 each at 25% premium to existing shareholders on one for four basis. The cum-right market price of a share is ₹ 150.

Calculate :

– Value of a right

– Ex-right market price of a share

Interpret the results.

(2+2+1=5 marks)

(c) XYZ Ltd. wants to make a public issue of 10,00,000 equity shares of ₹ 100 each at par. The applications are received for 15,00,000 shares. The company wants to explore the Green Shoe Option (GSO). IPO Price, i.e. listing price is ₹ 120.

(i) What is the maximum number of shares which can be issued through Green Shoe Option ?

(ii) If the market price post listing comes down to ₹ 90, what the stabilizing agent can do in this situation ?

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(iii) If the market price post listing goes up to ₹ 110, what is the option before the stabilizing agent ?

(1+2+2=5 marks)

Answer 6(a)

(i) Since total number of shares for which application received is 1600, the allotment shall be made as follows:

Bid	Minimum (A)	Proportionate Shares (B)	Total (A+B)
1.	50	200 x 650/1250 = 104	154
2.	50	200 x 650/1250 = 104	154
3.	50	50 x 650/1250 = 26	76
4.	50	400 x 650/1250 = 208	258
5.	50	100 x 650/1250 = 52	102
6.	50	200 x 650/1250 = 104	154
7.	50	100 x 650/1250 = 52	102
	350	650	1,000

(ii) Since both bidders 1 and 3 have been allotted 154 and 76 shares respectively, a sum of ₹46,200 (154 shares x ₹ 300 per share) and ₹ 22,800 (76 shares x ₹ 300 per share) shall be charged from them.

The balance amount of ₹ 43,800 (₹ 360 x 250 - ₹ 46,200) shall be refunded to bidder 1 and an amount of ₹ 12,200 (₹ 350 x 100 - ₹ 22,800) shall be refunded to Bidder 3.

Answer 6(b)

Ex-right value of the shares:

$$= \frac{\text{[Cum-right value of the existing shares + (Right shares x Issue Price)]}}{\text{Existing number of shares + No. of right shares}}$$

$$= \frac{\text{[(₹150 x 4 shares) + (₹125 x 1 share)]}}{\text{(4 + 1 shares)}}$$

= ₹ 725/5 shares = ₹ 45 per share

Value of right = Cum-right value of the share – Ex-right value of the share

= 150 – 145

= ₹ 5 per share

Hence, any one desirous of having a confirmed allotment of one share from the company at ₹ 125 will have to pay ₹ 20 (4 shares x ₹5) to an existing shareholder holding 4 shares and willing to renounce his right of buying one share in favour of that person.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 6(c)

(i) Maximum number of shares which can be issued through the green shoe option

= 10,00,000 x 15% = 1,50,000 equity shares

(ii) If the market price post listing comes down to ₹ 90, the stabilizing agent will purchase shares from the market to boost up the demand for the shares. This will induce the investors to start purchasing the shares of XYZ Ltd. and consequently, the market price of shares will go up. So, basically, green shoe option is a price stabilizing mechanism. The shares borrowed from the promoters will then be returned to them.

(iii) If the market price post listing goes up to ₹ 110, the stabilizing agent will do the same thing as discussed in point (ii) above. However, if the post listing market price goes above ₹ 120, the best course of action for the stabilizing agent is to wait for 30 days after the date of listing and then take steps to allot further shares. The shares borrowed from the promoters will then be returned to them.

OR (Alternative question to Q. No. 6)

Question 6A

(*i*) Define briefly the following in context of Indian Equity Private Funding :

(a) Hedge Fund

(b) SME Fund

(c) Corpus

(d) Start up

(e) Venture Capital Undertaking.

(ii) What is placement memorandum ? Discuss briefly the contents of placement memorandum.

(*5 marks*)

(iii) SEBI vide notification dated 16th October, 2024 introduced Liquidity Window Facility for investors in debt securities through Stock Exchange Mechanism. Explain Liquidity Adjustment Facility. What are the features and conditions governing the same ?

(*5 marks*)

Answer 6A(i)

(a) "Hedge fund" means an Alternative Investment Fund which employs diverse or complex trading strategies and invests and trades in securities having diverse risks or complex products including listed and unlisted derivatives.

(b) "SME fund" means an Alternative Investment Fund which invests primarily in unlisted securities of investee companies which are SMEs or securities of those SMEs which are listed or proposed to be listed on a SME exchange or SME segment of an exchange.

(c) "Corpus" means the total amount of funds committed by investors to the Alternative Investment Fund by way of a written contract or any such document as on a particular date.

(d) "Start-up" means a private limited company or a limited liability partnership which fulfils the criteria for start-up as specified by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India or such other policy of the Central Government issued in this regard from time to time.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(e) "Venture Capital Undertaking" means a domestic company which is not listed on a recognised stock exchange at the time of making investments.

Answer 6A(ii)

Placement Memorandum

As per the (Alternative Investment Funds) Regulations, 2012, Alternative Investment Fund (AIF) may raise funds by issue of information memorandum or placement memorandum, by whatever name called.

Contents of the Placement Memorandum

This document shall contain all material information about the AIF and the Manager, background of key investment team of the Manager, targeted investors, fees and all other expenses proposed to be charged, tenure of the Alternative Investment Fund or scheme, conditions or limits on redemption, investment strategy, risk management tools and parameters employed, key service providers, terms of reference of the committee constituted for approving the decisions of the Alternative Investment Fund, conflict of interest and procedures to identify and address them, disciplinary history, the terms and conditions on which the Manager offers investment services, its affiliations with other intermediaries, manner of winding up of the AIF or the scheme and such other information as may be necessary for the investor to take an informed decision on whether to invest in the Alternative Investment Fund.

Answer 6A(iii)

Liquidity Window Facility for investors of debt securities through Stock Exchange Mechanism SEBI vide circular dated 16th October, 2024 introduced Liquidity Window Facility for investors in debt securities through Stock Exchange Mechanism.

It allows investors holding listed debt securities to sell them back to issuers using a put option on specific dates ensuring liquidity. It is felt that establishing a framework of providing liquidity window facility by the issuers through use of put options exercisable on pre specified dates or intervals will provide uniform norms for such issuer(s) to consider adopting liquidity window facility in the manner specified. The provisions of this circular shall be applicable w,e,f 1st November, 2024. The circular *inter alia* covers the following features and conditions governing the Liquidity Window Facility:

Issuer Direction and Prospective applicability: Liquidity Window can only be provided at the discretion of the issuer. Further this option is available only for future issues either by public or by private placement.

Eligible Securities: All listed debt securities governed by SEBI NCS Regulations are eligible for this facility.

Prior approval of the Board of Directors of the issuing company is required for providing liquidity window.

Stakeholders' Relationship Committee (SRC): For entities which have listed their specified securities , the implementation and the outcome of the liquidity window shall be monitored by the SRC. However for the entities which only have listed debt securities (for whom constitution of SRC is not mandatory), the monitoring of the implementation and monitoring of the liquidity window shall be under the aegis of board of directors, or such board level committee.

Eligible Investors: Issuers have the option to specify the class of investors who can be provided the said facility.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Minimum holding period: Investors can exercise the option only after the expiry of one year from the date of issue.

Period of the Liquidity window: The issuer shall keep the window open for a minimum three working days. The facility can be provided for a monthly or quarterly basis, but the facility details shall be provided upfront in the offer documents.

Reporting and disclosure requirements: After the closure of a liquidity window, the issuer is required to submit a report to the stock exchanges on which the securities are listed. However, the form and manner of such disclosures are to be specified by the stock exchanges in consultation with SEBI.

***

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

CORPORATE RESTRUCTURING, VALUATION & INSOLVENCY

GROUP 2 PAPER 6

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

NOTE : *Answer All Questions.*

PART-I

Question 1

Pysunsmart Fire Protection Limited (PFPL) is a listed company on the Bombay Stock Exchange (BSE). It is engaged in the manufacture of industrial fire extinguishers. The company has seen a steady growth over the past few years and has attained a robust market presence. The company's stock has been gaining attention due to company's strong pipeline of upcoming new products and expansion into new markets. As a result, the stock price of (PFPL) has been steadily rising.

A and B have been close friends and business partners over years. Over time, they have started investing jointly in several listed company, including PFPL.

C is a majority shareholder of a company "C holdings" and has also expressed his interest to purchase more shares in PFPL through C holdings and has been in talks with A, B, and Z about a potential joint acquisition strategy to gain control over the company.

Z a prominent investor has been closely monitoring the performance of PFPL. He believes that PFPL is undervalued relative to its growth prospects. He has identified that if the company's product pipeline succeeds, it could increase the company's market capitalization significantly. He already holds 20% shares in PFPL and is interested in increasing his stake further.

While all these shareholders have not made any formal agreements with each other but they have had multiple informal meetings where they discussed the possibility of working together.

PFPL had conducted a buy back through an open offer in order to improve its earning per share (EPS) and boost stock prices. Due to this, the total number of shares of PFPL in circulation decreased and as a result the shareholding of one shareholder, Q, increased from 24% to 28%.

PFPL is also considering proposals for merger with Sangam Limited, a manufacturer in same product. PFPL has attained a robust market presence in North India but operating at a much smaller scale in south. Merger with Sangam Limited will open the avenues to increase its market share in South too. The board of directors of PFPL have shown keen interest in doing premerger due diligence as they want to ensure the post-merger success. Though they have not received any red flag from any other department but HR head who is a part of premerger due diligence team has raised a concern. PFPL has a formal corporate culture, with a hierarchical structure whereas the employees of Sangam Limited are young and thrive in a culture that values innovation and informality. Sangam Limited operates in a flat structure where decision making is quick and decentralized. The HR Department of PFPL wants to draw attention to the problems that might come up regarding the cultural integration and human aspects of combining these companies who are having starkly different cultures. A meeting of Board of Directors has been called to discuss the matter.

Based on the above facts, answer the following questions :

(a) As an advisor to A, B, C and Z, guide them about the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which regulate the acquisitions of large stakes in listed

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

companies. What are the typical steps and corresponding timelines for the process advised by you ?

(b) Q has approached you to seek guidance on whether the increase in his voting rights in PFPL due to the buyback of shares by the company attract the obligations under sub-regulation 3 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and why ?

(c) The acquiring companies often use cash deals or stock deals for acquisition. Differentiate between the two, enumerating the advantages of cash deals and stock deals. What are the considerations to be kept in mind while making a choice between the two ?

(d) The HR Head strongly believes one modification that has great potential to affect the merged entity is a change in the organizational structure. Regardless of whether the change is large or small, planning and an intense analysis are vital to creating a decision-making and communication framework that will support post-merger objectives and help the new business grow. As the member of the HR team, what do you suggest to synchronise these differences in culture and organizational structure of Sangam Limited and PFPL especially during the premerger diligence.

(5 marks each)

Answer 1(a)

Where an acquirer takes over the control of the 'target company', it is termed as takeover. When an acquirer acquires 'substantial quantity of shares or voting rights' of the target company, it results into substantial acquisition of shares.

The transaction relating to the acquisition of shares of a target company (listed company in India), undertaken by an existing shareholder of the company or any other independent acquirer company, is governed by the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Regulations"). The Regulations' goal is to govern the direct or indirect purchase of shares, voting rights, or the "control" of the target firm and to make sure that such purchases are made in a just and open way. Its objective is to make the transactions relating to acquisition fairer and more transparent.

A, B, C and Z will be required to follow the following regulations, the prescribed procedure and the timelines.

Regulation 3(1) of the SAST Regulations provides for Substantial acquisition of shares or voting rights. It states that no acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by Persons Acting in Concert (PACs) with him in such target company, entitle them to exercise twenty-five percent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

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

The typical steps and corresponding timelines in an open offer process:

- Under most scenarios (except in certain types of indirect acquisitions) on the day of

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

the triggering event, the acquirer is required to make a Public Announcement to the stock exchanges where shares of Target Company are listed and to SEBI. Such public announcement, – in the case of market purchases, shall be made prior to placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds.

- A copy of the public announcement shall be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement
- Within 5 working days thereafter, the acquirer is required to publish a Detailed Public Statement (DPS) in newspapers and also submit a copy to SEBI, after creation of an escrow account.
- Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount according to the scale mentioned in the Regulations.
- Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to stock exchanges where shares of the target company are listed ("BSE" in this case).
- Within 5 working days of publication of DPS, the acquirer through the manager to the offer is required to file a draft letter of offer with SEBI for its observations. .
- Simultaneously with the filing of the draft letter of offer with the Board, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.
- The letter of offer is dispatched to the shareholders of the target company, as on the identified date, after duly incorporating the changes indicated by SEBI, if there are any, not later than seven working days from the receipt of comments from the Board.
- The offer shall open not later than 12 working days from the date of receipt of SEBI's observations. The acquirer is required to issue an advertisement announcing the final schedule of the open offer, one working day before opening of the offer. The offer shall remain open for 10 working days from the date of opening of the offer. Within 10 working days after the closure of the offer, the acquirer shall make payments to the shareholders whose shares have been accepted.
- A post offer advertisement, giving details of the acquisitions, is required to be published by the acquirer within 5 workings days of the completion of payments under the open offer.

Answer 1(b)

Under Regulation 10(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Regulations"), an increase in voting rights in a target company of any shareholder beyond the limit attracting an obligation to make an open offer under sub-regulation (1) of regulation 3, pursuant to buy-back of shares by the target company shall be exempt from the obligation to make an open offer provided such shareholder reduces his shareholding such that his voting rights fall to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date of the closure of the said buy-back offer.

Under Regulation 10(4) of the SAST Regulations, the following acquisitions shall be exempt from the obligation to make an open offer under sub-regulation (2) of regulation 3, —

c) increase in voting rights in a target company of any shareholder pursuant to buy- back of shares:

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Provided that, —

i. such shareholder has not voted in favour of the resolution authorising the buy-back of securities under section 68 of the Companies Act, 2013;

ii. in the case of a shareholder resolution, voting is by way of postal ballot;

iii. where a resolution of shareholders is not required for the buy- back, such shareholder, in his capacity as a director, or any other interested director has not voted in favour of the resolution of the board of directors of the target company authorizing the buy-back of securities under section 68 of the Companies Act, 2013; and

iv. the increase in voting rights does not result in an acquisition of control by such shareholder over the target company:

Provided further that where the aforesaid conditions are not met, in the event such shareholder reduces his shareholding such that his voting rights fall below the level at which the obligation to make an open offer would be attracted under sub-regulation (2) of regulation 3, within ninety days from the date of closure of the buy-back offer by the target company, the shareholder shall be exempt from the obligation to make an open offer.

Hence in this case, Q is not required to make an open offer provided he reduces his holding to below the threshold referred to in sub-regulation (1) of regulation 3 within ninety days from the date of the closure of the said buy-back offer.

Answer 1(c)

Cash deal vs. Stock deal for acquisition

In a Cash Deal, the acquiring company pays the shareholders of the target company a predetermined amount of cash per share.

Advantages of Cash Deals are:

Certainty of payment: Shareholders receive a fixed amount of cash, providing certainty and liquidity.

Simplified valuation: The valuation of the target company is straightforward based on the agreed-upon cash amount per share.

Minimal dilution: Existing shareholders of the acquiring company are not diluted by issuing additional shares.

In a Stock Deal, the acquiring company offers its own shares to the shareholders of the target company as consideration for the acquisition.

Advantages of a Stock Deal are:

Tax benefits: Depending on the jurisdiction and structure, stock deals may offer tax advantages compared to cash deals.

Flexibility in valuation: Stock deals allow for flexibility in valuation, as the acquiring company's stock price can fluctuate over time.

Potential for synergies: Aligning interests through stock ownership can foster collaboration and integration between the two companies.

Considerations for making a choice:

Market conditions: The choice between cash and stock deals may depend on prevailing market conditions, availability of financing, and the relative valuations of the companies involved.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Shareholder preferences: The preferences of both the acquiring company's shareholders and the target company's shareholders play a significant role in determining the structure of the deal.

Regulatory requirements: Regulatory considerations, including antitrust laws and securities regulations, may influence the choice between cash and stock transactions.

Overall, whether a cash deal or a stock deal is preferable depends on various factors, including the strategic objectives of the acquiring company, the financial position of both parties, and the prevailing market dynamics.

Answer 1(d)

Yes, the concern of the HR Head is justified as there is a lot of difference in human and cultural aspects of both the companies and both have to be taken care of to make the merger successful.

Human Aspects: The employees of the amalgamated entity at times face secondary treatment in the amalgamating company.

Cultural Aspects: Behavioral patterns get set because of the culture. These patterns create mental blocks for the people in the organization.

Structural Change Considerations

An organizational structure refers to the levels of hierarchy, chain of command, management systems and job structures and roles. In response to a merger, duplicate departments need to be merged or eliminated, and at least some employees from both companies will either get transfer to new positions or leave the company.

Pre-merger survey and summarization of varying cultures of different companies merging, needs to be carried out. People belonging to each defined culture need to be acquainted with other cultures of other merging companies. They need to be mentally prepared to adopt the good points of other cultures and shed the blockades of their own cultures. Such an open approach will make the fusion of cultures and ethos easy and effective.

Important considerations and steps to be taken by HR w.r.t. the above stated aspects are as follows:

Premerger Due Diligence

Review the organizational structures of both businesses to see how well each compares to the mission and long-term objectives for the new company. Analyze hierarchies and reporting relationships to see where the existing structures clash and where they're synchronized. Once an initial review is completed, appoint an integration team to speak with core employees and get their perspective on what works and what doesn't work in their respective structures. Make preliminary decisions about which features best support the new business.

Structural Change Options

Organizational structure change options include starting from scratch, eliminating one in favor of the other and combining the best features of both structures into one. Which is the best option depending on the size, complexity and objectives of the new business.

The Three Phases of Change

Changing an organizational structure due to a merger involves much more than creating a new organizational chart. Although the chart will reflect decisions made about how the new business's employees will communicate with one another and make decisions, this typically occurs in multiple phases. The first phase is awareness, during which employees from both businesses come to understand the new company's direction and what it will mean to them. The goal of the second phase is acceptance, as the integration team works to build new relationships and employees

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

at every level transition into new roles and new ways of getting work done. In the final phase, the merger is complete and the new organizational structure becomes fully adopted.

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

Question 2

(a) To classify a merger, one needs to look at the nature of companies involved and the rationale behind the deal. The main types of mergers are Congeneric Merger, Horizontal Merger, Vertical Merger, Conglomerate Merger, and Reverse Merger. Classify the following mergers into the type of merger giving the justification for such classification :

(i) Facebook's acquisition of Instagram.

(ii) Combination of a computer system manufacturer with a UPS manufacturer.

(iii) Berkshire Hathway acquired Lubrizol.

(5 marks)

(b) Company X, has acquired Company Y, in a merger transaction. The acquisition is considered to be in nature of purchase. As per the merger agreement, the fair value of identifiable assets and liabilities of the company is 150 lakhs and 50 lakhs respectively.

The purchase consideration is to be paid as follows :

One share of X and ₹ 40/- per share in cash in exchange of one share of Y. Each share of X is valued at ₹ 80/- per share.

The total number of shares is of Y are 1,00,000.

Calculate the following from the above transaction in the books of transferee company X :

- Purchase consideration
- Fair value
- Goodwill/Capital reserve.

(5 marks)

(c) Briefly explain methodology for arriving at the offer price under Regulation 8(2) of SEBI (SAST) Regulations, 2011.

Calculate the Offer Price in the case of direct acquisition of shares from the following information (where shares are frequently traded on the stock exchange) :

(i) Negotiated price per share available of the target company are :

₹ 15, ₹ 13, ₹ 14;

(ii) Volume-weighted average price paid or payable for acquisitions :

₹ 14 (26 week); ₹ 16 (52 week)

(iii) Price paid or payable for any acquisition :

₹ 17 (26 week); ₹ 15 (52 week)

(iv) Volume-weighted average market price of such shares :

₹ 18 (30 days), ₹ 15 (60 days).

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(d) Under a "Scheme of Amalgamation", "Acme Inc." (Transferor Company) is being merged with "Beta Corp." (Transferee Company), where Acme Inc.'s assets and liabilities would be transferred to Beta Corp., resulting in Acme Inc. dissolving, with shareholders receiving a specific exchange ratio of Beta Corp. shares for their Acme Inc. shares, aiming to achieve operational synergies and cost savings by combining operations under one entity.

In this respect, Managing Director of Transferee Company approaches you as a Practising Company Secretary for seeking advice on the list of key documents required to be filed in this scheme of amalgamation. Advise in the matter.

(5 marks)

Answer 2(a)

(i) Horizontal Merger

Horizontal Merger is a merger between companies selling similar products in the same market and in direct competition and share the same product lines and markets. It decreases competition in the market. The main objectives of horizontal merger are to benefit from economies of scale, reduce competition, achieving monopoly status and control of the market.

Facebook's acquisition of Instagram for a reported $1 billion. Both Facebook and Instagram operated in the same industry and were in similar production stages in regard to their photo-sharing services. Facebook, looking to strengthen its position in the social media and social sharing space, saw the acquisition of Instagram as an opportunity to grow its market share, increase its product line, reduce competition and access potential new markets.

(ii) Congeneric Merger

Congeneric merger is a merger between two or more businesses which are related to each other in terms of customer groups, functions or technology. Combination of a computer system manufacturer with a UPS manufacturer is a Congeneric Merger.

(iii) Conglomerate Merger

Conglomerate merger is a merger between two companies that have no common business areas. It refers to the combination of two firms operating in industries unrelated to each other. The business of the target company is entirely different from the acquiring company.

Berkshire Hathway acquired Lubrizol: Berkshire Hathaway and its subsidiaries engage in diverse business activities including property and casualty insurance and reinsurance, utilities and energy, freight rail transportation, finance, manufacturing, retailing and services. Berkshire's common stock is listed on the New York Stock Exchange. The Lubrizol Corporation is an innovative specialty chemical company that produces and supplies technologies to customers in the global transportation, industrial and consumer markets. These technologies include lubricant additives for engine oils, other transportation-related fluids and industrial lubricants, as well as fuel additives for gasoline and diesel fuel.

Answer 2(b)

In preparing the transferee company's financial statements, the assets and liabilities of the transferor company should be incorporated at their fair value or, alternatively, the consideration should be allocated to individual identifiable assets and liabilities on the basis of their fair values at the date of amalgamation. Any excess of the amount of the consideration over the fair value of the net assets of the transferor company acquired by the transferee company should be recognized in the transferee company's financial statements as goodwill arising on amalgamation in the nature of purchase. If the amount of the consideration is lower than the negotiated value of the net assets acquired, the difference should be treated as Capital Reserve.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Total amount of purchase consideration in this case is Rs.120 lakhs i.e. (Rs. 80/- + Rs. 40/-)*1,00,000 Shares

In the given case, the excess of the amount of the consideration i.e Rs.120 lakhs over the fair value of the net assets i.e. (150-50=100 lakhs) of the Y, (the transferor company) should be recognized in the transferee company's financial statements as goodwill. The assets and liabilities taken over from company Y (the transferor company) should be incorporated at their fair values and Rs. 20 lakhs will be recorded as goodwill in the books of company X.

Answer 2(c)

As per Regulation 8(2) of SEBI (SAST) Regulations, 2011, If the target company's shares are frequently traded then the open offer price for acquisition of shares under the minimum open offer shall be highest of the following: -

(a) the highest negotiated price per share of the target company for any acquisition under the agreement attracting the obligation to make a public announcement of an open offer;

(b) the volume-weighted average price paid or payable for acquisitions, whether by the acquirer or by any person acting in concert with him, during the fifty-two weeks immediately preceding the date of the public announcement;

(c) the highest price paid or payable for any acquisition, whether by the acquirer or by any person acting in concert with him, during the twenty-six weeks immediately preceding the date of the public announcement;

(d) the volume-weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on the stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded.

Thus, the offer price shall be highest of the followings: -

i) Highest negotiated price is Rs.15

ii) Volume weighted average price is Rs.16 (52 week)

iii) Highest price paid for any acquisition is Rs. 17 (26 week)

iv) Volume weighted average market price is Rs.15(60 days)

Highest of the above price is offer price i.e. Rs. 17 (option iii).

Answer 2(d)

List of Documents is to be filed in case of a scheme of amalgamation.

In this case there are two companies to the amalgamation, i.e., the Transferor (1st Applicant) and the Transferee (2nd Applicant)

1. Memorandum and Articles of Association of the First Applicant Company
2. Audited Balance Sheet of the First Applicant Company – latest
3. Board Resolution for approval and authorization of the scheme by the First Applicant Company
4. List of Equity Shareholders of the First Applicant Company
5. Consent Affidavits filed by the Equity Shareholders of the First Applicant Company
6. Auditors Certificate stating out the no. of Secured Creditors in the First Applicant Company

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

7. Auditor's Certificate listing out the no. of Unsecured Creditor in the First Applicant Company
8. Consent Affidavit filed by no. of Unsecured Creditor of the First Applicant Company
9. Auditors Certificate of the 1st Applicant Company in relation to the accounting treatment proposed in the Scheme of Amalgamation
10. Memorandum and Articles of Association of the Second Applicant Company
11. Audited Balance Sheet of the Second Applicant Company
12. Board Resolution for approval and authorization of the Scheme by the Second Applicant Company
13. List of Equity Shareholders of the Second Applicant Company
14. Auditors Certificate listing out the no. of Secured Creditors in the Second Applicant Company
15. Consent Affidavit filed by the no. of Secured Creditor of the Second Applicant Company
16. Auditors Certificate listing out the no. of Unsecured Creditors in the Second Applicant Company
17. Consent Affidavit filed by the no. of Unsecured Creditor of the Second Applicant Company
18. Auditors Certificate of the 2nd Applicant Company in relation to the accounting treatment proposed in the Scheme of Amalgamation
19. Certificate of the Chartered Accountant for Non-Applicability of obtaining a Valuation Report
20. Fairness Opinion issued by the Merchant Banker on the Scheme of Amalgamation.
21. Undertaking regarding the Non-Applicability of paragraph I(A) 9(a) of Annexure I of SEBI Circular No. CIR/CFD/CMD/16/2015 dated 30 November 2015.
22. Observation Letter issued by the Stock Exchanges approving the Scheme of Amalgamation
23. Scheme of Amalgamation.

As a Practising Company Secretary, the Managing director of the Transferee Company is thus advised accordingly.

OR (Alternate question to Q. No. 2)

Question 2A

(i) As per the scheme of arrangement, 'Software Undertaking' of S India is proposed to be transferred to S Software under Sections 391 to 394 of the Companies Act, 1956. One of the conditions of the scheme was that any excess in the value of net assets of software undertaking transferred to the resulting company shall be applicable for distribution to the shareholders of the resulting company.

Regional Director of Northern Region, Ministry of Corporate Affairs (MCA) has raised objection in his affidavit filed with the High Court stating that excess, if any, in the value of the net assets of the software undertaking should be adjusted to the capital reserve as prescribed in AS-14 and not to the general reserve as proposed in the scheme of arrangement.

Decide the matter with reference to a decided case law.

(5 marks)

(ii) Apka Bank, one of the largest private sector bank, is willing to merge with Hamara Bank, a

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

small regional bank. Apka Bank wants to expand its footprint in rural sectors where Hamara Bank has a strong presence. Merging with Apka Bank will provide better technology and financial boost to Hamara Bank.

Here the amalgamation is to take place between two banking companies.

The Reserve Bank has discretionary powers to approve the voluntary amalgamation of two Banking companies under the provisions of Section 44A of the Banking Regulation Act, 1949.

You are required to enumerate the provisions of Section 44A of the Banking Regulation Act, 1949 in a joint meeting of representatives of both the banks.

(5 marks)

(iii) Subodh Consumer Products Limited (SCPL) decided to demerge its food and beverages business into a separate entity, Subodh Foods Limited (SFL). The demerger allowed SCPL to concentrate on its core products line while its food and beverages business could be more effectively managed by SFL. The demerger took place within the meaning of Section 2(19 AA) of the Income-tax Act, 1961. N who was holding 100 shares in SCPL was allotted 100 shares in Subodh Foods Limited along with the shares in resulting company as per the swap ratio.

N seeks your advice to calculate the following as he intends to transfer some of his shares after demerger :

(a) Cost of acquisition of shares in the resulting company.

(b) Cost of acquisition of shares in the demerged company.

(c) Period of holding of shares of the resulting company.

(5 marks)

(iv) ABC Ltd., a company registered under the Companies Act, 2013, providing Information Technology & allied services, wants to merge with its USA based wholly owned holding company, Silicon Valley Inc. Managing Director of ABC Ltd. seeks your advice on the matter citing the recent amendments etc. if any.

(5 marks)

Answer 2A(i)

The matter is similar to the case of *2010 1CLJ 351 titled Gallops Realty (P) Ltd. v. State of Gujarat* as decided by the Gujarat High Court.

The petitioners contended that AS-14 is applicable only to amalgamations and not to demerger. It was clarified that AS-14 is applicable only to amalgamations and not to demerger. On a plain reading of the accounting standard under reference, it is clear that the same is applicable only in case of an amalgamation and not in case of demergers.

High Court of Gujarat in the case of Gallops Realty (P) Ltd., In re v. K.A. PUJ, J.(2010), under Section 391, read with sections 394 and 100, of the Companies Act, 1956 Petitioner-companies, i.e., demerged company and resulting company, sought for sanction of composite scheme of arrangement in nature of purchase of shares and demerger of hotel business of demerged company to resulting company and consequent reconstruction of share capital of demerged company under section 391, read with sections 394, 78 and 100 consisting of reduction of paid-up share capital as well as utilization of share premium account. Regional Director stated that as per scheme, capital profit on demerger would be transferred to general reserve in books of resulting company which was not in consonance with generally accepted accounting principles as also Accounting Standard-14

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

which provide that any profit arising out of a capital transaction ought to be treated as capital profit and, hence, would be transferred to capital reserve and not to general reserve. It was held that the observation of Regional Director was not in consonance with accounting principles in general and Accounting Standard-14 in particular, as Accounting Standard-14 is applicable only in case of amalgamation and not in case of demerger, as envisaged in instant scheme.

Answer 2A(ii)

Procedure for amalgamation of banking companies. —

The Reserve Bank has discretionary powers to approve the voluntary amalgamation of two banking companies under the provisions of Section 44A of the Banking Regulation Act, 1949.

Section 44A provides that:

1. Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.
2. Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association indicating the time, place and object of the meeting, and shall also be published at least once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.
3. Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting of the company concerned or to the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such determination by the Reserve Bank as to the value of the shares to be paid to the dissenting shareholder shall be final for all purposes.
4. If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in writing passed in this behalf, be binding on the banking companies concerned and also on all the shareholders thereof.
5. On the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order be transferred to, and become the liabilities of, the banking company which under the scheme of amalgamation is to acquire the business of the amalgamated banking company, subject in all cases to the provisions of the scheme as sanctioned.

6A. Where a scheme of amalgamation is sanctioned by the Reserve Bank under the provisions of this section, the Reserve Bank may, by a further order in writing, direct that on such date as may be specified therein the banking company (hereinafter in this section referred to as

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

the amalgamated banking company) which by reason of the amalgamation will cease to function, shall stand dissolved and any such direction shall take effect notwithstanding anything to the contrary contained in any other law.

6B. Where the Reserve Bank directs a dissolution of the amalgamated banking company, it shall transmit a copy of the order directing such dissolution to the Registrar before whom the banking company has been registered and on receipt of such order the Registrar shall strike off the name of the company.

6C. An order under sub-section (4) whether made before or after the commencement of section 19 of the Banking Laws (Miscellaneous Provisions) Act, 1963 shall be conclusive evidence that all the requirements of this section relating to amalgamation have been complied with, and a copy of the said order certified in writing by an officer of the Reserve Bank to be a true copy of such order and a copy of the scheme certified in the like manner to be a true copy thereof shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 19), be admitted as evidence to the same extent as the original order and the original scheme.

7. Nothing in the foregoing provisions of this section shall affect the power of the Central Government to provide for the amalgamation of two or more banking companies under section 396 of the Companies Act, 1956, [corresponding to Section 237 of the Companies Act, 2013], Provided that no such power shall be exercised by the Central Government except after consultation with the Reserve Bank.

Answer 2A(iii)

In the case of demerger, the existing shareholders of the demerged company will hold after demerger:

(a) shares in resulting company; and

(b) shares in demerged company.

And in case the shareholder transfers any of the above shares subsequent to the demerger, the cost of such shares shall be calculated as under: –

Cost of acquisition of shares in the resulting company [Section 49(2C)]

The cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.

Cost of acquisition of shares in the demerged company [Section 49(2D)]

The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived at under sub-section (2C).

For the above purpose, net worth shall mean the aggregate of the paid-up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.

Period of holding of shares of the resulting company [Section 2(42A)(g)]

In the case of a capital asset, being a share or shares in an Indian company, which becomes the property of the assessee in consideration of a demerger, there shall be included the period for which the share or shares held in the demerged company were held by the assessee.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 2A(iv)

In exercise of the powers conferred under section 469 read with sections 233 and 234 of the Companies Act, 2013, the Central Government has notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024 which shall come into effect from 17th day of September, 2024.

In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, in rule 25A, after sub-rule (4), the following sub-rule shall be inserted, namely:

Where the transferor foreign company incorporated outside India being a holding company and the transferee Indian company being a wholly owned subsidiary company incorporated in India, enter into merger or amalgamation, –

(i) both the companies shall obtain the prior approval of the Reserve Bank of India;

(ii) the transferee Indian company shall comply with the provisions of section 233;

(iii) the application shall be made by the transferee Indian company to the Central Government under section 233 of the Act and provisions of rule 25 shall apply to such application; and

(iv) the declaration referred to in sub-rule (4) shall be made at the stage of making application under section 233 of the Act."

The Ministry of Corporate Affairs (MCA) has introduced a sub-rule to fast-track the approval process for the merger of a startup incorporated outside India into its wholly owned Indian subsidiary. The foreign holding company and its wholly owned Indian subsidiary will only need to obtain approval from the Reserve Bank of India (RBI) for such mergers or amalgamations, eliminating the need for clearance from the National Company Law Tribunal (NCLT).

PART-II

Question 3

(a) Newrotechnologies Limited is a tech company that needs to find out its valuation for next round of funding. To estimate its fair value, it is planning to use Market Comparable Approach, which involves comparing it with companies which are similar in size, industry and financial characteristics.

The chief financial officer has gathered the following information for this purpose : Comparable Companies in the market :

Company A : P/E Ratio = 18

Company B : P/E Ratio = 20

Company C : P/E Ratio = 22

Company D : P/E Ratio = 21

The financials of Newrotechnologies Limited for the year ending 31st March, 2024 are as follows :

Net income is ₹ 20,00,000.

Total number of shares is 50,000

Using the above information, calculate the estimated price per share and estimated value of Newrotechnologies Limited.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(b) (i) Ram purchased 100 shares of M/s. T Ltd, a listed company, @ ₹ 750/- per share on May 2, 2024. M/s T Ltd. declared 40% & 50% dividend on September 15, 2024 and on March 15, 2025 respectively. Market value of share of T Ltd. on May 2, 2025 is 1000/- per share.

Calculate the return of equity investment in T Ltd. (face value per share is ₹ 10/-)

(ii) "In order to ensure authenticity and to have a unique reference number of the valuation reports, it has been decided to provide a Valuation Report Identification Number (VRIN) for each valuation conducted under the code."

Comment on the statement on the basis of recent IBBI circular.

(5 marks)

Answer 3(a)

Average P/E ratio using the market comparables is = (18+20+22+21) / 4= 20.25

Earnings per share = 20,00,000 / 50,000 = ₹40/- per share

Market value per share = Average P/E ratio * EPS

= 20.25* 40

= ₹ 810/- per share

Value of the Newrotechnologies Limited= MP Per share * No. of shares

= 810 * 50,000

= ₹ 4,05,00,000

Answer 3(b)(i)

Return on equity investment =

[Cash Flow (dividend) + closing market price - opening market price] / opening market price

Cash dividend on September 15, 2024 @ 40% = 40% of Rs. 10/- = Rs. 4/-;

Cash dividend on March 15, 2025 @ 50% = 50% of Rs. 10/- = Rs. 5/-;

Closing Price = 1000/-; Opening Price = Rs.750/-

So, return on equity investment = [{4+5} + {1000 – 750}] / 750 = 34.53%

Answer 3(b)(ii)

Generation of Valuation Report Identification Number for valuation conducted by Register Valuer under Insolvency and Bankruptcy Code, 2016. (IBBI circular dated 12th August, 2024)

- In exercise of the powers conferred under the provisions of section 196 of the Insolvency and Bankruptcy Code, 2016, Regulations made thereunder, and the Valuation Rules and IBBI issued circular for Generation of Valuation Report Identification Number for valuation conducted by Register Valuer under Insolvency and Bankruptcy Code, 2016.
- In order to ensure authenticity and to have a unique reference number of the valuation reports, it has been decided to provide a Valuation Report Identification Number (VRIN) for each valuation conducted under the Code.
- Accordingly, an online module, in consultation with Registered Valuers Organisations, has been developed by IBBI. The module has been hosted on the IBBI website at https://www.ibbi.gov.in . The RV/RVE shall access the module with the login credentials already provided

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

by the IBBI. Before the submission of valuation report, the respective RV/RVEs shall generate a unique VRIN for each valuation report. The RV/RVE shall mention the VRIN on the front page of the valuation report.

- A facility is also being provided on the IBBI website to allow stakeholders to verify the authenticity of the report by using VRIN.
- The circular shall be applicable to all the cases where the date of valuation report is on or after the date of this circular. The IPs shall not accept any valuation reports without VRIN in all such cases.

Question 4

(a) PQR Ltd. is in the process of getting its securities listed on the stock exchange.

The company needs to get the valuations done as per the requirements of SEBI. The Board of Directors have proposed the name of M/s Sunidhi and Associates, a partnership firm, to be appointed as the valuers for the above mentioned purpose. In the light of the provisions of Rule 3 of The Companies (Registered Valuers and Valuation) Rules, 2017, a partnership firm becomes ineligible to be appointed as registered valuer in circumstances stated in the above mentioned rule.

As the Company Secretary of PQR Ltd., state such circumstances to confirm that M/s Sunidhi and Associates do not fall under any of the ineligibility criterion.

(5 marks)

(b) Company X owns many businesses and it also operates a manufacturing division that manufactures and sells electronic devices.

Company Y is interested in acquiring the entire manufacturing division of company X that sells electronic devices as a going concern.

In the sale agreement, Company X transfers its entire manufacturing division of electronic devices, including all its assets and liabilities, to company Y.

No values are assigned to respective assets or liabilities of the manufacturing division. The lump sum consideration for the sale is agreed upon between Company X and Company Y.

In the background of the case, discuss the category of transaction between Company

X and Company Y and also discuss rationale behind such transaction by Company

X in general and process involved in such transfer.

(5 marks)

Answer 4(a)

Rule 3 (2) of the Companies (Registered Valuers and Valuation) Rules, 2017 provides that no partnership entity or company shall be eligible to be a registered valuer if-

(a) it has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;

(b) it is undergoing an insolvency resolution or is an undischarged bankrupt

(c) all the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (f), (g), (h),(i), (j) and (k) of sub-rule (1);

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(d) three or all the partners or directors, whichever is lower, of the partnership entity or company, as the case may be, are not registered valuers; or

(e) none of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

Answer 4(b)

The transaction between Company X and Company Y is a slump sale transaction.

A slump sale refers to the transfer of an undertaking, business, or division of a company as a going concern, where all assets and liabilities are transferred as a package to another entity. In a slump sale, the business is sold as a whole, and individual assets and liabilities are not separately identified or valued. The consideration for the slump sale is usually a lump sum amount.

Rationale for Slump Sale: The key reasons for pursuing a slump sale were as follows:

a. *Strategic Focus*: The slump sale aimed to enable company X to concentrate its resources and efforts on its core business activities. By divesting non-core assets, the company could redirect its attention to areas where it held a competitive advantage and maximize growth opportunities.

b. *Cost Rationalization*: The non-core business segments were associated with additional costs, such as separate management teams, infrastructure, and overhead expenses. Through the slump sale, the company could eliminate these costs and achieve operational efficiencies.

c. *Debt Reduction*: In some cases, non-core business segments might have been burdened with significant debt. The proceeds from the slump sale could be utilized to repay debt, thereby strengthening the company's financial position and reducing interest obligations.

Slump Sale Process: The slump sale process involved the following steps:

a. *Identification of Non-Core Assets:* The management conducted a thorough evaluation of the company's businesses and identified the non-core assets that would be divested. This assessment involved analyzing financial performance, growth prospects, and strategic alignment with the company's long-term objectives.

b. *Valuation and Pricing:* The non-core assets were valued based on their fair market value, taking into account factors such as asset condition, market demand, and future cash flows.

The pricing of the slump sale was determined through negotiations with potential buyers or investors.

c. *Due Diligence:* The potential buyers or investors performed due diligence on the non-core assets to assess their financial, operational, and legal aspects. This step ensured transparency and minimized risks associated with the slump sale.

d. *Agreement and Execution*: Once the negotiations and due diligence were completed, a formal agreement was drafted, outlining the terms and conditions of the slump sale. The execution of the agreement involved the transfer of ownership and assets, including tangible and intangible assets, contracts, and employees.

e. *Approval and Registration:* The slump sale transaction may require approval from regulatory authorities and compliance with statutory requirements. The transfer documents are registered with the appropriate authorities.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

PART III

Question 5

(a) XYZ Limited, was undergoing a Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016. While the company was in CIRP, the Bombay Stock Exchange (BSE) sought to take a legal action against the company for non-compliance with the listing regulations. BSE wanted to recover the penalty amount from the Company failing which, the BSE warned the company of potential delisting and also suspending the trading of shares of XYZ Limited.

As the Resolution Professional (RP) of the XYZ limited (the Corporate Debtor), discuss, citing a relevant case law and provisions of the Insolvency and Bankruptcy Code (IBC), 2016, whether the BSE, as a stock exchange, could exercise its regulatory powers against a company undergoing insolvency proceedings ? How can the Bombay Stock Exchange recover the amount of penalty from XYZ Limited ?

(5 marks)

(b) An application filed by an operational creditor under Section 9 of the Insolvency and Bankruptcy Code (IBC), 2016, was admitted by National Company Law Tribunal (NCLT) and Mr. Goel has been appointed as the Interim Resolution Professional (IRP). Section 20 of the Code mandates Mr. Goel (IRP) to run management of operations of corporate debtor as a going concern. In the light of provisions of the Insolvency and Bankruptcy Code (IBC), 2016, mention the authorities available to IRP to run the business as a going concern in the above matter.

(5 marks)

(c) SPM bank extended credit facilities to Anuj Constructions (The Principal Borrower), a proprietary firm, in 2023. Gita Steel Limited (The Guarantor) provided guarantee for credit facilities provided to Anuj Constructions by the SPM bank. Anuj Constructions (The Principal Borrower), defaulted in the repayment of credit facilities and hence the facilities were declared as Non-Performing Assets. Anuj Constructions repeatedly assured the bank to repay the outstanding amount of ₹ 11,45,23,535, but failed and SPM bank issued notice to Anuj Constructions.

SPM bank also issued notice to Gita Steel Limited (The Guarantor) under Section 4(1) of the Insolvency and Bankruptcy Code (IBC), 2016, demanding the outstanding amount.

Failing to receive any positive response from either of the parties, the bank proceeded to file an application before NCLT under Section 7 of the Code for initiating CIRP proceedings against Gita Steel Limited.

The Board of Directors of Gita Steel Limited argued that under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016, an application can be filed by financial creditor only against the Corporate person.

Section 7 of the Code cannot be legitimately invoked by the bank against Gita Steel Limited (being a Corporate Debtor) concerning guarantee offered by it in respect of a credit facility of Anuj Constructions (The Principal Borrower), who had committed default and is not a corporate person within the meaning of the Code.

In the background of the matter, discuss "Corporate Person" and "Corporate Debtor" under the provisions of IBC and referring to the relevant case law, discuss the tenability of arguments put forward by the Board of Directors of Gita Steel Limited.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(d) The Committee of Creditors (CoC) of Golconda Industries approved a resolution plan by voting share of 100% in voting held on 17.1.2024. Thereafter, X (the Resolution Professional) submitted the application for the approval of resolution plan before the Adjudicating Authority (AA). During the pendency of the application for approval of resolution plan before the AA, ex-promoter of Golconda industries submitted revised settlement proposal under Section 12 A of the Code and filed an application to NCLT seeking to keep the resolution in abeyance. The application filed by the ex-promoter was rejected by the NCLT. Hence, he filed an appeal before NCLAT against the NCLT order.

In the light of the provisions of the Insolvency and Bankruptcy Code, 2016, whether an application under section 12A of the Insolvency and Bankruptcy Code (IBC), 2016, can be entertained by NCLT after the approval of resolution plan by CoC and filing of application before NCLT for approval of resolution plan by the Resolution Professional ? Citing the relevant case law, discuss as to what will be the merit of appeal filed by the ex-promoter of Golconda Industries against the order of NCLT.

(5 marks)

Answer 5(a)

Moratorium also applies on the Regulatory Authorities: In the matter of *Ms. Anju Agarwal Resolution Professional for Shree Bhawani Paper Mills Ltd. Vs Bombay Stock 19 Exchange & Ors.,* the NCLAT observed that Section 28A of the SEBI Act, 1992 being inconsistent with Section 14 of IBC, it held that Section 14 of IBC will prevail over Section 28A of the SEBI Act, 1992 and SEBI cannot recover any amount including the penalty from the Corporate Debtor (CD). The 'Bombay Stock Exchange' cannot suspend trading of shares of CD for the same reason.

Penalty imposed by Regulator may be claimed as Operational Creditor but cannot be recovered during the Resolution Process: In the matter of *Maharashtra Seamless Ltd. Vs. Shri Padmanabhan Venkatesh & Ors.,* the NCLAT held that the statutory dues i.e. the dues to Central Government or the State Government arising under any law for the time being in force and payable come within the meaning of 'Operational Debt'.

If penalty is imposed or amount is payable to the 'Securities Exchange Board of India' in such case, it may claim as an 'Operational Creditor' but cannot recover the same during the 'Resolution Process'.

Thus, the Bombay Stock exchange cannot recover the amount of penalty against a company undergoing insolvency proceedings.

Answer 5(b)

Section 20 of the Insolvency Bankruptcy Code (IBC), 2016 mandates IRP to run management of operations of corporate debtor as going concern.

(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property. It is provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt;

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

Answer 5(c)

"Corporate Person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider [Section 3(7) of the IBC, Code].

National Highway Authority of India (NHAI) is a statutory body which functions as an extended limb of the Central Government and performs Governmental functions which obviously cannot be taken over by an RP, or by any other corporate body nor can NHAI ultimately be wound up under the Code. For all these reasons, it is not possible to either read in, or read down; the definition of 'corporate person' in section 3(7) of the Code to include NHAI. *(Hindustan Construction Company Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 1074 of 2019 with other Civil Appeals] SC judgement dated 27.11.2019)*

"Corporate Debtor" means a corporate person who owes a debt to any person [Section 3(8) of IBC, 2016].

The facts of the present case are similar to the facts in *"Laxmi Pat Surana Vs. Union Bank of India & Anr"*.

In the above-mentioned case, the Hon'ble Supreme Court held that:

If a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of expression "corporate debtor" in section 3(8) of the Code.

Hence in this particular case, the status of a guarantor, Gita Steel Limited, who is a corporate person, metamorphoses into corporate debtor, when the principal borrower Anuj Constructions (The Principal Borrower), a proprietary firm (regardless of not being a corporate person) commits default in the payment of debt which had become due and payable.

Thus, the action under Section 7 of the Code can be legitimately invoked against a (corporate) guarantor being a corporate debtor and the contention of the Board of Directors of Gita Steel Limited is not tenable.

Answer 5(d)

Regulation 30A of the CIRP Regulations specifies deals with provisions relating to withdrawal of application under section 12A of the Code. It provides as under: -

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

In *Hem Singh Bharana Vs. Pawan Doot Estate Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1481 of 2022],*

During pendency of approval of the resolution plan before the AA, ex-promoter submitted revised settlement proposal under section 12A of the Code and filed an application seeking to keep the resolution in abeyance. As the AA rejected the said application, an appeal was filed before the NCLAT on the ground that there is no bar on CoC in accepting the settlement proposal under section 12A even if they have already approved a resolution plan. The NCLAT dismissed the appeal while relying on the judgment of SC in *Ebix Singapore Pvt. Ltd. V. Committee of Creditors of Educomp Solutions Limited and Anr.*, wherein it was held that after approval of a resolution plan by the CoC, it itself is bound by its decision and cannot be allowed to go back from its decision.

Hence in the present case, an application under section 12 A of IBC cannot be entertained after the approval of a resolution plan by the CoC and filing of application before NCLT for approval of resolution plan. The appeal filed by the ex-promoter of Golconda Industries against the order of NCLT will not be entertained by NCLAT.

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

Question 6

(a) A director of a company in CIRP had moved the Hon'ble NCLT, Mumbai Bench, seeking the right to participate in the meetings of the CoC and access all the documents and/or information including the resolutions plans being discussed in the meetings of the CoC, for effective participation in the meetings.

The Hon'ble NCLT on August 1, 2018 held that the directors have the right to attend the CoC meetings as per Section 24 of the Code, however, the directors could not receive information that is considered confidential by the resolution professional or the CoC, including the resolution plans.

Thereafter, the Directors filed appeal before NCLAT for treating the papers as confidential by the RP. In the appeal, the decision of the NCLT was upheld by the NCLAT on August 9, 2018.

The director then moved the Supreme Court, challenging the decision of the appellate tribunal.

Decide the matter with reference to relevant case law.

(5 marks)

(b) "While the Insolvency professionals assist in the insolvency resolution proceedings envisaged in the Code, the Information Utility, on the other hand, collect, collate, authenticate and disseminate financial information." Enumerate the obligations of information utility as per provision of section 214 of IBC.

(5 marks)

(c) Agastu Industries Limited, a medium sized company had been facing financial difficulties for the past few years due to poor management and an inability to cope with its increasing operational costs. Also the company's funds were being used for personal expenses of the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

directors like purchase of high end vehicles and other non-business related expenditures. These actions led to a significant depletion of company's cash reserves. The company had to finally face a liquidation order from NCLT.

The NCLT appointed Mr. Jayant Nanda as liquidator to wind up the company and liquidate its assets.

However, it came to the light that Mr. Jayant Nanda had prior business relationship with one of the major creditors PQR Corporation and he is giving preferential treatment to PQR Corporation by prioritizing its claims over those of other creditors and possibly negotiating assets sales at lower prices to benefit PQR Corporation.

A group of creditors filed a petition in the Hon'ble Delhi High Court for removal of Mr. Jayant Nanda as the liquidator accusing him of conflict of interest. Discuss the validity of the petition in the light of the provisions of the Companies Act, 2013.

(5 marks)

(d) Bhawna Clothing Limited (The Corporate debtor) was placed under Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC), 2016 in Jan., 2024.

Mr. N was appointed as the Interim Resolution Professional (IRP) and the committee of creditors was also formed.

During the CIRP process, the IRP was required to send notices to the members of CoC, members of the suspended Board of Directors and other participants entitled to attend the meetings.

In April, 2024, Mr. Goswami, a participant other than member of CoC, raised an issue in the meeting of creditors that he had not received any prior notices of the CIRP meetings and questioned the legitimacy of decisions taken in the meetings he had missed.

Highlighting the provisions of Regulation 20 of the Corporate Insolvency Resolution Process Regulations relating to service of notice by electronic means, decide about the legitimacy of decisions taken in the meetings Mr. Goswami had missed. Is there any obligation on the part of IRP for updation of e-mail ID while serving notice by electronic means ?

(5 marks)

Answer 6(a)

The matter is similar to the case of *Vijay Kumar Jain Vs. Standard Chartered Bank & Others [(2019)* decided by the Hon'ble Supreme Court.

The Judgement of the Supreme Court is as under :-

The Hon'ble Supreme Court held that the scheme of the Code makes it clear that the directors, though not members of the COC, have a right to participate in every meeting of the COC. In addition, for effective participation as vitally interested parties in discussion on resolution plans, they have the right to receive copies of the resolution plans presented to the COC. The Hon'ble Supreme Court also clarified that under Regulation 21(3)(iii) of the CIRP Regulations, the notice of the COC meeting, which is required to be given to the directors as well, must contain copies of all the documents relevant for matters to be discussed, including the resolution plans.

The Hon'ble Supreme Court considered the directors to be vitally interested on two counts:

1. Such directors are often guarantors and bound by the approved plan, which may scale down their own debts.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

2. The directors, being well versed in the affairs of the company, may be able to assist the COC on determining whether the resolution plan addresses the cause of default by the company (a mandatory requirement for resolution plans).

The Hon'ble Supreme Court also clarified that any concerns over breach of confidentiality may be alleviated by the resolution professional obtaining a confidentiality undertaking from the directors, which may also contain an indemnity to the resolution professional against any breach.

Answer 6(b)

Section 3(21) of the IBC, 2016 defines an "information utility" as a person who is registered with the Board as an information utility under section 210.

While the Insolvency professionals assist in the insolvency resolution proceedings envisaged in the Code, the Information Utility, on the other hand, collect, collate, authenticate and disseminate financial information. The purpose of such collection, collation, authentication and dissemination financial information of debtors is to facilitate swift decision making in the resolution proceedings. The Insolvency and Bankruptcy Board of India oversees the functioning of such information utilities. The Insolvency and Bankruptcy Board of India has framed the IBBI (Information Utilities) Regulations, 2017. These regulations are amended from time to time by the Insolvency and Bankruptcy Board of India.

Obligations of information utility (Section 214 of IBC, 2016)

(a) create and store financial information in a universally accessible format;

(b) accept electronic submissions of financial information from persons who are under obligations to submit financial information under sub-section (1) of section 215, in such form and manner as may be specified by regulations;

(c) accept, in specified form and manner, electronic submissions of financial information from persons who intend to submit such information;

(d) meet such minimum service quality standards as may be specified by regulations;

(e) get the information received from various persons authenticated by all concerned parties before storing such information;

(f) provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by regulations;

(g) publish such statistical information as may be specified by regulations;

(h) have inter-operatability with other information utilities.

Answer 6(c)

Section 276 of the Companies Act, 2013 lays down that in case, the NCLT may remove the provisional liquidator or the Company liquidator, on any of the following grounds:

- Misconduct
- Fraud or misfeasance
- Professional Incompetence for failure to exercise due care and diligence in performance of the powers and functions
- Inability to act as provisional liquidator as the case maybe company liquidator
- Conflict of interest or lack of independence during the term of his appointment that would justify removal.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

In the present case, the petition may be filed before the NCLT and not before the Hon'ble High Court as the same is within the powers of NCLT. The NCLT, *for reasons to be recorded in writing*, may remove the Mr. Jayant Nanda, the Company liquidator, if found guilty of giving preferential treatment to PQR Corporation by prioritizing its claims over those of other creditors and possibly negotiating assets sales at lower prices to benefit PQR Corporation.

Answer 6(d)

Regulation 20 of the Corporate Insolvency Resolution Process Regulations deals with Service of notice by electronic means and states that: -

A notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.

The subject line in e-mail shall state the name of the corporate debtor, the place, if any, the time and the date on which the meeting is scheduled.

If notice is sent in the form of a non-editable attachment to an e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.

When notice or notifications of availability of notice are sent by an e-mail, the resolution professional shall ensure that it uses a system which produces confirmation of the total number of recipients e-mailed and a record of each recipient to whom the notice has been sent and copy of such record and any notices of any failed transmissions and subsequent re-sending shall be retained as ''proof of sending".

The obligation of the resolution professional shall be satisfied when he transmits the e-mail and he shall not be held responsible for a failure in transmission beyond its control.

The notice made available on the electronic link or Uniform Resource Locator shall be readable, and the recipient should be able to obtain and retain copies and the resolution professional shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information.

If a participant, other than a member of the committee, fails to provide or update the relevant e-mail address to the resolution professional, the non-receipt of such notice by such participant of any meeting shall not invalidate the decisions taken at such meeting.

In view of above provisions, If Mr. Goswami, failed to provide or update the relevant e-mail address to the resolution professional, the non-receipt of such notice by Mr. Goswami of any meeting shall not invalidate the decisions taken at such meeting.

OR (Alternate question to Q. No. 6)

Question 6A

(i) "To alleviate the compliance burden for Insolvency Professionals (IPs), a set of forms on an electronic platform has been created by the IBBI to capture the details of the voluntary liquidation process. These forms are vital for the voluntary liquidation procedure under the Insolvency and Bankruptcy Code (IBC), as they enable systematic and transparent record keeping and seamless reporting". Highlight the advantages and the documentation with timelines in view of the recent amendment via IBBI Circular dated 28th June, 2024.

(5 marks)

(ii) A company ABC Ltd. is undergoing a prepackaged insolvency resolution process under IBC, 2016. The company has appointed an Interim Resolution Professional (IRP) to oversee the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

insolvency process. The management of Corporate Debtor is concerned about their role and vesting of the management with IRP during the insolvency process. Discuss the provisions of Vesting management of corporate debtor with resolution professional, if any.

(5 marks)

(iii) Sujan Technologies Pvt. Ltd. faced serious allegations of financial mismanagement, excessive debts and non-compliance of statutory filings. The non-compliance issues led to an inspection and investigation being ordered by the Registrar of Companies (ROC). The inspection of the company by Registrar of Companies (ROC) was completed and investigation report was submitted. Severe irregularities relating to falsification of accounts was reported and hence prosecution under the Companies Act was initiated in the court of law against the directors. As the investigation of the Company is already complete, the Board of Directors of Sujan Technologies Pvt. Ltd filed an application for removal of name of the company from the Register of Companies (ROC). The company has not continued with any of its business or operation for a period of two immediately preceding financial years. The ROC rejected the application citing the provisions of Section 248 of the Companies Act, 2013.

Referring to the relevant provisions, discuss the tenability of the application filed with ROC for removal of name.

(5 marks)

(iv) Mr. X was appointed as a Liquidator in the liquidation process of ABC Limited.

In the process, he is required to prepare a preliminary Report as per Regulation 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. Discuss contents of such Preliminary Report as well as timelines prescribed for the same.

(5 marks)

Answer 6A(i)

Filing Forms to monitor Voluntary liquidation processes under the Insolvency and Bankruptcy Code, 2016, and the regulations made thereunder. (IBBI Circular dated 28th June, 2024)

To alleviate the compliance burden for Insolvency Professionals (IPs), a set of forms on an electronic platform has been created by the IBBI to capture the details of the voluntary liquidation process. These forms are vital for the voluntary liquidation procedure under the Insolvency and Bankruptcy Code (IBC), as they enable systematic and transparent recordkeeping and seamless reporting. The primary advantages of these forms include:

- Boosting the efficiency and effectiveness of the voluntary liquidation process.
- Allowing liquidators to conveniently access and submit forms online, reducing delays & enhancing efficiency.
- Decreasing the chances of errors and omissions, ensuring more accurate and reliable information.

Form No	Period Covered and Scope	Timeline
VL 1	This includes details of the Corporate Debtor (CD) and the details of the Voluntary Liquidation Process	On or before the 10th day of the second month after the public announcement
VL 2	Details of the meetings of contributories with the reasons for delay in the process and details of replacement of liquidator, if any.	On or before the 10th day of the subsequent month, after the meeting of contributories or replacement of liquidator

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

VL 3	Details of dissolution application, details of Unclaimed Proceeds, Details of realisation and distribution made to stakeholders, Details of Pending Litigations, Detection of Fraud or Insolvency, if any.	On or before the 10th day of the subsequent month, after submission of the dissolution application of the CP or withdrawal/suspension application for the voluntary liquidation process, to the Adjudicating Authority
VL 4	Details of order for Dissolution: This includes details of, the distribution of proceeds, Receipts and Payments, etc. (The details required in these forms are carried forward from the VL-3 form and hence need not be filled again)	On or before the 14 days of passing of the order for dissolution of the CP. or withdrawal / suspension of the voluntary liquidation process

Answer 6A(ii)

According to section 54H of the Code, during the pre-packaged insolvency resolution process period, -

(a) The management of the affairs of the body corporate shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor, subject to such conditions as may be prescribed.

(b) The Board of Directors, as the case may be, of the corporate debtor, shall make every endeavour to protect and preserve the value of property of the corporate debtor, and manage its operations as a going concern and

(c) the promoters, members, personnel and partners as the case may be, of the corporate debtor shall exercise and discharge their contractual or statutory rights and obligations in relation to the corporate debtor, subject to the provisions of this chapter and such other conditions and restrictions as may be prescribed.

Vesting management of corporate debtor with resolution professional (Section 54J of IBC, 2016)

Section 54J (1) provides that where the committee of creditors, at any time during the pre-packaged insolvency resolution process period, by a vote of not less than sixty-six per cent of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.

Section 54J (2) of the Code provides that on an application made under sub-section(1), if the Adjudicating Authority is of the opinion that during the pre-packaged insolvency resolution process

(a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or

(b) there has been gross mismanagement of the affairs of the corporate debtor, it shall pass an order vesting the management of the corporate debtor with the resolution professional.

Section 54J (3) provides that notwithstanding anything to the contrary contained in this chapter, the provisions of:

(a) sub-sections (2) and (2A) of section 14 (moratorium)

(b) section 17 (Management of affairs of corporate debtor by IRP)

(c) clauses (e) to (g) of section 18 (Duties of IRP)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(d) sections 19 and 20 (Personnel to extend co-operation to IRP and management of operations of corporate debtor as going concern)

(e) sub-section (1) of section 25 (Duty of RP to preserve clauses (a) to (c) and clause (k) of sub-section (2) of section 25 (duties of RP) and section 28 (Approval of COC for certain actions) shall, mutatis mutandis applies, to the proceedings under this chapter, from the date of the order under sub-section (2), until the pre-packaged insolvency resolution process period comes to an end.

Answer 6A(iii)

According to section 248(1) of the Companies Act,2013, where the Registrar has reasonable cause to believe that—

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 he shall send a notice to the company and all the Directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

Section 248(2) of the Act states that without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 provides that the Registrar of Companies may remove the name of a company from the register of companies in terms of sub-section (1) of section 248 of the Act. The rule provides that following categories of companies shall not be removed from the register of companies under this rule and rule 4, namely-

(iv) Companies where inspection or investigation is ordered and being carried out or actions or such order is yet to be taken up or were complete but prosecutions arising out of such inspection or investigation is pending in the court;

(v) Companies against which any prosecution for an offence is pending in any court;

In the present case, while the inspection had been completed, the prosecution against the directors was still ongoing in the court at the time, the company applied for striking off its name.

Hence, Sujan Technologies Pvt. Ltd. has to wait till the final verdict in the court and the rejection by ROC is valid as the removal of name from the register could not be done under the law until the pending prosecution gets resolved.

Moreover, though the company has not continued with any of its business or operation for a period of two immediately preceding financial year but it has not applied for dormant status, therefore, pursuant to section 248(2), without prejudice to the provisions of sub-section (1), the company cannot file application for removal of name of company as for that company has to pay its all liabilities and then pass special resolution or needs consent of seventy-five per cent. members in terms of paid-up share capital for the same to the Registrar on the grounds specified in sub-section (1).

Therefore, the application of the company filed with RoC for removal of its name is not tenable pursuant to above provisions.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 6A(iv)

Regulation 9 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 deals with provisions of Preliminary Report.

Timeline for submission of Preliminary Report:-

The liquidator shall submit a Preliminary Report to the corporate person within forty-five days from the liquidation commencement date.

Preliminary Report shall provide for the following contents in detail-

The liquidator shall submit a Preliminary Report detailing-[Regulation 9(1)]

(a) the capital structure of the corporate person;

(b) the estimates of its assets and liabilities as on the liquidation commencement date based on the books of the corporate person:

Provided that if the liquidator has reasons to believe, to be recorded in writing, that the books of the corporate person are not reliable, he shall also provide such estimates based on reliable records and data otherwise available to him;

(c) Whether he intends to make any further inquiry in to any matter relating to the promotion, formation or failure of the corporate person or the conduct of the business thereof; and

(d) the proposed plan of action for carrying out the liquidation, including the timeline within which he proposes to carry it out and the estimated liquidation costs.

***

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

ARBITRATION, MEDIATION & CONCILIATION

GROUP 2 ELECTIVE PAPER 7.1

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

NOTE : *Answer All Questions.*

PART-I

Question 1

NexaSoft Private Ltd., an Indian IT services provider, entered into a five-year contract with TechknoTech Inc., a U.S.-based software solutions company, to develop and maintain a cloud-based enterprise resource planning (ERP) system. The contract outlined key provisions, including project milestones, payment schedules, performance benchmarks, data security measures, intellectual property rights, liability limitations, and dispute resolution. The arbitration clause specified that any disputes would be resolved through arbitration.

As the project progressed, disagreements emerged regarding timelines, scope changes, and security requirements. TechknoTech alleged that NexaSoft failed to meet crucial deadlines, and that the software contained performance issues and security vulnerabilities, exposing it to potential regulatory risks. TechknoTech further claimed that NexaSoft's delays led to business losses and customer dissatisfaction, which ultimately compromised its market position. NexaSoft, in contrast, argued that TechknoTech had frequently rnodified the project requirements without formal amendments, resulting in delays and additional costs. NexaSoft also claimed that TechknoTech had defaulted on payment obligations, leaving several invoices unpaid for completed work.

Due to these disputes, TechknoTech terminated the contract, refused to clear pending invoices, and sought damages for losses incurred. NexaSoft, contesting the validity of the termination, invoked the arbitration clause to resolve the matter. However, a dispute arose regarding the arbitration mechanism. NexaSoft preferred ad hoc arbitration, emphasizing cost efficiency and procedural flexibility, while TechknoTech insisted on institutional arbitration, arguing that a structured process was necessary for a cross-border technology dispute.

A sole arbitrator was eventually appointed under institutional arbitration rules. During the arbitration proceedings, NexaSoft objected to the admissibility of TechknoTech's damage claims, stating that they were filed beyond the contract's limitation period and that TechknoTech had implicitly waived its right to claim damages by continuing the project despite alleged deficiencies. TechknoTech countered that the damages were a direct result of NexaSoft's breach and that the contract did not restrict compensation for consequential losses. Additionally, TechknoTech raised concerns about NexaSoft's handling of sensitive data, alleging that the security flaws in the software had potentially exposed confidential information to third parties. NexaSoft denied the allegations, asserting that no actual data breach had occurred, making TechknoTech's claim speculative and unsubstantiated.

After several hearings and an assessment of expert reports, the arbitrator ruled partially in favor of TechknoTech, granting compensation for delays and performance deficiencies but rejecting claims related to business losses and data security failures, citing insufficient evidence and speculative calculations. Dissatisfied with the ruling, NexaSoft challenged the arbitral award in an Indian court under Section 34 of the Arbitration and Conciliation Act, 1996, arguing that the arbitrator had exceeded jurisdiction by admitting time-barred claims, misinterpreted key contract provisions, and

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

issued an award contrary to Indian public policy by imposing damages beyond contractual terms. The court was now tasked with balancing the principles of judicial intervention and arbitral finality.

With reference to above facts, answer the following :

(a) Outline the critical clauses that should be included in a contract, to prevent disputes.

(b) Explain the difference between ad hoc and institutional arbitration.

(c) Discuss the grounds for challenging an arbitral award under Indian law and the factors influencing the court's decision to set it aside.

(d) 'In arbitration, an arbitrator is the presiding officer.' Comment in the background of the norms which an arbitrator should abide by.

(e) Elucidate the general guidelines which an arbitrator should follow for drafting an Arbitral award.

(5 marks each)

Answer 1(a)

Any contract should be drafted carefully. But in case of Commercial Contracts, more diligence is required as the value at stake are comparably more in case if commercial. Though, all the clauses require enough time and due attention but few important clauses requires more diligence. These clauses *inter alia* are as under:

- **Operating clauses:** An agreement can be split into parts as any other document *viz.* Title, Date, Parties, Recitals, Testatum, Operating Clause, Schedule (if necessary), Exceptions and Reservations (if any), Habendum, Covenants (if any) and Testimonium. Operating clauses are one the most important clauses of an agreement as they can be said to be the purpose and essence of a contract. They are required to be drafted very carefully. Otherwise the purpose of a contract may not succeed.
- **Confidentiality clause:** In modern business transactions, it is sometimes necessary for the seller to supply detailed specifications, literature, etc. relating to the goods particularly if the goods are of scientific or technical nature. In such cases, it is usual to provide in the contract as to whether the technical documentation supplied by the seller will become the property of the buyer or it has to be returned to the seller after a stipulated time. It is also desirable to provide that the technical and confidential information contained in the documentation should be kept confidential by the buyer and that it will not be transmitted by him to a third-party without the permission of the seller.
- **Force majeure:** Another very important provision witnessed in modern commercial contracts relates to force majeure or excuses for non-performance. This provision defines as to what particular circumstances or events beyond the control of the seller would entitle him to delay or refuse the performance of the contract, without incurring liability for damage. It is usual to list the exact circumstances or events, like strike, lockout, riot, civil commotion, Government prohibition, etc. which would provide an excuse to the seller to delay or refuse the performance. It may be further provided that events of a similar nature, which are beyond the control of the seller and which could not have been avoided with due diligence would also furnish the above relief.
- **IPR protection clauses:** As the size of the Businesses are growing, the importance and value of IPR is increasing. Therefore, it is essential that the IPR Protection clause are always included in commercial contracts.
- **Dispute resolution:** The last, but not the least, important is the provision regarding settlement of

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

disputes under the contract by arbitration or otherwise. It is usual to provide for an arbitration clause in the contract, particularly under the auspices of an arbitral institution. A suitable arbitration clause may be provided by the parties by mutual agreement. It is also desirable to provide for the mode of appointment of arbitrator and also for the venue of the arbitration in the arbitration clause.

Answer 1(b)

Ad hoc arbitration is an arbitration procedure agreed and arranged by the parties themselves. If they fail to do so then it becomes the responsibility of the arbitration tribunal. This enables the parties to tailor the procedure to its needs. That is its main attraction. This flexibility is an advantage but one must not lose sight of the fact that it is not an easy thing to create the procedure. It requires a lot of expertise. However the trouble of creating the said procedure can be escaped by choosing the rules of an arbitral institution to govern the arbitration proceedings without submitting the arbitration to an institution.

The major disadvantage of ad hoc arbitration is that if the arbitration encounters some troubles especially because of non- cooperation of a party, the recourse to save arbitration is to be made to the national courts. This is problematic because parties had opted for arbitration as they did not want to go to courts. In India ad hoc arbitration is said to be more prevalent than institutional arbitration.

When arbitration is conducted under the supervision of an institution in accordance with its rules of procedure it is termed as institutional arbitration. There are various institutions which administer arbitration proceedings. They have their own set of rules to conduct the proceedings. Some of the institutions prominent internationally are the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), Singapore International Arbitration Centre (SIAC), American Association of Arbitration (AAA) etc. As far as India is concerned, some of the well-known arbitration institutions are The Indian Council of Arbitration (ICA) and Federation of Indian Chamber of Commerce and Industry (FICCI).

The biggest advantage of institutional arbitration is that parties are saved the trouble of framing the procedure of arbitration, since it would be conducted under the rules of the selected institution. Another advantage is the administrative support provided by the highly trained staff which these institutions have. Also they have good infrastructure to conduct the proceedings and a list of competent arbitrators to choose from. Most importantly if arbitration encounters any problem there will be effective support from the institution to save it as they have their own internal mechanism to save arbitration without making recourse to the national courts. For example in the event of non-cooperation by a party to appoint an arbitrator or if emergency measures are to be taken even prior to the establishment of the tribunal the institution has mechanisms and rules to deal with such situations.

Institutional arbitration may be more expensive than ad-hoc arbitration but it offers a lot more facilities than the latter. Institutional arbitrations are conducted pursuant to institutional arbitration rules, almost always overseen by an administrative authority with responsibility for various aspects relating to constituting the arbitral tribunal, fixing the arbitrators' compensation and similar matters. In contrast, ad hoc arbitrations are conducted without the benefit of an appointing and administrative authority or generally pre-existing arbitration rules, subject only to the parties arbitration agreement and applicable national arbitration legislation.

Answer 1(c)

The grounds on which an award may be set aside are limited and pertain primarily to the procedure of the arbitration and principles of natural justice. A crucial amendment was the inclusion of specific

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

wording in relation to the scope of the public policy challenge- perhaps the most abused provision in the Arbitration and Conciliation Act, 1996. The amendments clarify that an award will be in conflict with the public policy of India if:

(i) the making of the award was induced or affected by fraud or corruption or was in violation of confidentiality provisions or admissibility of evidence provisions in the Act;

(ii) it is in conflict with the most basic notions of morality or justice; or

(iii) it is in contravention with the fundamental policy of Indian Law. Specifically, the test as to whether there is a contravention with the fundamental policy of Indian Law shall not entail a review on the merits of the dispute. In case of challenge of an arbitral award, if the arbitrator has applied his mind to the matter before him, the Court cannot re-appraise the matter as if it were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail. (The Supreme Court of India in *Navodaya Mass Entertainment Ltd. v. J.M. Combines*).

In the cases of the *Bharat Coking Coal Ltd. v. L.K. Ahuja*, *Ravindra and Associates v. Union of India*, *Madnani Construction Corporation Private Limited v. Union of India and Ors*, *Associated Construction v. Pawanhans Helicopters Pvt. Limited*, and *Satna Stone and Lime Company Ltd MP and Ors. v. Union of India and Ors*, it was held by the Supreme Court that once the arbitrator has applied his mind to the matter before him, the Court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the arbitrator would prevail.

Answer 1(d)

In arbitration, an arbitrator is the presiding officer. The Cambridge dictionary defines an arbitrator as a person who has been officially chosen to make a decision between two people or groups who do not agree.

There are various norms that an arbitrator must abide by. They include:

- A person who is of the general reputation of accountability, integrity. He shall be capable of applying objectivity in arriving at a settlement of disputes.
- An arbitrator should be impartial and neutral. He must avoid entering into any associations which has a tendency to affect the impartiality. The arbitrator must avoid circumstances which might create a reasonable appearance of partiality or bias among the parties.
- The arbitrator must not incorporate himself in any legal proceedings. He should refrain from any potential conflict related to the disputes which he shall arbitrate.
- He must not engage in any private discussions or conversations with the parties related to the dispute.
- The arbitrator must not accept any illegal gratifications.
- For any disputes which come before him, he must be capable of suggesting, recommending or writing a reasonable and enforceable arbitral award.

Answer 1(e)

General guidelines for drafting arbitral award:

- An Award should be logically sequenced.
- The Arbitrator should ensure that the Award should be legally enforceable.
- An award should be made timely.
- Award should be communicated to the Parties.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

- An award should be titled property. For example: Interim Award, Final Award etc.
- An award should be properly paragraph and numbered to the possible extent.
- In case of Arbitration by a panel of more than one arbitrator, the voting of individual arbitrator should be mentioned.
- An arbitration agreement is required to be in writing.
- The award is to be signed by the members of the arbitral tribunal.
- The making of an award is a rational process which is accentuated by recording the reasons. Generally, the award should contain reasons.
- The award should be dated.
- The arbitral tribunal is under obligation to state the place of arbitration.
- The arbitral tribunal may include in the sum for which award is made, interest up to the date of award and also a direction regarding future interest.
- The award may also include decisions and directions of the arbitrator regarding the cost of the arbitration.

Question 2

(a) Rohan, a contractor, entered into an agreement with Zenith Constructions Ltd to complete a commercial building project within a stipulated period. The contract contained a clause stating that in case of a breach, Rohan would be liable to pay a fixed sum of ₹ 10 lakh as compensation. Due to unforeseen delays, the project was not completed on time, and Zenith Constructions Ltd invoked the penalty clause, demanding the entire amount. Rohan contended that the actual loss suffered must be proved before such compensation could be enforced.

In the light of legal provisions, discuss whether Rohan's contention is valid.

(5 marks)

(b) Alpha Constructions Ltd and Beta Infra Private Ltd entered into a Joint Venture Agreement (JVA) for the development of a commercial project. The agreement contained a termination clause allowing either party to terminate in case of a material breach if the defaulting party failed to rectify the breach within 30 days of receiving notice. Due to non-compliance with key project deadlines and financial mismanagement, Alpha Constructions Ltd issued a termination notice. Beta Infra, disputing the termination, filed a petition under Section 9 of the Arbitration and Conciliation Act, l996, seeking an injunction against the termination and restoration of the agreement. Alpha Constructions Ltd argued that since the contract was determinable in nature, the court could not grant such relief.

With reference to a case law, comment whether Alpha Constructions Ltd will succeed.

(5 marks)

(c) Aeon Technologies Ltd, an Indian company, entered into a contract with Orion Machines Inc., a South Korean firm, for the supply of industrial equipment. The agreement contained an arbitration clause stating that disputes would be resolved through arbitration, but did not explicitly mention the seat of arbitration or the governing law. A dispute arose, and Aeon Technologies argued that Indian law should govern the arbitration, while Orion Machines Inc. claimed that Singaporean law should apply based on the arbitration venue.

Based on a case law, examine how the seat of arbitration and the governing law should be determined.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 2(a)

Section 74 of the Indian Contract Act, 1872 deals with compensation for breach of contract where a sum is named or a penalty is stipulated in the contract.

Section 74 states:

When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation. – A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Under section 74 of Indian Contract Act, 1872, when a contract specifies a sum payable in case of breach or includes a stipulation by way of penalty, the aggrieved party is entitled to receive reasonable compensation, even if actual loss or damage is not proved. However, the compensation awarded cannot exceed the stipulated amount.

The key judicial test, as evolved by courts, is to distinguish between a genuine pre-estimate of damages (liquidated damages) and a penalty, which is imposed to secure performance. Courts may assess whether the amount named is a reasonable pre-estimate of probable loss or an unreasonably high sum meant to deter breach (i.e., a penalty).

In the present case, while Zenith Constructions Ltd. is entitled to compensation under the clause, the enforceability of the entire ₹10 lakh will depend on whether it can be seen as a reasonable assessment of anticipated loss at the time of entering into the contract, rather than a punitive penalty. If the amount is found to be excessive or penal in nature, the court may reduce it to a just and fair compensation. Hence, Rohan's argument that actual loss must be proved is not entirely sustainable, as Section 74 does not mandate such proof. However, his contention gains relevance if the stipulated amount is found to be arbitrary or excessive, in which case the court may reduce the amount to a reasonable figure.

Answer 2(b)

The facts of the given situation are similar to the facts of the case, *Inter Ads Exhibition Pvt. Ltd. vs. Busworld International Cooperative (13.01.2020 - DELHC)*

In this case, the main and substantive relief claimed in the petition, was for setting aside the termination notice dated 15.03.2019. The court stated that Learned counsel for the respondent in my view is right in her contention that the said relief cannot be granted in a petition under Section 9 of the Act (i.e. Arbitration and Conciliation Act, 1996). The contract between the parties is clearly determinable in nature.

Article 7.3 of JVA-I enables either one of the parties to terminate the agreement, if the other party is in default or is in breach of any material obligation under the JVA and has failed to correct the default within 30 days of the receipt of the notice.

The Court held that once a contract is determinable in nature and has been terminated by one party to the contract, the same cannot be revived or restored by a Court and specific performance of the same cannot be sought by the defaulting party. This has been clearly held by the Court in the case of RPS Educational Society (Regd.) vs. DDA, OMP 538/2008, decided on 02.09.2009.

The contract law supports the Law relating to Arbitration as the Arbitral Process mainly gets effective due to the agreement of the parties.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Section 9 of the Arbitration and Conciliation Act, 1996 primarily provides for interim relief but does not empower courts to set aside a valid termination or restore a contract that has already been determined by one party as per contractual terms.

Therefore, Beta Infra Pvt. Ltd.'s petition seeking to nullify the termination and restore the agreement is unlikely to succeed, and its remedy lies in seeking damages or other reliefs under arbitration instead of specific performance. Therefore, Alpha Constructions which has issued a termination notice is likely to succeed.

Answer 2(c)

The seat of Arbitration and governing law can be ascertained by referring to the Closest-Connection Test to Ascertain the Seat of Arbitration.

In *Dozco India Pvt Ltd. v. Doosan Infracore Co. Ltd 33(2011)*, the Supreme Court held that if the parties fail to mention the seat of arbitration in the agreement, the presumption is that the parties have intended the laws of the venue of the arbitration to be the laws governing the arbitration as well unless an intention to the contrary has been shown. This is called the closest-connection test as the country/place that is most closely connected with the arbitral proceedings is used to determine the seat of arbitration.

In the absence of an explicit agreement on the seat of arbitration, the closest-connection test is applied to determine the governing law. Since the contract specifies Singapore as the arbitration venue, there is a presumption that the parties intended for Singaporean law to govern the arbitration, unless there is clear evidence to the contrary.

For Aeon Technologies Ltd. to establish Indian law as the governing law, it must demonstrate a strong contractual or factual basis indicating such intent. Otherwise, in line with standard arbitration principles, the laws of the arbitration venue (Singapore) will likely govern the proceedings. However, the substantive law of the contract may still be governed by Indian law if explicitly agreed upon in the contract.

Question 3

(a) NTP Ltd. (NTP) and SPM Infra Ltd. (SPM) entered into a contract for certain project works (Agreement). In terms of the Agreement, SPM furnished a performance bank guarantee and advanced bank guarantee for a cumulative amount of INR 14,96,89,136 to secure the NTP. Upon the successful completion of the project, NTP issued a certificate of completion. NTP subsequently communicated to SPM by way of a letter dated 10 April 2019 that the final payment would be released once SPM issued a no-demand certificate.

On 12 April 2019, SPM issued the required no-demand certificate, prompting NTP to release the final payment of INR 1,40,00,000 in April 2019. However, the bank guarantees were not released at that time due to ongoing disputes and outstanding liabilities between the parties relating to other projects at Bongaigon, Barh, and Korba. NTP formally notified SPM of this decision on l4 May 2019. In response, SPM raised objections, claiming a sum of INR 72,01,53,899 as recoverable liabilities from NTP for actions attributable to NTP.

In an effort to address the unresolved disputes arising from the Agreement, SPM wrote to NTP on 12 June 2019, requesting the appointment of an adjudicator as prescribed by the Agreement's dispute resolution mechanism. NTP did not take any action in response to this request from SPM. As NTP took no action, SPM moved to Delhi High Court by filing a writ petition under Article 226 of the Constitution. The Delhi High Court, through an interim order dated 8 July 2019, directed NTP not to invoke the bank guarantees and instructed SPM to maintain the guarantees in force. While the writ petition was still pending, the parties managed to

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

settle their disputes and executed a Settlement Agreement (Settlement Agreement). As per the Settlement Agreement, NTP released the bank guarantees on 30 June 2020, and SPM withdrew the writ petition.

However, three weeks after the bank guarantees were released and two months after the Settlement Agreement was executed, SPM issued a letter of repudiation. SPM claimed that they had been subject to coercion and economic duress during the execution of the Settlement Agreement. Subsequently, SPM repudiated the Settlement Agreement and filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, with the Delhi High Court on l0 October 2020. In this application, SPM also asserted that NTP had not appointed an arbitrator despite multiple requests, which necessitated SPM's recourse to the High Court.

In the background of the above matter and in view of judicial pronouncement, discuss primary inquiry about the existence and the validity of an arbitration agreement.

(5 marks)

(b) Zenda Infrastructure Ltd acquired land for a national highway project, compensating landowners based on government-determined rates. Dissatisfied with the valuation, the landowners initiated arbitration, but the appointed arbitrator upheld the original compensation. Seeking redress, the landowners approached the District Court, which not only set aside the arbitral award but also enhanced the compensation. Zenda Infrastructure Ltd challenged this decision, arguing that courts lack authority to modify arbitral awards under the applicable arbitration law.

In the context of a judicial precedent, evaluate whether Zenda Infrastructure will succeed.

(5 marks)

(c) Skyline Aviation Private Ltd was engaged in a contractual dispute with AeroFleet Services Ltd and participated in arbitration proceedings. However, its counterclaims were struck off by the Arbitral Tribunal due to a significant delay in filing. After exhausting various legal remedies, Skyline Aviation filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996, seeking to refer its counterclaims to arbitration before the same Tribunal, citing its familiarity with the case. AeroFleet Services opposed this, arguing that the claims were barred due to prior dismissal and the doctrine of res judicata.

In the context of arbitration law and legal precedents, examine whether the arguments of AeroFleet Services are justified.

(5 marks)

Answer 3(a)

The facts of the given situation are similar to the case of *NTPC Ltd. v. SPML Infra Ltd. (Supreme Court of India Citation: 2023 (SC)*

In this case, the Hon'ble Court has laid down that the pre-referral jurisdiction of the courts under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Act) is very narrow and inheres two inquiries. The primary inquiry is about the existence and the validity of an arbitration agreement, which also includes an inquiry as to the parties to the agreement and the applicant's privity to the said agreement. These are matters which require a thorough examination by the referral court. The secondary inquiry that may arise at the reference stage itself is with respect to the non-arbitrability of the dispute.

In the above matter, the Supreme Court, in its ruling, extensively examined the legal framework governing pre-referral jurisdiction, both before and after the 2015 Amendment.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

The Supreme Court classified pre-referral stage cases into three distinct categories:

(a) Cases requiring the Court's direct determination on aspects such as assessing the existence and validity of the arbitration agreement;

(b) Cases exclusively under the jurisdiction of the arbitral tribunal;

(c) Cases where the court may elect to decide, particularly those involving the determination of whether the parties had finalised the contract or transaction by mutually satisfying their rights and obligations or by making the final payment. This approach is commonly referred to as the "accord and satisfaction approach".

2015 amendment of the Arbitration Act

In response to the recommendations from the 256th Law Commission Report, the 2015 Amendment introduced Section 11(6A), aiming to limit the Courts' involvement at the pre-referral stage solely to the determination of the arbitration agreement's existence, "nothing more, nothing less". However, in certain cases, the Courts continued to apply the pre-2015 amendment "accord and satisfaction" approach. Notably, in *Vidya Drolia v. Durga Trading Corporation* the Supreme Court restricted the scope of pre-referral jurisdiction under Section 11(6A) to encompass a prima facie examination of (i) the existence and validity of the arbitration agreement, and (ii) the arbitrability of the dispute's subject matter.

Drawing from this discussion on jurisprudence, the Court introduced an "eye of the needle" approach, involving a two-fold inquiry:

(a) The primary inquiry scrutinises the existence and validity of the arbitration agreement thoroughly.

(b) The secondary inquiry, related to arbitrability, includes a prima facie review of the facts, including an assessment of the genuineness of the assertion regarding arbitrability.

Based on the prima facie examination of the facts, the Court deemed SPML's claims to be an "afterthought," and the allegations of economic duress and coercion were found to lack genuineness. Consequently, the Court dismissed the application, characterising SPML's claims and allegations as "patently frivolous and untenable" and "obviously devoid of merit and made in bad faith."

In reaching this decision, the Court emphasised that supervisory courts should not act mechanically but have a "duty" to ensure that parties are not compelled to arbitrate disputes that are "demonstrably non-arbitrable." Neglecting this duty would undermine the effectiveness of the arbitration process.

Answer 3(b)

The facts of the given situation are similar to the case of *The Project Director National Highways of India vs M. Hakeem* decided by Supreme Court in 2021.

In this case, the Supreme Court of India addressed the critical issue of whether courts possess the authority to modify arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996.

Background:

NHAI initiated land acquisition proceedings under the National Highways Act, 1956, for highway development projects. The Special District Revenue Officer (SDRO), acting as the competent authority, determined compensation amounts based on the 'guideline value' of the lands, which often resulted in significantly low valuations. Dissatisfied landowners sought arbitration as provided under Section 3G(5) of the National Highways Act. However, the arbitrators, appointed by the Central Government, upheld the initial compensation amounts.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Legal Proceedings:

Aggrieved by the arbitral awards, the landowners filed applications under Section 34 of the Arbitration and Conciliation Act, 1996, before the District Courts, seeking to set aside the awards. The District Courts went beyond merely setting aside the awards; they enhanced the compensation amounts. NHAI challenged these decisions before the Madras High Court, which upheld the District Courts' modifications. Subsequently, NHAI appealed to the Supreme Court.

Supreme Court's Analysis:

The Supreme Court examined the scope of judicial intervention under Section 34 of the Arbitration Act. It emphasized that Section 34 allows courts to set aside an arbitral award only on specific grounds such as fraud, bias, or violation of natural justice principles. The Court clarified that this provision does not grant courts the authority to modify or enhance the award's terms. The legislative intent, as reflected in the Act, is to minimize judicial interference in arbitral proceedings, ensuring that arbitration remains an effective and efficient alternative dispute resolution mechanism.

Conclusion:

The Supreme Court concluded that while courts have the power to set aside arbitral awards under Section 34, they do not possess the authority to modify them. This decision reinforces the principle of minimal judicial intervention in arbitration, upholding the autonomy and finality of the arbitral process.

This case underscores the importance of adhering to the legislative framework governing arbitration in India and clarifies the limited role of courts in arbitral award enforcement.

A division bench of the Supreme Court of India ruled in favour of minimal judicial intervention in the case of Project Director, National Highway Authority of India v. M. Hakeem & Anr., (2021), holding that courts cannot amend, revise, or alter an arbitral judgement under Section 34 of the Arbitration Act.

Therefore, Zenda Infrastructure is likely to succeed in this legal battle.

Alternate Answer

The facts of the given situation are similar to the case of *The Project Director National Highways of India vs M. Hakeem* decided by Supreme Court in 2021.

In this case, the Supreme Court of India, while addressing a similar problem of demand for enhanced compensation, settled the critical issue of whether courts possess the authority to modify arbitral awards under Section 34 of the Arbitration and Conciliation Act, 1996.

The Court emphasized that while Section 34 allows courts to set aside an arbitral award on grounds such as fraud, bias, or violation of natural justice principles, this provision does not grant courts the authority to modify or enhance the award's terms. The legislative intent, as reflected in the Act, is to minimize judicial interference in arbitral proceedings, upholding the autonomy and finality of the arbitral process.

Therefore, Zenda Infrastructure is likely to succeed in this legal battle.

Answer 3(c)

The facts of the given situation is based on the case of *Airone Charters Private Limited v. Jetsetgo Aviation Services Private Limited* decided by the High Court of Delhi on 12.10.2021.

Delhi High Court, single judge, in this case has observed that the Petitioner's counterclaims were struck off before the Arbitral Tribunal (AT) on the ground of being filed at an extremely belated stage.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

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

The Court observed as follows:

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

Based on the above, although the Court did not refer the disputes to the same AT, the Court appointed one of the arbitrators as the Petitioner's nominee, directed the Respondent to appoint its nominee and thereafter the two learned arbitrators to proceed to appoint the presiding arbitrator.

The Court disposed off the petition with an observation that needless to say, if the parties would be agreeable to the claims being decided by the existing AT, that would be the eminently advisable course to pursue, which would aid in expeditious disposal of arbitral proceedings.

More so, in this case, the doctrine of res judicata would not apply to the subsequent petition as the counter claim in the first instance was not adjudicated upon and merely rejected citing delay.

In view of the above discussed case, it can be said that Arguments of Aerofleet Services may not be justified.

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

Question 4

(a) Mr. AR, a retail investor wants to lodge a formal complaint with the Stock Exchange against M/s ABC Ltd. Mr. AR alleges that the company M/s ABC Ltd. did not release his unpaid dividends in spite of his repeated request. As a practising Company secretary, prepare a note for your client Mr. AR indicating the framework for handling of complaints available through SEBI.

(5 marks)

(b) Mr. A, an Investor lodged a Complaint against NSDL, regarding less number of securities shown in his account. But NSDL did not respond. Thereafter, the complaint was filed on SCORES portal. NSDL provided the resolution through SCORES portal but Mr. A is not satisfied with the resolution.

Now, Mr. A wants to initiate resolution through ODR portal. Discuss the benefits available for initiation of the dispute resolution process through ODR.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(c) Alpana Tech Private Ltd and Swalpana Solutions Private Ltd, both companies incorporated in India, entered into a contractual agreement that included an arbitration clause. A dispute arose and Alpana Tech sought to classify the arbitration as an International Commercial Arbitration under the Arbitration and Conciliation Act, 1996, citing foreign investment in its parent company and business operations outside India. Swalpana Solutions, however, argued that since both parties were Indian-registered entities, the arbitration must be treated as domestic arbitration.

Discuss with reference to statutory provisions and judicial precedents whether Alpana Tech will succeed.

(5 marks)

Answer 4(a)

Note on Framework for handling of complaints available through SEBI

1. **Submission of the Complaint and Handling by the Entity**

- All Entities shall review the investors' grievances redressal mechanism from time to time to further strengthen it and rectify the existing shortcomings
- All Entities who are in receipt of the complaints of the investors ("Complaint") through SCORES, shall resolve the complaint within 21 calendar days of receipt of such Complaint.
- The Complaints lodged on SCORES against any Entity shall be automatically forwarded to the concerned Entity through SCORES for resolution and submission of ATR. Entities shall resolve the Complaint and upload the ATR on SCORES within 21 calendar days of receipt of the Complaint.
- The Complaint against the Entity shall be simultaneously forwarded through SCORES to the relevant Designated Body. The Designated Body shall ensure that the concerned Entity submits the ATRs within the stipulated time of 21 calendar days.
- The Designated Body shall monitor the ATRs submitted by the entities under their domain and inform the concerned entity to improve the quality of redressal of grievances, wherever required.
- SEBI may concurrently monitor grievance redressal process by entities and Designated Bodies.

2. **First Review of the Complaint**

- In case complainant is satisfied with the resolution provided by the entity *vide* the ATR or complainant does not choose to review the Complaint, the Complaint shall be disposed on SCORES. However, if the complainant is not satisfied, the complainant may request for a review of the resolution provided by the entity within 15 calendar days from the date of the ATR.
- In case the complainant has requested for a review of the resolution provided by the entity or the entity has not submitted the ATR within the stipulated time of 21 calendar days, the concerned Designated Body shall take cognizance of the Complaint for first review of the resolution through SCORES. The Designated Body shall take up the first review with the concerned Entity, wherever required. The concerned Entity shall submit the ATR to the Designated Body within the time stipulated by the Designated Body.
- The Designated Body may seek clarification on the ATR submitted by the Entity for the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

first review. The concerned Entity shall provide clarification to the respective Designated Body, wherever sought and within such timeline, as the Designated Body may stipulate. The Designated Body shall stipulate the timeline in such as manner to ensure that the Designated Body submits the revised ATR to the complainant on SCORES within 10 calendar days of the review sought.

- The Designated Bodies shall be responsible for:
  - Monitoring and handling grievance redressal of investors against respective entities.
  - Taking non-enforcement actions including issuing advisories, caution letters for non-redressal of investor grievances and referring to SEBI for enforcement actions.

3. Second Review of the Complaint

- The complainant may seek a second review of the Complaint within 15 calendar days from the date of the submission of the ATR by the Designated Body. In case the complainant is satisfied with the ATR provided by the concerned Designated Body or complainant does not choose to review the Complaint within the period of 15 calendar days, the Complaint shall be disposed on SCORES.
- In case the complainant is not satisfied with the ATR provided by the Designated Body or the concerned Designated Body has not submitted the ATR within 10 calendar days, SEBI may take cognizance of the Complaint for second review through SCORES.
- SEBI may take up the review with stakeholders involved, including the concerned entity or/and Designated Body. The concerned entity or/and Designated Body shall take immediate action on receipt of second review complaint from SEBI and submit revised ATR to SEBI through SCORES, within the timeline specified by SEBI.
- SEBI or the Designated Body (as the case may be) may seek clarification on the ATR submitted by the concerned entity for SEBI review complaint. The concerned entity shall provide clarification to the respective Designated Body and/or SEBI, wherever sought and within such timeline as specified. The second review Complaint shall be treated as 'resolved' or 'disposed' or 'closed' only when SEBI 'disposes' or 'closes' the Complaint in SCORES. Hence, mere filing of ATR with respect to SEBI review complaint will not mean that the SEBI review complaint is disposed.

4. SCORES authentication for registered intermediaries and market infrastructure institutions

- The procedure for generation of SCORES user ID and password is fully automated for all SEBI registered intermediaries and MIIs registered or recognised by SEBI after August 02, 2019. SCORES user ID and password details shall be sent through auto-generated e-mails, upon completion of process of online grant of registration by SEBI.
- The SCORES user ID and password details shall be sent to the e-mail ID of the Contact Person or the Compliance Officer as provided in the online Registration Form (submitted through the SEBI Intermediaries Portal – https://siportal.sebi.gov.in).
- Stock Brokers and Depository Participants shall also obtain SCORES authentication. The procedure for obtaining SCORES authentication shall be as may be specified.

5. SCORES authentication for companies intending to list their securities on recognized stock exchanges

- All companies intending to get their securities listed on the recognized stock exchanges

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

shall obtain SCORES authentication through the online mechanism available at the SCORES website www.scores.gov.in.

- The companies shall be required to apply for the authentication through the online form available on the abovementioned SCORES website in accordance with the instruction document provided on the website.
- Companies shall attach a declaration, with the online form, on the letter head of the company signed by the Compliance Officer, as under:
  - Companies intending to list on Main Board: A declaration that the Draft Red Herring Prospectus has been submitted to SEBI.
  - Companies intending to list on SME/Debt Platform of stock exchange: A declaration that an application to list its securities has been submitted with the stock exchange/in-principal approval to list its securities has been obtained from the stock exchange.
- The SCORES credentials shall be sent to the e-mail ID of the Compliance Officer or the Dealing Officer as provided in the online form.
- Complaints against listed companies can be processed by companies in-house or through its Registrar to Issue and Share Transfer Agent (RTI/STA). In case the complaints are processed by the RTI/STA on behalf of the listed company, any failure on the part of the RTI/STA to redress the complaint or failure to update Action Taken Report (ATR) in SCORES, will be treated as failure of the listed company to furnish information to SEBI and non redressal of investor complaints by the listed company.
- The Entities can update their primary e-mail address in SCORES where all notifications related to SCORES complaints are sent.

6. Access to SCORES Portal and other requirements applicable to Designated Bodies

- The Designated Bodies shall take SCORES Authentication from SEBI. The Designated Bodies shall fill the form placed at Schedule IV and submit the same to scores@sebi.gov.in. The SCORES user id and password details shall be sent to the e-mail id provided in the Registration Form.
- The Designated Bodies shall provide generic e-mail id for the purpose of obtaining SCORES authentication. Further the Designated Bodies shall appoint one nodal officer for the purpose. The details of the nodal officer shall be updated with SEBI, through SCORES or/and through email intimation.
- The Designated bodies who already have a complaint redressal portal of their own and desires to integrate it to SCORES through Application Programming Interface (API) shall write to SEBI at scores@sebi.gov.in for the same. It may be noted that SCORES Authentication is mandatory for all the Designated Bodies even though integrated to SCORES through API.
- The Designated Bodies shall have adequate infrastructure/systems in place like manpower etc. to comply with the requirements and process laid down.
- The Designated Bodies shall have adequate systems in place to curb leakage of any data received through SCORES.
- The Designated Bodies shall maintain Management Information Systems (MIS) reports, which shall be shared with the concerned entities so the latter can adequately track timelines for submission of ATR. SEBI may also require the Designated Bodies to furnish

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

MIS reports in such form and on such periodicity as it may specify from time to time.

- SEBI may appoint or remove any Designated Body for various class of registered intermediaries from time to time. SEBI may appoint or remove any Designated Body for various class of registered intermediaries from time to time.
- SEBI may appoint or remove any Designated Body for various class of registered intermediaries from time to time.

7. Action for failure to redress investor complaints by listed companies

- The procedure and actions mentioned below shall only be applicable for certain categories of complaints.
- The Designated Stock Exchange (DSE) shall levy a fine of ₹ 1000 per day per complaint on the listed company for violation of Regulation 13 (1) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (LODR Regulations) read with SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020.
- Fines shall also be levied on companies, which are suspended from trading on the stock exchanges.
- DSE shall issue a notice intimating the listed company about the levy of fines while also directing it to submit ATRs on the pending complaints and payment of the fines within 15 days from the date of such notice.
- In case the listed company fails to redress the grievances and/or pay fine levied within 15 days from the date of such notice, the concerned DSE shall issue notices to the promoter(s) of such listed company, to ensure submission of ATRs on the pending complaints and payment of fines by the listed company within 10 days from the date of such notice.
- In case the listed entity fails to comply with the aforesaid requirement and/ or pay fine levied within the stipulated period as per the notices, the DSE shall forthwith intimate the depositories to freeze the entire shareholding of the promoter(s) in such listed company as well as all other securities held in the demat account of the promoter(s).
- The depository(ies) shall immediately freeze such demat accounts and also intimate the promoter(s) about the details of non-compliances resulting in freezing of their demat accounts.
- In case the listed entity fails to pay the fine or resolve the complaint despite receipt of the notice as stated above, the DSE may initiate other action as deemed appropriate.
- While issuing the aforementioned notices, the DSE shall also send intimation to other recognized stock exchange(s) where the shares of such company are listed.
- The fine shall be computed and levied on a monthly basis during the non-compliance period.
- Amount of fine shall continue to accrue till the date of filing of ATR to the effect of redressal of grievance by the company or till the company is compulsorily delisted, whichever is earlier.
- Upon exhaustion of all options as mentioned hereinabove, and if the number of pending complaints exceed 20 or the value involved in such complaints is more than ₹ 10 lakhs, stock exchanges shall forward all the complaints against such listed companies to SEBI for further action, if any.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

- Stock exchanges may deviate from the above procedure and actions, if found necessary, only after recording reasons in writing.
- Stock exchanges shall intimate SEBI through SCORES about all actions taken against the listed company for non-resolution of the complaints and non-payment of fines.
- The time-line the actions to be taken by stock exchanges for non-resolution of investor grievances is also provided.

Alternate Answer

Note on Framework for handling of complaints available through SEBI

1. **Submission of the Complaint and Handling by the Entity**
   - Investor complaints are required to be filed electronically on the SCORES platform at https://scores.gov.in.
   - Once submitted, the complaint is routed to the concerned listed company/ intermediary.
   - The entity must respond to the complaint and upload an Action Taken Report (ATR) with supporting documents on SCORES within 21 calendar days.
   - The entity should resolve the grievance only through the SCORES portal and must not request physical copies or separate email submissions.
2. **First Review of the Complaint**
   - If you are not satisfied with the response, the complaint will be reviewed by the Designated Body (e.g., Stock Exchange).
   - The Designated Body will assess the adequacy of the ATR and supporting documents.
   - If deficient, the complaint is reopened and sent back to the entity for revised response within a stipulated time.
3. **Second Review of the Complaint**
   - If the revised reply is still unsatisfactory, the Designated Body will conduct a second-level review.
   - After this, if the issue persists, the complaint may be escalated to SEBI for further regulatory intervention.
   - The Designated Body ensures time-bound closure and resolution at this stage.
4. **SCORES Authentication for Registered Intermediaries and Market Infrastructure Institutions**
   - All registered intermediaries and market infrastructure institutions must obtain authentication for access to the SCORES portal.
   - They must regularly monitor complaints and update resolution status in a timely manner.
5. **SCORES Authentication for Companies Intending to List on Recognized Stock Exchanges**
   - Companies intending to list must obtain SCORES authentication before listing their securities.
   - Stock exchanges are responsible for verifying that such companies are SCORES-compliant.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

6. **Access to SCORES Portal and Responsibilities of Designated Bodies**

   Designated Bodies such as stock exchanges and depositories are given access to the SCORES portal to:

   - Monitor complaint resolution timelines
   - Reopen complaints, if improperly closed
   - Submit compliance status reports to SEBI
   - They are key in the two-level review mechanism of investor complaints.

7. **Action for Failure to Redress Investor Complaints by Listed Companies**

   If a listed company fails to redress grievances in a timely and satisfactory manner, SEBI may initiate actions including:

   - Issuance of warnings
   - Freezing of promoter shareholding
   - Monetary penalties under SEBI regulations
   - Persistent non-compliance may also attract prosecution or suspension from trading platforms.

Answer 4(b)

Benefits of Online Dispute Resolution (ODR)

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

1. **Cost effective**

   The economic burden of dispute resolution often turns the process itself into a punishment and thereby hinders access to justice. In this light, ODR offers a cost-effective mode of dispute resolution for the disputants as well as the Neutrals. Further, ODR has the potential to reduce legal costs, by way of reduced time for resolution and by doing away with the need for legal advice in select categories of cases. Apart from these tangible costs, there are other indirect costs, often faced by enterprises, on account of lengthy litigation proceedings. For instance, enterprises see loss of productive time, loss in wellbeing of the individuals, loss in investor confidence, reduced investments and consequently slower economic growth. While all these impacts cannot be completely remedied by ODR, it can help in mitigating them and therefore prove to be cost effective.

2. **Convenient and quick**

   Issue: The pendency of cases in Courts across India has been one of the major challenges for the justice system. As per the India Justice Report, 2019, in 21 States and Union Territories, cases in District Courts remain pending for 5 years on average or more. Excessive adjournments, vacancy in judicial and administrative staff, and complex processes involving multiple participants are some of the major reasons for such pendency.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

How ODR is solving such issue: ODR can address such delays by providing a faster and more convenient process for resolution of disputes. In itself, ADR employs simpler procedures and a fixed timeline for processes leading to efficient dispute resolution. To add to such benefits, ODR eliminates the need for travel and synchronisation of schedules. This reliance on asynchronous communication, allows parties to submit their arguments intermittently, or follow a 'documents-only' process. Not requiring the physical presence of parties also reduces the need for travel thereby especially benefitting parties involved in cross border disputes. Similarly, use of ODR within businesses such as e-commerce entities also provides consumers a one-stop avenue to resolve their disputes thereby making dispute resolution quicker and more convenient.

3. **Allows for customisable processes**

   Over the past few years, ADR has seen a lot of variants emerge, that go beyond the traditional ADR processes such as arbitration and mediation. Some of the hybrid variants include med-arb, med-arb-med, arb-med-arb. ODR's integration with such non-traditional ODR processes and use of artificial intelligence can lead to limitless possibilities in terms of the types of models that can be developed. Thus, ODR can allow for multi-door dispute resolution through curated and customised process for certain classes of cases. This in turn, can make the dispute resolution process more cost effective and convenient for the user.

4. **Encourages dispute resolution**

   ODR can contribute significantly to improve access to a variety of dispute resolution processes by addressing major concerns such as lack of access to physical courts or ADR centres, cost of dispute resolution as well as the barriers due to disabilities. Since ODR tools such as online negotiation and mediation are premised on mutually arriving at an agreement, they make the dispute resolution process less adversarial and complicated for the parties. Resolving disputes in the comfort of the user's own homes can make the dispute resolution process feel more accessible. This improvement in the overall experience can encourage more parties to opt to resolve their disputes through such formal means as opposed to not agitating their rights at all.

5. **Limits implicit bias caused by human judgment.**

   With the increased awareness regarding racial, caste and gender justice, there have been some concerns regarding the impact of biases, prejudice, and stereotype on decision-making processes and outcomes. Studies have identified that implicit bias and anxiety to communicate with members of different communities can influence the outcome of mediation. ODR processes can lessen the unconscious bias of the Neutral while resolving disputes. ODR Platforms, especially those based on texts and emails, detach audio-visual cues relating to the gender, social status, ethnicity, race, etc. and help in resolving disputes based on the claims and information submitted by the disputing parties, rather than who these parties are.

   That said, while ODR could indeed limit biases arising from human interactions, ODR stands the risk of introducing new biases through the use of artificial intelligence.

Answer 4(c)

The facts of the given situation are similar to the case of *TDM Infrastructure (P) Ltd. v. UE Development India (P) Ltd.*

The Supreme Court of India in this case, while determining whether an arbitration is a domestic or a foreign arbitration ruled that a company which is incorporated in India, has the Indian nationality for the purpose of Arbitration and Conciliation Act, 1996. It therefore cannot be said that where both the parties who get into an arbitration agreement and are companies registered in India, the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

arbitration agreement between them be referred to as International Commercial Arbitration under Section 2(1) (f) of the Arbitration and Conciliation Act, 1996.

"An arbitration is considered to be 'international' if (in the sense of the Model Law) it involves parties of different nationalities, or it takes place in a country that is 'foreign' to the parties, or it involves an international dispute.

Nonetheless, a caveat must be entered to the effect that such arbitrations will not necessarily be universally regarded as international. If a question arises as to whether or not a particular arbitration is 'international', the answer will depend upon the provisions of the relevant national law."

The Arbitration and Conciliation Act, 1996 defines an International Commercial Arbitration under Section 2(f) as follows:

"International commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is-

i. an individual who is a national of, or habitually resident in, any country other than India or,

ii. a body corporate which is incorporated in any country other than India; or

iii. an association or a body of individuals whose central management and control is exercised in any country other than India, or

iv. the Government of a foreign country

Upon a perusal of the definition provided above, in a simple language, an international commercial arbitration means the disputes settled through arbitration which involves parties that transcend the national boundaries.

On the other hand, a domestic arbitration is one where the arbitration takes place in India, the subject matter of the contract is in India, the merits on which the dispute exists between the parties and the procedure that is to be applicable for the arbitral proceedings is governed by the local laws of India. For example, Switzerland determines the nature of the arbitration being international or domestic on the basis whether at the time when the arbitration agreement was concluded between the parties, at least any of the parties was not domiciled or habitually resident in Switzerland.

Therefore, Alpana Tech is not likely to succeed.

OR (Alternate Question to Q. No. 4)

Question 4A

(i) Sterling Minerals Ltd entered into a contract with Nem Infrastructure Private Ltd for excavation work at a predetermined fixed rate, explicitly excluding any cost escalations.

Due to unforeseen market changes, Nem Infrastructure sought additional compensation, which Sterling Minerals refused, citing the strict contractual terms. The dispute was referred to arbitration, where the arbitrator awarded additional payments beyond the agreed rate. Sterling Minerals challenged the award, arguing that the arbitrator had exceeded jurisdiction by disregarding the contractual provisions.

With reference to a judicial precedent, comment whether the contention of Sterling Minerals is justified.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(ii) Onko Metals Inc., a foreign supplier, entered into a contract with Premo Copper Ltd., an Indian company, for the supply of raw materials. The contract incorporated a multi-tier dispute resolution clause, stipulating that any disputes would first be arbitrated in India, with a provision for further arbitration in Singapore if necessary. Initially, the business relationship between the parties was smooth, and contractual obligations were being fulfilled without issues. However, disputes arose later regarding alleged breaches of contractual terms, leading to arbitration proceedings. The first arbitration, seated in India, ruled in favor of Premo Copper. Dissatisfied with the outcome, Onko Metals invoked the second arbitration in Singapore, as permitted under the contract, which resulted in an award in its favor. Premo Copper challenged the enforceability of the second arbitral award in India, arguing that the dual arbitration mechanism is legally unsustainable. It contended that allowing multiple arbitration proceedings over the same dispute undermines finality in arbitral awards and creates legal uncertainty.

Additionally, Premo Copper asserted that conflicting arbitral awards could lead to enforcement challenges and inconsistencies in international commercial arbitration.

Analyse the validity and enforceability of multi-tier arbitration clauses in context of a settled case law.

(5 marks)

(iii) Div Studios Ltd entered into an agreement with Astra Broadcasting, a government- owned media network, to produce a reality show. Despite initial approval, Astra Broadcasting later refused to air the show, leading Div Studios to initiate arbitration. During the arbitration proceedings, Div Studios sought to amend its statement of claims to include additional financial losses incurred due to pre-production expenses such as research, scripting, and hiring production staff. The arbitrator rejected the application, ruling that the amendments constituted new claims barred by limitation. Div Studios challenged this decision before the High Court, arguing that the amendments were mere clarifications rather than fresh claims.

With reference to judicial precedent, comment whether Div Studios will succeed ?

(5 marks)

Answer 4A(i)

In this case, the arbitrator awarded additional compensation to Nem Infrastructure Pvt. Ltd., despite the contract with Sterling Minerals Ltd. having a fixed rate clause that explicitly excluded cost escalations. Sterling Minerals challenges the award on the ground that the arbitrator exceeded his jurisdiction by ignoring the contractual provisions.

As per the principles laid down in *ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705*, if an arbitral award is passed in contravention of the terms of the contract, it amounts to a patent illegality and can be set aside under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 for being in conflict with the public policy of India.

Further, in *Associate Builders v. DDA, (2015) 3 SCC 49*, the Supreme Court held that while arbitral tribunals are not courts of equity, they are bound by the contract. Any award that ignores or rewrites the terms of the contract amounts to a jurisdictional error and violates the public policy ground of patent illegality.

Even in *Rajasthan State Mines and Minerals Ltd. v. Eastern Engineering Enterprises, (1999) 9 SCC 283*, the Court held that arbitrators derive their jurisdiction from the contract and must act within its four corners. They cannot award a claim that is expressly barred by the contract.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

In the present case, the contract between Sterling Minerals and Nem Infrastructure clearly excluded any cost escalations. The arbitrator's award of additional compensation overrides this express bar, amounting to a disregard of the contractual limitation. Thus, the arbitrator has exceeded the scope of authority granted under the arbitration agreement.

In light of the above precedents, the contention of Sterling Minerals Ltd. is justified. The arbitrator acted beyond jurisdiction, and the award is liable to be set aside under Section 34 on the ground of patent illegality and violation of public policy.

Answer 4A(ii)

The facts of the given situation is similar to the case *M/s Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.*

In this case, Centrotrade Minerals & Metal Inc., a U.S.-based company, entered into a contract with Hindustan Copper Ltd. (HCL) for the supply of copper concentrate. The agreement included a two-tiered arbitration clause, allowing initial arbitration under Indian Council of Arbitration (ICA) rules in India, with an option to appeal through a second arbitration under International Chamber of Commerce (ICC) rules in London. A dispute arose over the quantity of delivered goods, leading to arbitration in India, where the tribunal ruled in favor of HCL with a nil award. Dissatisfied, Centrotrade invoked the second-tier arbitration in London, where the ICC arbitrator ruled in its favor, awarding around $1.5 million.

HCL challenged the validity of this dual-arbitration structure, leading to prolonged litigation in India. While the Calcutta High Court initially upheld the enforcement of the ICC award, a Division Bench later set it aside, terming the conflicting awards as "mutually destructive." The matter reached the Supreme Court of India, which, in a 2017 judgment, upheld the validity of two-tiered arbitration, reinforcing the principle of party autonomy. In 2020, the Court ruled in favor of enforcing the London ICC award, emphasizing minimal judicial interference in foreign arbitral awards. This case set a significant precedent in Indian arbitration law, strengthening India's pro-arbitration stance and reinforcing its obligations under international arbitration frameworks.

Two Tier Arbitration means in case an award given by a sole arbitrator it would be appealed to an Arbitral Tribunal consisting of a panel of three arbitrators or a higher odd number. This concept is permissible subject to having a clause to the effect in the arbitration agreement. In that event, the award given by the sole arbitrator cannot be enforced and after exhausting the appeal before the panel of arbitrators, the award so rendered by the said panel will be enforceable subject to the application of provisions under Section 35 and 36 of the Arbitration and Conciliation Act, 1996. A three Judges bench of the Hon'ble Supreme Court of India delivered a judgment in *M/s Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd* upholding the validity of such constitution of appellate Arbitral Tribunals.

Answer 4A(iii)

The facts of the given situation are similar to the case, *M/S Cinevistaas Ltd. vs M/S Prasar Bharti*.

Facts : The Petitioner, Cinevistaas Ltd., had undertaken production of a game show the telecast of which was approved by Prasar Bharti, which is the public service broadcaster established under a statute. When Prasar Bharti informed Cinevistaas that the show would not be aired, the latter triggered arbitration and a sole arbitrator was also appointed by the High Court of Delhi upon an application made by Cinevistaas.

During the pendency of the arbitration, Cinevistaas moved an application before the arbitrator seeking permission to correct two claims in its statement of claims. Through the correction, Cinevistaas sought to increase the claims regarding losses incurred on account of concept development, research scripting and appointing technicians.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

This application was dismissed by the arbitrator on 08.08.2009 on the ground of limitation. The arbitrator held that the changes sought to be made by the application constituted additional claims and that the application for incorporating such additional claims, was barred by limitation. It was this order of the arbitrator that was challenged before the High Court.

Sequitur by the Court:

- Arbitral proceedings are not meant to be dealt with in a straitjacket manner. Arbitral proceedings cannot also be conducted in a blinkered manner. There could be various situations wherein, due to inadvertent or other errors, applications for amendments/ corrections may have to be moved. So long as the disputes fall broadly within the reference, correction and amendments ought to be permitted and a narrow approach cannot be adopted.
- In the facts of this case, it is clear that the quantification of claims was done correctly in the notice invoking arbitration, in the application under Section 11 as also in the writ petition filed by the Petitioner. The rejection of the additional claims has in fact resulted in greater delay rather than expeditious disposal. The bona fides of the Petitioner are not in question. Rejection of additional claims by the impugned order have all the trappings of an award and hence the Section 34 petition is clearly maintainable.
- It is, accordingly, held that the present petition is maintainable. Additional claims having been raised in the first place in the notice invoking arbitration, the claims are not time barred by limitation as the commencement of arbitral proceedings is governed by Section 21 of the Act which stipulates that the notice invoking arbitration constitutes commencement. Amended claim petition is, therefore, directed to be taken on record.

In view of the above discussion, it may be said that Div Studios is likely to succeed.

PART-II

Question 5

Mr. Salman and Ms. Ria, who met via mutual marriage broker namely Mr. Nikah. Families of both Mr. Salman and Ms. Ria were preparing for their upcoming wedding, the invitation cards were printed, dates were decided, hotels were paid advance money and what not, everything seemed to be going smoothly until disagreements arose over the financial responsibilities for the wedding festivities, specifically for the ring ceremony and the main wedding event.

As tensions escalated and a resolution seemed elusive, rumours spread that Ria's family was considering finding another match for their daughter. This threat of breaking off the relationship escalated the conflict, leading both parties towards a costly and emotionally draining breakup. Not only would they have to invest more resources in finding new matches, but all the preparations made for the wedding would go to waste.

Thereupon, Mr. Nikah was being asked by both the parties to find someone new for them since they had a truce with their previous match. At this, Mr. Nikah introduced Mr. X, an expert in mediation and conciliation matters with both the parties to arrive at some settlement. Mr. X acted as a neutral third party; brings both sides together for a facilitated discussion. Initially, ego and unresolved grievances hinder progress, and the impasse remains unchanged. However, Mr. X didn't give up. Recognizing the need for separate conversations to uncover underlying concerns, one day Mr. X meets with Salman's family privately and a day after with Ria's family.

With a deeper understanding of each side's perspective, Mr. X requests both the families to meet again and have a constructive dialogue. After hours of discussion, facilitated by Mr. X insights and

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

interventions, a breakthrough occurs. Both families agree on a compromise : the bride's family will cover the expenses of the ring ceremony, while the groom's family will handle the main wedding function.

In the background of the above, answer the following :

(a) Discuss the important advantages of mediation in arriving at a compromise between the parties.

(b) When a court can disqualify a mediator ?

(c) Before sitting with the parties, Mr. X was required to do his homework. What should be the procedure of mediation of Mr. X ?

(5 marks each)

Answer 5(a)

Important Advantages of Mediation in arriving compromise

According to the Mediation and Conciliation Project Committee, Supreme Court of India Following are the advantages: Mediation is well suited to resolve a conflict because-

1. Informal - Attorneys are not required because the process is informal and flexible. There are no witnesses and no formal rules of evidence.
2. Confidential - Mediation is a private process. Any information revealed during the mediation will not be disclosed by the mediators. The sessions are neither taped nor transcribed. Mediators destroy any notes they took during the mediation session at the end of the session.
3. Simple and inexpensive - Mediation is an option to consider when parties want to get back to business and their lives. Mediation generally takes less time to complete, allowing for a faster resolution than investigation.

Moreover, mediation generally produces or promotes- Increased level of party control- Parties who negotiate their own settlements have a greater degree of control over the outcome of their dispute. In the process, all parties have an equal say. There is no finding of fault; rather, the parties reach a mutually acceptable resolution to their dispute.

- Relationship maintenance. Many conflicts arise as a result of ongoing work relationships. Mediated settlements that address all parties' interests frequently preserve working relationships in ways that a win/lose decision-making procedure would not. Mediation can also help to make the end of a working relationship more amicable.
- Results that are mutually satisfactory- Parties are generally more satisfied with solutions that they helped to develop rather than solutions imposed by a third-party decision maker.
- Agreements that are both comprehensive and customised - Mediated agreements frequently aid in the resolution of procedural and interpersonal issues that are not always amenable to legal resolution. The parties can tailor their agreement to their specific situation and attend to implementation details.
- A Foundation for Future Problem Solving - If a subsequent dispute arises after a mediation resolution, parties are more likely to use a cooperative problem-solving forum to resolve their differences rather than an adversarial approach.

Further, Mediation has no effect on the parties' legal rights, and they can use it before filing a case in court or at any stage of their litigation in court because the process is completely confidential and cannot be used as evidence in court. As a result, if Mediation fails, the parties' rights in Court remain unaffected.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 5(b)

Disqualifications in Court Annexed Mediation

A person will be disqualified from appointment as mediator if:

- any person who has been adjudged insolvent or is of unsound mind;
- any person against whom criminal charges involving moral turpitude have been framed by a criminal court and are pending;
- any persons who has been convicted by a criminal court for any offence involving moral turpitude;
- any person against whom disciplinary proceedings have been initiated by the competent authority or who has been punished in such proceedings;
- such other categories of persons as may be notified by the High Court;
- any person who is interested or connected with the subject-matter of dispute or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing;
- any legal practitioner who has or is appearing for any of the parties in the suit or in other suit or proceedings.

In accordance with Delhi High Court Mediation - Rule 7, when a person is contacted regarding his potential appointment as a mediator or conciliator, he is required to inform the parties in writing of any circumstances that would give rise to a reasonable doubt about his independence or impartiality. After being appointed as a mediator or conciliator, if such a factor emerges, it must be immediately notified to the parties in writing. The rules also provide that while appointing mediator/ conciliator the Court concerned shall ensure that the person to be appointed is not interested or connected with the subject matter of the dispute and is not related to any of the parties or to those who represent them. However, the parties shall be free to waive such objection in writing. While choosing a mediator or conciliator, the court in question must make sure the candidate has no stake in or connection to the dispute and is unrelated to any of the parties or the legal counsel for them. The parties may, however, expressly waive such objection in writing.

In view of the above, the court can disqualify a mediator according to these ground.

Answer 5(c)

Procedure of Mediation

A Mediation is a structured process designed to assist parties in resolving disputes. Here are the typical steps involved in mediation:

- Introduction: The mediator will introduce themselves and explain the mediation process to the parties involved. They will also explain the role of the mediator and the ground rules for the mediation process.
- Opening statements: Each party will have the opportunity to make an opening statement to explain their perspective on the dispute.
- Information gathering: The mediator will gather information about the dispute from both parties. They will ask questions and clarify any misunderstandings to ensure they have a clear understanding of the issues at hand.
- Identifying issues: The mediator will help the parties identify the issues in dispute and prioritize them.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

- Generating options: The parties will brainstorm and generate potential solutions to the issues in dispute. The mediator will help facilitate this process and encourage the parties to consider a wide range of options.
- Negotiation: The parties will engage in negotiations to reach a mutually acceptable agreement. The mediator will assist in this process by helping the parties to communicate effectively, explore potential compromises and consider the consequences of their decisions.
- Closure: Once an agreement has been reached, the mediator will summarize the terms of the agreement and ensure that both parties understand and agree to them. The parties will then sign a written agreement.
- Follow-up: The mediator may follow up with the parties after the mediation to ensure that the agreement.

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

Question 6

Amaze Ltd. announced its acquisition of W. Foods Market Ltd., a high-end grocery chain, for $13.7 billion, which was one of the largest deals in the retail industry. The negotiation between Amaze Ltd. and W. Foods Market Ltd is a well-known case, which has been analysed by various sources. One of the primary issues in the negotiation was the price at which W. Foods Market Ltd was willing to sell. Initially, Amaze Ltd. offered $41 per share, but W. Foods Market Ltd rejected the offer as it was considered too low. However, negotiations continued until Amaze Ltd. increased its offer to $42 per share, which W. Foods Market Ltd ultimately accepted.

Another issue in the negotiation was the integration of Amaze Ltd.'s online retail and distribution platform with W. Foods' brick-and-mortar stores. Amaze Ltd. wanted to use W. Foods' physical locations as distribution centers for its online grocery business. However, W. Foods Market Ltd was concerned about maintaining its unique brand identity and customer experience. To address this issue, Amaze Ltd. agreed to allow W. Foods Market Ltd to continue operating as a separate brand, with its own management team, purchasing practices, and quality standards.

There were also concerns about the impact of the acquisition on W. Foods' employees, particularly given Amaze Ltd.'s reputation for prioritizing efficiency and automation over human labour. To address these concerns, Amaze Ltd. committed to maintaining W. Foods' employee benefits and job levels and pledged to continue supporting local suppliers and farmers. Additionally, Amaze Ltd. announced plans to introduce new technology to improve operational efficiency, which would create new job opportunities for W. Foods Market Ltd employees.

Overall, the negotiation between Amaze Ltd. and W. Foods Market Ltd was complex and multifaceted, involving issues related to price, branding, and employee concerns. By reaching a successful agreement, Amaze Ltd. and W. Foods Market Ltd were able to position themselves as key players in the evolving grocery market, while also addressing the concerns of stake- holders and employees.

In the background of the case, answer the following :

(a) What are the elements of the negotiation process ?

(b) What are the steps during the negotiation process ?

(c) What are the negotiation techniques and styles for negotiation practitioners ?

(5 marks each)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 6(a)

Seven elements of Negotiation

Negotiators can successfully avoid deadlocks. For a successful negotiation process, it is important that various principles must be followed to eliminate selfish bargain by replacing it with principled bargain. According to the Harvard Negotiation Project, there are seven elements of negotiation.

- Communication - The parties must talk to each other while negotiating as the success of negotiation depends upon communication choices. Miscommunication or vague communication may lead to misunderstandings. This misunderstanding may prejudice the relationship between the parties. Therefore, it is important to communicate effectively.
- Relationship - Parties must deal with one another while negotiating, even if this is a one-time transaction and they have no past or ongoing relation. The relationship can be strengthened by building rapport with the parties. Remove people from the problem. The emphasis should be on how to resolve the dispute without destroying the relationship.
- Interests - Concerns, objectives, needs, desires or fears must be addressed and satisfied in some way if the parties are to reach a negotiated agreement. The interests are often hidden and unspoken. A good negotiator always addresses the fears of the other party, thereby building a rapport which is essential for a successful negotiation.
- Options - The various possible ways the parties could work together so their interests are included and satisfied to some degree in a negotiated agreement are called options. The success of negotiation depends upon the number of options the parties propose.
- Options come from brainstorming - While brainstorming all the ideas must be recorded. Once the ideas are recorded they must be evaluated in terms of feasibility and thereafter they must be proceeded in negotiation.
- Legitimacy - Objective standards (e.g. market value, precedents, industry practices) and fair procedures (e.g., appraisals, bidding, split-the-difference) that can be used to evaluate options. The success of the negotiation depends upon the fact that the negotiator follows a fair procedure. Being fair is not enough. The fairness has to be rather manifested in the negotiator's approach and dealing.
- Alternatives - The range of possible things a party can take from the table are the alternatives. As a lawyer does not depend on single argument, similarly, a negotiator should also not depend upon a single alternative. This helps in making a decision as to whether to agree to the proposal given by the opposite party or not. If there are no alternatives a person will be forced to settle in the negotiation. The attempt to settle the dispute depends upon BATNA.

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

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

  MLATNA (Most Likely Alternative to a Negotiated Agreement) - It is the most likely alternative in case of a dispute if the BATNA is not achieved. This is known as the second best alternative that the parties to the dispute would resort to settle.
- Commitment - Any preconditions of the parties that must be met in order to negotiate and reach a final, binding agreement. A commitment can range from meeting at a particular place at a particular time.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 6(b)

Steps during Negotiation

The outcomes of the negotiation depend upon how well a negotiator prepares for it. A negotiation starts when the intention of the parties gets to "problem solving" and not holding onto their ego and clashes. When the parties take a step for resolving their disputes through negotiation, the responsibility of the negotiator to resolve their dispute increases. Therefore, a negotiator should prepare well in advance for the negotiation so that desired goals can be achieved through proper communication.

(i) Preparation

- Try to control the outside influences. Negotiation should happen in a quiet and calm atmosphere with no interference.
- Give proper introduction to the parties in Negotiation.
  - Describe the process to the parties.
  - Discuss the time available.
  - Lay down ground rules.
- Understand the interests and expectations of the parties to the Negotiation.
- Assess the nature of relationship of the parties.
- Identify the issues to be discussed.

(ii) Information Gathering

- Actively Listen the parties.
- Ask questions.
- Identify the areas of Agreement and Disagreement between the parties.
- Set the stage for problem solving.
- Study their responses to initiate the resolution.
- While having a "problem - solving approach" share the information with the parties after taking caution.
- Explain the parties rationale and benefit of resolving the dispute.
- Segregate the information to come to solution.

(iii) Bargaining

- Deal with one issue at a time.
- Compare the proposals given by the parties.
- Leave room for concessions.
- Don't lose track of underlying interests.
- Don't apply pressure on the parties for resolution. Remain Party Centric.
- Break impasse between the parties.
- Don't rush conclusions.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 6(c)

Negotiation Techniques and Styles

While negotiation are going on different styles and strategies are adopted by the negotiators to reach the settlement and they depend upon the way parties act during the negotiation.

1. **Competing style:** This is an assertive and non-cooperative style in which the attitude is "I win, you lose". The participant values his/her own concerns and needs over those of others. He/she pursues his/ her own concerns at the other person's expense using whatever power seems appropriate to win his/ her position. He/she is forthright and conveys what he/she expects from others. Competing might also mean standing up for your rights or defending what you believe is correct.
2. **Accommodating style:** This is an unassertive and cooperative style in which the attitude is "You win, I lose". The participant values concerns of others equally as his/her own needs. He/she values relationships equally as his/her own concerns and enjoys pleasing and making others happy. He/she neglects his/her own concerns to satisfy the concerns of the other person; there is an element of self sacrifice-in this mode. Accommodating might take the form of selfless generosity or charity, obeying another person's order when one would prefer not to, or yielding to another's point of view.
3. **Avoiding style:** This is an unassertive and non-cooperative style in which the attitude is "I don't care if I win or lose". The participant stays away from the issues over which the conflict is taking place and from the persons they are in conflict with. He/she does not address the conflict. Avoiding might take the form of diplomatically sidestepping the issue, postponing an issue until a better time or simply withdrawing from a threatening situation. He/she believes it is easier to withdraw (physically and psychologically) from a conflict than to face it.
4. **Compromising style:** This is intermediate in both assertiveness and cooperativeness where the attitude is "I win some, you win some". The participant values his/her own as well as others' concerns, and values fairness and equality. He/she recognizes that both have to give up something to receive something. He/ she aims to find some expedient, mutually acceptable solution, which partially satisfies both parties. They seek solutions in which both sides gain something and they will give up a part of their goal and relationship in order to find agreement for the common good. Compromising might mean splitting the difference, exchanging concessions or seeking a quick middle-ground position.
5. **Collaborating style:** This is an assertive and cooperative style in which the attitude is "You win, I win". The participant values discussion of the conflict and desires to jointly solve the problem. He /she values his/ her own concerns as well as those of others and aims to work towards a deeper level of clarity. He/she attempts to work with the other person to find some solution that fully satisfies the concerns of both persons. Collaborating between two persons might take the form of exploring a disagreement to learn from each other's insights, concluding to resolve some condition which would otherwise have them competing for resources, or confronting and trying to find a creative solution to an interpersonal problem.

OR (Alternate Question to Q. No. 6)

Question 6A

(i) Plethora Private Ltd and Count Enterprises are embroiled in a contractual dispute and have chosen mediation as their resolution method. If the parties reach a mutual agreement, the mediator will document the terms in a settlement that is confidential, binding, and enforceable. However, if no consensus is achieved, the parties can either accept the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

mediator's recommendation - which will become binding unless explicitly declined within a predetermined period or opt for a final decision that is immediately enforceable.

As a legal advisor, evaluate these two scenarios and explain the processes by which the mediator ensures that the resolution is enforceable.

(5 marks)

(ii) "The feature of remaining secret makes the 'mediation' different from court litigation procedure as well as different from other modes of alternate dispute resolution mechanism." Discuss the importance of confidentiality in mediation and examine exceptions, if any.

(5 marks)

(iii) 'Cross-cultural mediation can be very difficult for some practitioners and alternately be very beneficial to others.' Comment in the background of parties to international negotiations.

(5 marks)

Answer 6A(i)

The process by which the mediator ensures that the resolution is enforceable

If there is an agreement: The mediator will write up what both parties agreed to as a Record of Settlement. Once it is signed by the parties and the mediator, this document becomes confidential, binding, final and enforceable through the courts. The mediator will give a copy of the document to the parties. Both parties must then do what they agreed to do when they signed the document.

If the parties cannot agree on a solution: The parties may then: ask the mediator to make a recommendation. If the recommendation is not declined by either party (before a specified time limit), it will become final, binding and enforceable, or ask the mediator to make a decision. The decision will be final, binding, and enforceable.

All of the above factors also constrain the parties involved in Mediation and prevent them from arriving at agreements, or resolution of their conflict that may impinge on their rights, or those of another person or that may have a significant impact on the needs or operational requirements.

In mediation there is no assurance of a goal. It tends to be viewed as a costly cycle if a result can't be reached. It is subsequently just advantageous if the two players are set up to settle. A few people need to 'have their day in court' and feel a feeling of injustice if the cycle is not seen through until the end.

Mediation works as a tool for both the parties in order to find a safe way out of disputes and conflicts that arise.

Answer 6A(ii)

The conversation among the parties as well as the mediator happens to be there behind the scenes. The process is non-public i.e. no one from public is allowed to see any single glimpse of the dealings of mediation. The matter remains exclusively confidential and private. This feature of remaining being secret makes the 'mediation' different from court litigation procedure as well as different from other modes of alternate dispute resolution mechanism. The disputing parties also expect full secrecy in the process from a mediator. Hence, mediator is bound to preserve two forms of secrecy in mediation: i. Secrecy of parties' dispute from public ii. Secrecy of information given by one party from the other party. But however, in latter type of secrecy the mediator may disclose the information given by one party to another only with the prior approval of party who gave the information and if the situation demands such disclosure. All the rules with regard to confidentiality clause in mediation shall be deliberated among the parties and mediator before they initiate with the proceedings.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

If such prohibitions are imposed, then it may affect the behaviour of mediator to accomplish his task and he will not be in a position to carry out mediation in an appropriate and valuable manner. Therefore there are some exceptions to the confidentiality of mediation process which are as follows:

- When the conflicting parties give their written consent;
- When there are some statutory obligations to be followed;
- When mediator is entailed to prepare a written brief or summary or report of mediation;
- When there are justifiable grounds to believe that disclosure is essential in order to avert any danger or injury to any person or property;
- When the information is of qualitative or quantitative nature which is further required to be used for research or evaluation purposes. Considering these exceptional situations in mediation, a mediator conducts private caucuses with the parties to discuss their issues and must inform the parties about the restraints to confidentiality during such sessions.
- A mediator must make it certain that confidentiality is preserved in the storage as well as disposal of mediation records, documents, files etc. as well.

Answer 6A(iii)

Cross-cultural Mediation can be very difficult for some practitioners and alternately be very beneficial to others. In Arbitration and Litigation, one party win over the other. But in Mediation, both parties can win. Therefore, the language and preferences of people depending upon the culture can influence the outcome of the Mediation.

Intercultural Mediation necessitate a mediator to address cultural changes into consideration. For example: A practice can be acceptable in one culture and not acceptable in the other. In this situation, a mediator should address this difficulty and should try to bring parties to amicable resolution of Dispute. Language is also one barrier in any mediation process. It can be very easy to bring the parties to an agreement is their language are same. But, bringing the parties to an agreement when the other does not understand the language is a difficult task.

Parties to international negotiations are also known as actors. They include states, non-state actors including growing number of non-governmental organizations (NGOs), business firms, international organizations, and other institutions, who are drawn into the process because they are concerned in one way or another with the positive or negative values represented by the issues put on the agenda. The procedures and fora for modern international negotiation are numerous and varied. The increase in complexity year by year, and their forms and functions are evolving in adaptation to the changing needs of a rapidly expanding community of nations. Since the end of World War II, conference diplomacy in particular has significantly widened and diversified the approaches to international negotiation. It has also stimulated bilateral diplomacy. The fact that a party to a dispute or situation is now able to bring its cause to an international forum frequently operates to induce countries to take bilateral diplomacy much more seriously than they did before the era of continuous opportunities to resort to conference negotiation.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

GST AND CORPORATE TAX PLANNING

Elective 2 Paper 7.2

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

NOTE : *Answer All Questions.*

Part-A

Question 1

(*a*) Samrat Pvt. Ltd. is a paper manufacturing company having a GST registration from Jaipur (Rajasthan). Its manufacturing unit is situated in Ahmedabad. It gives the following information pertaining to April 2024 :

(1) Inter-State supply of paper manufactured by Samrat Pvt. Ltd. (invoice value : ₹ 40,00,000).

(2) Intra-State supply of paper manufactured by Samrat Pvt. Ltd. (invoice value : ₹ 10,00,000).

(3) Rent of agricultural land let out to ITC Ltd. (it is used for agriculture purposes by ITC Ltd., rent of April 2024 being ₹ 11,00,000).

(4) Rent of commercial property located near Uttar Pradesh let out to RK Mall (rent of April being ₹ 6,00,000).

(5) Stock transfer without consideration to its branch at Kota (Rajasthan), Branch has separate GSTIN for conveyance of accounting and billing. Value under section 15 is ₹ 20,000 (Intra-State).

The above figures are exclusive of GST @ 18%. Besides, Company gives the following information :

- A computer was purchased from a local supplier for ₹ 3,20,000 + GST rate : 18% on 1st September, 2023 for office purposes Full input tax credit was taken in September 2023. However, on 18th April, 2024 it is gifted by Samrat Pvt. Ltd. to Suresh, he is a friend of managing director of Samrat Pvt. Ltd. (assume useful life of computer is 60 months).
- Advance rent of ₹ 6,00,000 pertaining to commercial property for May 2024 is received on 29th April, 2024 (GST is not received separately, it will be paid by the tenant only during May 2024).
- On 25th April, 2024, Samrat Pvt. Ltd. pays advance consultancy fee to a consultant of ₹ 1,00,000. The consultant will provide his service only during July 2024. Invoice will be issued after completion of job.
- Balance available in electronic credit ledger on 1st April, 2024 : ₹ 11,000 (CGST), ₹ 8,01,000 (SGST) and ₹ 2,91,000 (IGST).
- Purchase of inputs during April 2024 from different parties in Andhra Pradesh (invoice value : ₹ 1,00,000 + GST : 5%).
- Purchase of inputs during April 2024 from different parties in Jaipur (invoice value : ₹ 80,000 + GST : 12%).

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Assume that conditions for claiming input tax credit (including conditions imposed by rule 36(4) are satisfied.

On the basis of above case study in the context of CGST Act, 2017, you are required to :

(i) Calculate the total GST on outward supply for the month of April, 2024.

(*5 marks*)

(ii) Calculate the total input tax credit available for the month of April, 2024.

(*5 marks*)

(iii) Calculate the net GST liability payable for the month of April 2024 and also calculate the balance left in electronic credit ledger on April 30, 2024, if any.

(*5 marks*)

(*b*) Rajat Limited, a manufacturing concern of Rajasthan having aggregate turnover of ₹ 120 lakhs in financial year 2023-24 have opted for composition scheme furnishes you with the following information for financial year 2024-25 :

S. No.	Particulars	**Amount in (₹)**
1.	Intra-state suppliers of goods Barium hydroxide chargeable @ 5%	20,00,000
2.	Intra-state suppliers of goods which are chargeable to GST at Nil rate	22,00,000
3.	Intra-state supply of services chargeable with 5% GST	5,00,000
4.	Interest earned on fixed deposits with banks	8,00,000
5.	Intra-state suppliers which are wholly exempt under section 11 of CGST Act, 2017	5,40,000
6.	Value of inward suppliers on which tax payable under RCM (GST rate 5%)	5,00,000
7.	Intra-state suppliers of goods Basic lead carbonate chargeable @ 18% GST	28,00,000

Determine the composition tax liability and total tax liability for the financial year 2024-25 in the context of CGST Act, 2017.

(*10 marks*)

Answer 1(a)(i)

Computation of GST on Outward supply for the month of April, 2024

Particulars	**IGST Rs.**	**CGST Rs.**	**SGST Rs.**
Inter-State supply of Goods (18% of Rs. 40,00,000)	7,20,000		

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Intra-State supply of Goods (9% of Rs. 10,00,000, 9% of Rs. 10,00,000)		90,000	90,000
Rent of Agricultural land (exempt from GST) as per S. No. 54(e) of Notification No. 12/2017-CT(Rate)		-	-
Rent of commercial property situated in Uttar Pradesh (18% of Rs. 6,00,000)	1,08,000	-	-
Advance rent of commercial property (Rs. 6,00,000 x 18 /118)	91,525	-	-
Intra- State stock transfer to Kota Branch with separate registration (Supply of goods between distinct persons in course of furtherance of business qualifies as supply even if made without consideration.) (9% of Rs. 20,000, 9% of Rs. 20,000)	-	1,800	1,800
Reversal of input credit pertaining to computer gifted to a friend [period of use from 1st September, 2023 to April 17, 2024: 7 months and 17 days, remaining useful life out of fixed life of 60 months: 52 months and 13 days, input tax credit availed: Rs. 57,600 (being 18% of Rs. 3,20,000), reversal required: Rs. 57,600 x 52/ 60. which comes to Rs. 49,920, 50% is CGST and 50% is SGST]	-	24,960	24,960
GST on Outward Supply	9,19,525	1,16,760	1,16,760

Answer 1 (a)(ii)

Computation of Total Input Tax Credit available for the Month of April, 2024

Particulars	IGST Rs.	CGST Rs.	SGST Rs.
Input tax credit			
Balance available in electronic credit ledger on April 1, 2024	2,91,000	11,000	8,01,000
Advance consultancy fee (invoice not received, input tax credit not available)	-	-	-
Purchase of inputs through inter-State supply (5% of Rs. 1,00,000)	5,000	-	-
Purchase of inputs through intra-State supply (6% of Rs. 80,000, 6% of Rs. 80,000)	-	4,800	4,800
Total input tax credit available	2,96,000	15,800	8,05,800

Answer 1 (a)(iii)

Calculation of Net GST liability payable for the month of April, 2024 and Balance available in Electronic credit ledger on April 30, 2024

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Particulars	IGST Rs.	CGST Rs.	SGST Rs.
GST payable			
GST on outward supply (as computed earlier)	9,19,525	1,16,760	1,16,760
Less: Input tax credit of IGST	(2,96,000)	-	-
Balance	6,23,525	1,16,760	1,16,760
Less: Input tax credit of CGST		(15,800)	-
Balance	6,23,525	1,00,960	1,16,760
Less: Input tax credit of SGST (balance SGST: Rs. 8,05,800 - Rs. 1,16,760 = Rs. 6,89,040)			(1,16,760)
Balance	6,23,525	1,00,960	Nil
Less: Input tax credit of SGST (Balance SGST: Rs. 6,89,040 - Rs. 6,23,525 = Rs. 65,515)	(6,23,525)	-	-
Balance payable through electronic cash ledger (due date of payment: May 20, 2024)	Nil	1,00,960	Nil
Balance left in electronic credit ledger on April 30, 2024	Nil	Nil	65,515

Answer 1 (b)

As per second proviso to section 10(1) to provide that a composition supplier may supply services of value not exceeding 10% of the turnover in the preceding financial year in a state or union territory or Rs. 5 lakh whichever is higher. Thus, Rajat Ltd. can supply services to the extent of 10% of Rs. 120 lakhs i.e., Rs. 12 lakhs.

According to explanation to section 10(1), for the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a state or union territory.

Since the value of services provided excluding interest earned on deposit is Rs. 5,00,000 which is within the limit of Rs 12 lakh, hence Rajat Ltd. is eligible for composition scheme.

Computation of Aggregate Turnover and Composite Tax

S. No.	Particulars	Amount in (Rs.)
1.	Intra state suppliers of goods Barium hydroxide chargeable @ 5%	20,00,000
2.	Intra state suppliers of goods which are chargeable to GST at Nil rate	22,00,000
3.	Intra state supply of services chargeable with 5% GST	5,00,000

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

4.	Interest earned on fixed deposits with banks (Accordingly, to explanation 2 to section 10, for the purposes of determining the tax payable by a person under this section, the expression "turnover in state or turnover in union territory" shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.)	Nil
5.	Intra state suppliers which are wholly exempt under section 11 of CGST Act, 2017	5,40,000
6.	Value of inward suppliers on which tax payable under RCM (GST rate 5%)	Nil
7.	Intra state suppliers of goods Basic lead carbonate chargeable @ 18% GST	28,00,000
	Aggregate turnover	80,40,000
	Rate of composite tax	1%
	Total Composite Tax (A)	80,400

Tax payable under Reverse Charge Basis

Value of inward suppliers on which tax payable under RCM	5,00,000
Rate of GST	5%
Tax payable under RCM (B)	25,000
Total tax liability (A)+(B)	1,05,400

Question 2

(*a*) What will be the value of taxable supply and GST payable in each of the following independent cases in accordance with the provisions of CGST Act, 2017 :

(i) Shriram Airline has sold tickets for transport of passengers to Singapore, and other foreign countries during the month of February. The total amount charges are ₹ 20 lakhs on the flight (100 tickets) of which ₹ 5 lakhs are towards passenger taxes. The applicable rate of GST is 18% (CGST 9% and SGST 9%) and above amount are exclusive of tax.

(ii) LIC of India provides you the following information for the month of March 2025 :

(1) Life micro-insurance policies where insured amount does not exceed ₹ 2,00,000 and premium collected ₹ 10,00,000.

(2) Premium collected ₹ 8,000 lakhs in variable insurance policies (80% of the amount is allocated for investment on behalf of policy-holder is given separate break up in premium receipts). Ignore GST calculation.

(iii) Ramesh is engaged in buying and selling of second-hand cars in Jaipur. During the month of January, 2025, he supplied a used car after some processing at ₹ 10,00,000 which he purchased from a customer at ₹ 10,50,000 and no input tax credit has been availed on such purchase.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(b) Shyam Ltd., a registered person, is engaged in the business of black pepper, cardamom and cinnamon. It provides following details in relation to GST paid on inward supplies procured by it during the month of March, 2025 :

S. No.	Particulars	GST (₹)
(1)	Black pepper, cardamom and cinnamon purchase for the purpose of sold to customers.	2,00,000
(2)	Electric machinery purchased for being used in the manufacturing process.	3,00,000
(3)	Motor vehicle used for transportation of the employee	1,05,000
(4)	Payment made to contractor for construction of staff quarter.	1,50,000

Determine the amount of ITC that can be availed by Shyam Ltd. for the month of March, 2025 in the context of CGST Act, 2017, by giving the necessary explanation for treatment of various items. Subject to the information given above, all the other conditions necessary for availing ITC have been fulfilled.

(*5 marks*)

(c) Vivek Ltd., a registered supplier, is engaged in the manufacture of Tanks. The company provides the following information pertaining to GST paid on the purchases made/ input services availed by it during the month of January 2025 :

S. No.	Particulars	GST Paid in (₹)
(i)	Purchase of machinery where debit note is issued	2,00,000
(ii)	Input purchased was directly delivered to Sushil, a job worker and a registered supplier	1,00,000
(iii)	Computers purchased (Depreciation was claimed on the said GST portion under the Income-tax Act, 1961)	1,50,000
(iv)	Works contract services availed for construction of staff quarters within the company premises	5,25,000

Determine the amount of ITC available to Vivek Ltd. for the month of January 2025 by giving brief explanations for treatment of various items. Subject to the information given above, all the conditions necessary for availing the ITC have been fulfilled.

(*5 marks*)

Answer 2(a)

(i)

Particular	Amount in Rs.
Basic Fare (Total Rs. 20 lakhs - Government Taxes Rs. 5 lakhs)	15,00,000
Value of taxable supply as per rule 32(3) @ 10% of basic fare	1,50,000

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

CGST @ 9%	13,500
SGST @ 9%	13,500

(ii)

Particular	**Amount in lakhs**
Life micro-insurance policies Exempt vide entry 36 of Notification No. 12/2017-CT (Rate)	Exempt
Variable insurance policies The gross premium charged from a policy holder reduced by the amount allocated in investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy at the time of supply of service (20% of Rs. 8000 lakhs)	1600
Total Taxable Value of Supply	1600

(iii) As per rule 32(5) of CGST Rules, the value of supply of second-hand goods shall be the difference between the selling price and purchase price and where the value of such supply is negative it shall be ignored. Therefore, the value of taxable supply of second-hand car (Rs. 10,00,000 – Rs. 10,50,000) i.e., Nil

Answer 2 (b)

Computation of Input Tax Credit that can be availed by Shyam Ltd. for the month of March, 2025

Particulars	**ITC (Rs.)**
Purchase of raw spices which are sold to customers (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.)	2,00,000
Electric machinery purchased for being used in the manufacturing process (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course of furtherance of his business.)	3,00,000
Motor vehicle used for transportation of employee (ITC on motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) is blocked except when the same are used for (i) making further taxable supply of such motor vehicles (ii) making taxable supply of transportation of passengers (iii) making taxable supply of imparting training on driving such motor vehicles. In the given case, since the supplier is in the business of spices, ITC on motor vehicle used for transportation of the employee is blocked credit assuming the seating capacity of motor vehicles ≤ 13 persons (including the driver)	Nil

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Payment made to contractor for construction of staff quarter [ITC is not available for works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service]	Nil
Total ITC	5,00,000

Note: The question has been solved assuming the seating capacity of motor vehicles ≤ 13 persons (including the driver).

Alternative Answer 2 (b)

Computation of Input Tax Credit that can be availed by Shyam Ltd. for the month of March, 2025

Particulars	ITC (Rs.)
Purchase of raw spices which are sold to customers (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business.)	2,00,000
Electric machinery purchased for being used in the manufacturing process (Every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course of furtherance of his business.)	3,00,000
Motor vehicle used for transportation of employee (ITC on motor vehicles for transportation of persons with seating capacity ≤ 13 persons (including the driver) is blocked except when the same are used for (i) making further taxable supply of such motor vehicles (ii) making taxable supply of transportation of passengers (iii) making taxable supply of imparting training on driving such motor vehicles. In the given case, since the supplier is in the business of spices, ITC on motor vehicle used for transportation of the employee is not covered under blocked credit assuming the seating capacity of motor vehicles > 13 persons (including the driver).	1,05,000
Payment made to contractor for construction of staff quarter [ITC is not available for works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service]	Nil
Total ITC	6,05,000

Note: The question has been solved assuming the seating capacity of motor vehicles > 13 persons (including the driver) and accordingly claimed the ITC.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 2 (c)

Determination of the amount of ITC available to Vivek Ltd. For the month of January 2025

S. No.	Particulars	(Amount in Rs.)
1	Purchase of Machinery where debit note is issued [ITC can be availed on the basis of debit note issued by the supplier in accordance with Rule 36 of CGST Rules, 2017]	2,00,000
2	Input purchased was directly delivered to Sushil, a job worker and a registered supplier [As per Explanation to Section 16(2), it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise. Thus, ITC can be availed in case the goods are directly delivered to job-worker on direction of Vivek Ltd.]	1,00,000
3	Computers purchased (Depreciation was claimed on the said GST portion under the Income-tax Act, 1961) [As per Section 16(3), where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.]	-
4	Works Contract services availed for construction of Staff quarters within the company premises [The same comes under the ambit of blocked credit u/s 17(5)(c), hence ITC shall not be admissible]	-
	Total Input tax credit available	3,00,000

Question 3

(*a*) Determine place of supply with correct legal provision in context of CGST Act, 2017 in the following independent cases as under :

(i) Anupam an employee of Rajshree Limited, Kolkata, goes on an official tour to Hyderabad and stays in a hotel there, booked in the name of company.

(ii) The contractor Vaya & Associates of Pune sub-contracted the work of construction of the building at Delhi to Ani & Associates of Mumbai, to complete the work as per the drawing and design of the Architect.

(iii) Lalit Fashions Ltd. an Indian fashion designing company registered in Jaipur hosts a fashion show at UK. The firm receives the services of Aman Ltd. of Mumabi for organizing the event.

(iv) Aryan residing in Delhi travelling with Indian Airlines is provided with the movie-on-demand service as on-board entertainment during the Kolkata Delhi leg of a Bangkok-Kolkata-Delhi flight.

(*5 marks*)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(b) Fortune Ltd. (a registered taxable person) provides the following information relating to their services for the month of November 2024 :

S. No.	Gross receipt from	Amount in (₹)
1.	Running a Boarding School (including receipts for providing residential dwelling services ₹ 12,00,000)	28,00,000
2.	Conducting private tuitions	18,00,000
3.	Education services for obtaining a qualification recognised by law of a foreign country	9,00,000
4.	Conducting modular employable training skill course, approved by National Council of Vocational training	10,00,000
5.	Renting of furnished flats for temporary stay to different persons	6,50,000

Compute the value of taxable supply and the amount of GST payable for the Fortune Ltd. in the context of CGST Act, 2017. The above receipts are exclusive of GST and GST rate is 18%.

(*5 marks*)

(c) Determine the time of supply (with correct legal provision) in each of the following independent cases in accordance with provisions of CGST Act, 2017 :

S. No.	Date of actual provision of service	Time [Date] of Invoice, Bill or Challan as the case may be	Date on which payment received
1.	11.11.2024	01.12.2024	16.11.2024
2.	11.11.2024	01.12.2024	07.11.2024 (part) and 10.11.2024 (remaining)
3.	10.11.2024	30.11.2024	07.11.2024 (part) and 17.11.2024 (remaining)
4.	10.11.2024	13.12.2024	05.11.2024 (part) and 25.12.2024 (remaining)
5.	10.11.2024	23.12.2024	13.12.2024

Answer 3 (a)

(i) The place of supply will be the Hyderabad (Telangana). This being the accommodation service is covered under section 12(3) of the IGST Act, 2017, accordingly, the place of supply shall be the location of the immovable property (i.e. hotel). The location of the recipient is irrelevant.

(ii) As per section 12(3)(a) of the IGST Act, 2017T, the place of supply towards the construction of immovable property shall be the place where such immovable property is located. Hence, the place of supply shall be the place where the immovable property is located i.e. Delhi.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(iii) As per Section 12(7) of IGST Act, 2017, the place of supply of services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events to a registered person, shall be the location of recipient.

Thus, in this case, though the service is received outside India, since service recipient is registered person, the place of supply shall be the location of the recipient, i.e. Jaipur (Rajasthan).

(iv) As per Section 12(10) of IGST Act, 2017, the place of supply of services board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

The place of supply of this service will be Bangkok (i.e., the first scheduled point of departure of the conveyance for the journey) which is outside the taxable territory, hence not liable to tax.

Answer 3 (b)

Computation of Value of Taxable Supply and GST liability

S. No.	Particular	Amount in Rs.
1	Running a Boarding School (including residential dwelling services Rs.12,00,000) Services provided by an educational institution to its students, faculty and staff are exempt from GST in terms of Entry 66 of Notification No. 12/2017-CT (Rate). Services sought to be exempted under the said entry inter alia includes the lodging services provided by the educational institution to its students as clarified by C.B.E. & C. Press Release No. 77/2017, dated 13-7-2017	Nil
2	Conducting private tuition's The exemption provided to an educational institution vide Entry 66 of Notification No. 12/2017-CT (Rate) should be in relation to: i. pre-school education and education up to higher secondary school or equivalent; ii. education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; iii. education as a part of an approved vocational education course. Thus, the Private tuition is not exempt as they do not fall within the purview of any of the above listed component.	18,00,000
3	Education services for obtaining a qualification recognised by law of a foreign country Education as a part of a curriculum for obtaining a qualification recognized by only an Indian law and not a foreign law is exempt	9,00,000

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

4	Conducting modular employable training skill course, approved by National Council of vocational training Since, Modular Employable Skill Course is an approved vocational education course and is exempt vide Entry 66 of Notification No. 12/2017-CT (Rate)	Nil
5	By taking an assumption that renting of furnished flats is not made by the educational institution to its students, faculty and staff, the service will not be exempt under Entry 66 of Notification No. 12/2017-CT (Rate). Even, the exemption under Entry 12 [applicable to residential dwelling rented to unregistered person] shall not be applicable as Short stay by different persons in furnished flats is not renting of residential dwelling	6,50,000
	Value of taxable supply	33,50,000
	GST payable @ 18%	6,03,000

Answer 3 (c)

Time of Supply (TOS) in each of the following independent cases in accordance with provisions of CGST Act, 2017:

S. No.	Date of actual provision of service	Date of Invoice	Date of receipt of payment	Time of Supply	Remarks
1	11.11.2024	01.12.2024	16.11.2024	16.11.2024	Invoice issued within 30 days but payment received before invoice.
2	11.11.2024	01.12.2024	07.11.2024 (Part) and 10.11.2024 (remaining)	07.11.2024 and 10.11.2024 for the respective amount	Invoice issued within 30 days; However, the advance has been received in two instalments before the date of completion of service. Thus, date of receipt of each such advance shall be treated as TOS. As per Explanation (i) The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
3	10.11.2024	30.11.2024	07.11.2024 (Part) and 17.11.2024 (remaining)	07.11.2024 and 17.11.2024 for respective amounts	Invoice issued within 30 days. Part payment (in the form of advance) received before issue of invoice and remaining payment received after completion of service. As per explanation (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

4	10.11.2024	13.12.2024	05.11.2024 (Part) and 25.12.2024 (remaining)	05.11.2024 and 10.11.2024 for the respective amount	Invoice not issued within 30 days. Part payment received as advance before completion of service and remaining payment received subsequently. As per Explanation (i) The supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
5	10.11.2024	23.12.2024	13.12.2024	10.11.2024	Invoice not issued within 30 days and entire payment received after completion of service.

[Attempt all parts of either Q. No. 4 or Q. N. 4A]

Question 4

(a) Mohan, an unregistered person under GST, purchases the goods supplied by Ramesh who is a registered person without receiving a tax invoice from Ramesh and thus helps in tax evasion by Ramesh. A disciplinary action is taken against Mohan and an ad hoc penalty of ₹ 20,000 is imposed by passing an order without describing contravention for which penalty is going to be imposed and without mentioning the provisions under which penalty is going to be imposed.

Should Mohan proceed to pay for penalty or challenge the order passed by Department as per the provision of CGST Act, 2017.

(*5 marks*)

(b) Sahara & Co. (registered in Jaipur) self-assessed its CGST liability as ₹ 80,000 for the month of April, but failed to make the payment. Subsequently the Department initiated penal proceedings against Sahara & Co. for recovery of penalty under section 73 for failure to pay GST and issued show cause notice on 10th July, which was received by Sahara & Co. on 14th July. Sahara & Co. deposited the tax along with interest on 25th July and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 40,000 (i.e., 50% of ₹ 80,000) under the CGST Act.

Explain the provisions related to SCN as per section 73 of CGST Act, 2017. Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act.

(*5 marks*)

(c) Shubham Associates registered in Baroda deals in industrial grade iron and steel products.

The proprietor of Shubham Associates sold TMT iron bars (GST applicable @ 18%) to a retailer in New Delhi at a value of ₹ 38,000 (excluding GST). As per the agreement of sale, goods are to be delivered at the premises of retailer. The transportation cost of ₹ 7,000 has been charged separately to deliver the same to the retailer in New Delhi.

In the above scenario, determine whether an e-way bill is required to be issued under GST ?

(*5 marks*)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 4 (a)

The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126.

Accordingly:

- no penalty is to be imposed without affording an opportunity of being heard to the person proceeded against to rebut the allegations levelled against him,
- the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged.

Therefore, Mohan should challenge the order imposing penalty.

Answer 4 (b)

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

As per section 73(9), the option to pay the tax liability along with interest within 30 days from the date of SCN and avoid penalty is not available where self-assessed tax is not paid

Since in the given case, Sahara & Co. has not paid the self-assessed tax within 30 days of due date [i.e., 20th May], penalty equivalent to:

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

(ii) Rs. 10,000,

whichever is higher, is payable by him under CGST Act. Equivalent amount of penalty is payable under SGST/UTGST Act.

Hence, the stand taken by the Department that penalty will be levied on Sahara & Co. is correct, but the amount of penalty of Rs. 40,000 under CGST Act is not correct.

Answer 4 (c)

Consignment value of goods is the value determined in accordance with the provisions of section 15, and also includes the central tax, state or union territory tax, integrated tax and cess charged, if any, in the document.

Further, since arranging freight is the liability of supplier, it is a case of composite supply and thus, freight charges are to be added in the value of principal supply.

Accordingly, the value of supply as per section 15 in the given case would include the transportation cost in the invoice value i.e. 45,000 (Rs.38,000 + Rs. 7,000).

Consignment value = Rs. 45,000 x 118% = Rs. 53,100.

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

(Alternative to Q. No. 4)

Question 4A

(i) Ram Singh, an unregistered famous author, received ₹ 3 crores of consideration from Raja Publications located in Indore for supply of services by way of temporary transfer of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary works of

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

his new book. He finished his work & made available the book to the publisher, but has yet not raised the invoice.

Ram Singh is of the view that Raja Publications is liable to pay tax under reverse charge on services provided by him. Raja Publications does not concur with his view and is not ready to deposit the tax under any circumstances.

Examine whether the view of Ram Singh is correct. Further, if the view of Ram Singh is correct, what is the recourse available with Ram Singh to comply with the requirements of GST law as Raja Publications has completely refused to deposit the tax.

(*5 marks*)

(ii) Khushwant had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal came also in favour of the Department. Khushwant now wants to file an appeal against the decision of the Appellate Tribunal as he feels the stand taken by him is correct.

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal.

(*5 marks*)

(iii) The assessee had claimed ITC in respect of goods purchased from registered suppliers. The Department contended that the claim of ITC was wrongful and sought to recover the ITC wrongly claimed and also levied penalty. The assessee submitted that, the Petitioner has, in its possession tax invoices for the goods/scrap purchased from various parties, and E-Way bills were also generated with respect to the said transaction. The goods were transported through trucks along with Consignment Notes and payment of goods was made through RTGS/NEFT. This was not accepted by the Department. The assessee filed a writ petition before the jurisdictional High Court.

Will the assessee's stand be accepted by the High Court ? You are required to answer in the wake of judicial pronouncements of the Courts, if any.

(*5 marks*)

Answer 4A(i)

Yes, the view of Ram Singh is Correct. GST is payable under reverse charge in case of supply of services by an author by way of transfer/permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary work to a publisher located in the taxable territory in terms of reverse charge Notification No. 13/2017 CT(R) dated 28.06.2017.

Therefore, in the given case, person liable to pay tax is the publisher i.e. Raja Publications.

However, since Raja Publications has completely refused to deposit the tax on the given transaction, Ram Singh as an option to pay tax under forward charge on the same.

For the purpose, he needs to fulfil the following conditions:

(i) since he is unregistered, he has to first take registration under the CGST Act, 2017;

(ii) he needs to file a declaration, in the prescribed form, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) of the CGST Act and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(iii) he has to make a declaration on the invoice, which he would issue to Raja Publications, in prescribed form.

Answer 4A(ii)

Since the issue involved in Khushwant's appeal relates to the place of supply, the appeal in his case would have been decided by the

i. National Bench of the Tribunal or.

ii. Regional Bench of the Tribunal.

An appeal against the decision of the National/Regional Bench lies directly to the Supreme Court.

Thus, in the given case Khushwant will have to file an appeal with the Supreme Court against the decision of the Appellate Tribunal.

Answer 4A(iii)

Input Tax credit is admissible subject to the fulfilment of conditions laid down under section 16(2) CGST Act. Among the conditions, the receipt of underlying goods and services and possession of accompanying tax invoice are prime conditions.

Section 155 of the CGST Act provides that where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person. This position has also been validated by the Hon'ble High Court in the matter of Malik Traders v. State of Uttar Pradesh and Ors. [Writ Tax No. 1237 of 2021 dated October 18, 2023] wherein the Allahabad High Court held that the scheme of ITC was introduced to avoid cascading effect of tax and to avoid double taxation. As per Section 16(2) of the UPGST Act, the registered dealer can avail ITC only when the conditions under Section 16 are fulfilled. The proceedings can be initiated against the Petitioner for ITC wrongly availed or utilised by any reason or wilful misstatement or suppression of fact.

Further, relying upon the judgment of the Hon'ble Supreme Court in the case of State of Karnataka Vs. M/s Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230 of 2023 dated March 13, 2023) the court noted, the primary burden is upon Petitioner to prove beyond reasonable doubt that the actual transaction and physical movement of goods have taken place. In particular, the petitioner is required to furnish the details of the selling dealer, vehicle number, payment of freight charges, acknowledgment of taking delivery of goods, Tax Invoices and payment particulars, etc. to prove and establish the actual physical movement of the goods. Furnishing details of the Tax Invoice, E-Way bill, and Goods Receipt are not sufficient to prove the genuineness of the transaction beyond a reasonable doubt, for availing ITC.

However, the list of documents mentioned by the High Court cannot be taken as a mandatory list of documents which every assessee is liable to produce to sustain the ITC.

In this particular case, the legal provisions do not specify the kind of evidence which the recipient is required to produce to prove receipt of goods and services. The courts have observed that the evidence should be such that genuineness of the transaction should be proved beyond a reasonable doubt.

Further, in case of M/s. Kiri Industries Ltd. v. Union of India (2022), the Gujarat High Court held that Input Tax Credit (ITC) should be allowed when a company presents valid invoices, evidence of payment, and documentation of goods receipt. The court ruled that denying ITC without substantial evidence of irregularity or fraud is arbitrary and against the principles of the GST regime.

In the present case, the Department has not alleged any specific wrong in respect of the given transaction. While, the assessee has produced plethora of documents including the payment proof

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

to evidence the genuineness.

In this background, the assessee may prefer appeal before the next authority or file writ petition challenging the order.

Part II

Question 5

Sairam Ltd., engages in diversified activities, earned a profit of ₹ 14,50,000 after debit/credit of the following items to its statement of profit and loss account for the year ended on 31.3.2025 :

(a)	Items debited to Statement of Profit and Loss Account	Rs.
	Provision for loss of subsidiary	60,000
	Provision for income-tax demand	1,10,000
	Depreciation	3,50,000
	Interest on deposit credited to buyers on 31.3.2025 for advance received from them, on which TDS was deducted in April, 2025 and was deposited on 31st July, 2025.	1,00,000
(b)	Items credited to Statement of Profit and Loss Account	
	Income from units of UTI (Gross)	95,000
	Long term capital gain on sale of equity shares on (which securities transaction tax paid at the time of acquisition and sale) dated 15.04.2024.	2,50,000

The company provides the following additional information :

(i) Depreciation includes ₹ 1,50,000 on account of revaluation of fixed assets.

(ii) Depreciation allowable as per Income-tax Rules is ₹ 2,80,000.

(iii) Brought forward Business Loss/Unabsorbed Depreciation :

F.Y.	Amount as per books		Amount as per income tax	
	Loss (In ₹)	Depreciation (In ₹)	Loss (In ₹)	Depreciation (In ₹)
2021-2022	2,50,000	3,00,000	2,00,000	2,50,000
2022-2023	NIL	2,70,000	1,00,000	1,80,000
2023-2024	3,50,000	3,15,000	1,20,000	2,10,000

You are required to :

(i) Compute the total income of the company for the AY 2025-26 giving the reasons for treatment of items.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(ii) Examine the applicability of section 115JB of the Income-tax Act, 1961, and compute book profit u/s 115JB.

(*5 marks*)

(iii) Compute the tax on total income & book profits and the tax credit to be carried forward.

(*5 marks*)

Assume the tax rate applicable to Sairam Ltd. for the PY 2024-25 is 25% & 115BAA not opted.

Answer 5(i)

Computation of Total Income of Company for the A.Y. 2025-26

Particulars	Rs.	Rs.
Profit as per Statement of Profit & Loss Account		14,50,000
Add: Items disallowed/considered separately		
• Provision for loss of subsidiary (Since it is not wholly and exclusively for the purpose of business of the assessee]	60,000	
• Provision for Income Tax (disallowed u/s 40(a)(ii)]	1,10,000	
• Interest on deposit credited on 31.3.2025 and tax deducted in April 2025 which was deposited on 31.7.2025 [Not allowed u/s 40(a)(ia) @30%]	30,000	
• Depreciation debited to statement of profit and loss account (only depreciation calculated as per the Income tax Rules, 1962 is allowed as deduction)	3,50,000	5,50,000
		20,00,000
Less: Items credited but not includible under business income		
Income from UTI, since it is not a business income.	95,000	
Long term capital gain on sale of equity shares on which securities transaction tax was paid, since it is not a business income.	2,50,000	(345000)
		16,55,000
Less: Depreciation (allowable as per the Income tax Rules, 1962)		(2,80,000)
		13,75,000
Less: Set-off of brought forward business loss and unabsorbed depreciation		
Brought forward business loss u/s 72	4,20,000	
Brought forward depreciation u/s 32	6,40,000	(10,60,000)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Income from Business		3,15,000
Capital Gains		
Long term capital gain on sale of equity shares on which securities transaction tax paid at the time of acquisition and sale		2,50,000
Income from Other Sources		
Income from units of UTI		95,000
Total Income		6,60,000

Answer 5(ii)

Computation of Book Profit u/s 115JB

Particulars	Rs.	Rs.
Profit as per statement of profit & loss account		14,50,000
Add: net profit to be increased by the following amounts as per explanation 1 to section 115JB		5,20,000
Provision for loss of subsidiary	60,000	
Provision for Income Tax	1,10,000	
Depreciation debited to profit and loss account	3,50,000	
		19,70,000
Less: Net profit to be reduced by the following amounts as per explanation 1 to section 115JB		
Depreciation debited to profit and loss account (excluding depreciation on account of revaluation of fixed assets) (i.e., Rs.3,50,000- 1,50,000)	2,00,000	
Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less, taken on cumulative basis	6,00,000	(8,00,000)
Book Profit		11,70,000

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 15% thereof plus HEC @ 4%.

Accordingly, in this case, since income tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit of Rs.11,70,000 is deemed to be the total income and income tax is payable @ 15% thereof plus HEC@4%. The tax liability, therefore, works out to be Rs.1,82,520

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

income u/s 115JB (1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income- tax Act, 1961, will be allowed as tax credit in the subsequent year.

The tax credit is, therefore, the difference between the tax paid u/s 115JB (1) and the tax payable on the total income computed in accordance with the other provisions of the Act. This tax credit is allowed to be carried forward for 15 assessment years succeeding the assessment year in which the credit became allowable.

Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act, other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

Answer 5(iii)

Computation of the Tax on Total Income & Book Profits and the Tax Credit to be carried forward

Particulars	Rs.
Tax on Book Profit u/s 115JB 15% of Book Profit (15% of Rs. 11,70,000) 1,75,500 + HEC@4% 7,020=1,82,520	1,82,520
Less: Tax on Total Income computed as per the other provisions of the act Tax on LTCG exceeding Rs. 1,25,000 @ 10% of Rs. 1,25,000 = Rs, 12,500 And remaining 25% of Rs. 4,10,000 = Rs. 1,02,500 Total Rs. 12,500+Rs. 1,02,500= 1,15,000 + Health and education cess @ 4%	(1,19,600)
Tax credit to be carried forward u/s115JAA	62,920

[Attempt all parts of either Q. No. 6 or Q. N. 6A]

Question 6

(a) A company manufactures two models of a pocket calculator. The basic model sells for ₹ 5, has a direct material cost of ₹ 1.25 and requires 0.25 hours of labour time to produce.

The other model, the Scientist, sells for ₹ : 7.50, has a direct material cost of ₹ 1.63 and takes 0.375 hours to produce. Labour, which is paid at the rate of ₹ 6 per hour, is currently very scarce, while demand for the company's calculators is heavy. The company is currently producing 8,000 of the basic models and 4,000 of the Scientist models per month, while fixed costs are ₹ 24,000 per month.

An overseas customer has offered the company a contract, worth ₹ 35,000, for a number of calculators made to its requirements. The estimating department has ascertained the following facts in respect of the work :

The labour time for the contract would be 1,200 hours.

The material cost would be ₹ 9,000 plus the cost of a particular component not normally used in the company's models. These components could be purchased from a supplier for ₹ 2,500 or alternatively, they could be made internally for a material cost of ₹ 1,000 and an additional labour time of 150 hours.

Assuming labour as limiting factor, decide whether to buy the component from the supplier or not and also advise the management as to the action they should take.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(b) Wonderland Limited has excess cash of ₹ 20 lakhs, which it wants to invest in short term marketable securities. Expenses relating to investment will be ₹ 50,000. The securities invested will have an annual yield of 9%.

The company seeks your advice :

(i) as to the period of investment so as to earn a pre-tax income of 5%. (discuss)

(ii) the minimum period for the company to break even its investment expenditure overtime value of money.

(5 marks)

(c) Richa & Co. (Firm) has sold all its Assets & Liabilities as a Slump Sale on 31.03.2025 to Ramesh & Co. (Firm) for slump sum consideration of 600 Lakhs. The Statement of Affairs of Richa & Co. as on 31.03.2025 is as below :

Liabilities	₹ in Lakhs	Assets	₹ in Lakhs
Capital	1,627	Plant & Machinery at WDV	250
Unsecured Loans	25	Land (At revalued figure)	1,200
Bank Borrowing	500	Sundry Debtors	380
Sundry Creditor	80	Cash & Bank Balances	2
		Loans & Advances	150
		Closing Stock	250
Total	2,232	Total	2,232

Additional Information :

(1) Cost of Land in March 2008 was 100 Lakhs.

(2) WDV of Plant & Machinery u/s 43(6) was 200 Lakhs.

(3) Cost Inflation Index for the FY 2007-2008 was 129 and for 2024-2025 is 363.

(4) Stock is overvalued by 10% on cost.

(5) The unit was set up in FY 2008-09.

Compute Capital Gain arising from slump sale and tax on such gain.

(5 marks)

Answer 6(a)

In view of its scarcity, labour is taken as the limiting factor. The decision on whether to make or buy the component has to be made before it can be decided whether or not to accept the contract. In order to do this the contribution per labour hour for normal production must first be calculated, as the contract will replace some normal production.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Particulars	Basic Model-I	Scientist Model-2
	Rs.	Rs.
Selling Price	5.00	7.50
Materials	1.25	1.63
Labour	1.50	2.25
Contribution	2.25	3.62
Limiting Factor (Direct Labour Hr. P.U.)	0.25	0.375
Contribution per direct Labour hour	9.00	9.65

Therefore, if the company is to make the component it would be better to reduce production of the basic model, in order to accommodate the special order. The company should now compare the costs of making or buying the component. An opportunity cost arises due to the lost contribution on the basic model.

Special contract manufacture of component

Material	1,000
Labour (Rs. 6 * 150 hours)	900
Opportunity cost (150 hours * Rs. 9)	1,350
Total	3250

Since this is higher than the bought-in price of Rs: 2,500 the company would be advised to buy the component from the supplier if they accept the contract. The contract can now be evaluated:
Contract Contribution

Particulars	Amount (Rs.)	Amount (Rs.)
Sales Revenue		35,000
Materials	9,000	
Component	2,500	
Labour (1200@ Rs.6)	7,200	18,700
Contribution (A)		16,300
Total Labour Hours (B)		1200
Contribution per direct labour hour (A)/(B)		Rs. 13.58

Since the contribution is higher than either of the existing products, the company should accept the contract assuming this would not prejudice the market for existing products. As the customer is overseas this seems a reasonable assumption. Because the contribution is higher for the Scientist model it would be wise to reduce production of the basic model.

However, the hours spent on producing the basic model per month are 8,000 units * 0.25 hours = 2,000, and so the contract would displace more than a fortnight's production of the basic model.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

The recommendation assumes that this can be done without harming long-term sales of the basic model.

Answer 6(b)

i. Pre-tax Income required on investment of Rs. 20,00,000

Let the period of Investment be 'P' and return required on investment Rs. 1,00,000 (Rs. 20,00,000 x 5%)

Accordingly, (Rs 20,00,000 * 9/100 * P/12) – Rs. 50,000 = Rs. 1,00,000

P = 10 months

ii. Break-Even its investment expenditure (Rs. 20,00,000 * 9/100 * P/12) – Rs. 50,000 = 0

P = 3.33 months

Answer 6(c)

Computation of Long-Term Capital Gain (Unit owned for more than 36 Months)

Particular	Amount in Lakhs
Sale Consideration	600.00
Less: Net Worth of Business transferred (Working Note-1) Benefit of Indexation shall not apply	454.27
Long Term Capital Gain	145.73
Tax on above at 20% u/s 112 of Rs. 145.73	29.15
Add: Surcharge at 12% (since the total income exceeds Rs. 1 Crore)	3.50
Tax and Surcharge Payable	32.65
Add: Health and Education Cess at @ 4%	1.30
Total Tax Liability under slump sale	33.95

Working Note:

Calculation of Net Worth of Richa & Co.

Particular	Amount in Lakhs
Fixed Assets at WDV as per the Income Tax Act (Other Assets- Revalued figure shall not be considered)	200.00
Land at Book Value	100.00
Sundry Debtors	380.00
Cash & bank balances	2.00
Loans & Advances	150.00

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Stock (Rs. 250 Lakhs * 100/110)	227.27
Total Assets	1059.27
Less: Liabilities	
Unsecured Loans	25.00
Bank Borrowings	500.00
Sundry Creditors	80.00
Net Worth	454.27

(Alternative to Q. No. 6)

Question 6A

(*i*) Vinita Bio-medicals Ltd. is engaged in the business of manufacture of biomedical items. The following expenses were incurred in respect of activities connected with Scientific Research :

Year Ended	Particulars	Amount (₹)
30.04.2021	Land	16,00,000
30.04.2021	Building	25,00,000
31.01.2024	Plant and Machinery	5,00,000
31.03.2023	Raw Materials	2,20,000
31.03.2025	Raw Materials and Salaries	1,80,000

The business was commenced on 01.09.2024. In view of availability of better model of Plant & Machinery, the existing Plant & Machinery were sold for 16,00,000 on 01.03.2025.

Discuss the implications of the above for AY 2025-2026 along with brief computation of deduction permissible u/s 35, assuming that necessary conditions have been fulfilled. You are informed that the assessee's line of business is eligible for claiming deduction u/s 35/35(2AB).

(*5 marks*)

(ii) XY & Co, a Partnership Concern, had established an undertaking for manufacturing of Computer Software in SEZ. It furnishes the following particulars of its 2nd year of operations ended on 31.03.2025 :

(a) Total Sales of Business ₹ 100 Lakhs

(b) Export Sales ₹ 80 Lakhs

(c) Profits of Business ₹ 10 Lakhs

(d) Out of the Total Export Sales, realization of a sale of ₹ 5 lakhs are difficult because of insolvency of buyer. Realization of rest of the sales is received in time.

(e) The Plant and Machinery used in the Business had been depreciated at 15% on SLM basis and Depreciation of ₹ 3 lakhs were charged in Profit and Loss A/c.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Compute the taxable business income of XY & Co for the AY 2025-2026.

(*5 marks*)

(iii) Ram Singh purchased 1000 equity shares of Fashion Limited at a cost of ₹ 155 per share on 19.06.1997 and paid 1% brokerage. On 15.11.2000 the company allotted him bonus shares on the basis of one share for every 5 shares held. Ram Singh again gets 800 bonus shares on 01.03.2005. The fair market value of the shares of Fashion Ltd. as on 01.04.2001 is ₹ 260. Ram Singh sold all the shares on 20.04.2004 @700 per share (brokerage 1%).

Compute the capital gain for the assessment year 2025-26, if these shares had been sold through the recognized stock exchange assume the fair market value of shares on 31.01.2018 was ₹ 450.

(*5 marks*)

Answer 6A(i)

Computation of Deduction permissible u/s 35

Nature of Expenditure	Actual Expenses	% of Deduction	Deductible Amount
Land - Land is not entitled for deduction.	16,00,000	-	-
Building acquired in the preceding 3 years before date of commencement business is only eligible as deduction in FYs. As building has been acquired on 30.04.2021 i.e. before the preceding 3 years from the date of commencement of business i.e. 01.09.2024 and therefore not eligible for deduction.	25,00,000	0%	Nil
Plant and Machinery 100% deduction of Current year Revenue or Capital Expenditure on Scientific Research is allowed under section 35(1)(iv)	5,00,000	100%	5,00,000
Raw Materials acquired in the preceding year Prior Period Revenue Expenditure incurred for Raw Materials or Salary during 3 years immediately preceding the date of commencement of business, will be allowed as deduction in the previous year in which the assessee commenced the business	2,20,000	100%	2,20,000
Current Year exp. on Raw Materials & Salaries - 100% deduction of Current year Revenue or Capital Expenditure on Scientific Research is allowed under section 35(2AB)	1,80,000	100%	1,80,000
Total Deduction for the Previous Year 2024-25			9,00,000

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Consequence of Sale of Capital Asset:

As per the provision of sections 41(3) of the Income tax Act, 1961, where a Capital Asset used for Scientific Research is sold without introducing the same into the business, the Sale Proceeds of the asset, up to the amount of deduction claimed shall be treated as Business Income of the Previous Year in which such transfer took place. Any excess amount shall be taxed under the head Capital Gains.

In this case, Amount of Short-Term Capital Gains u/s 45 = Total Sale Consideration Less Deduction Allowed = Rs. 16,00,000 – Rs. 5,00,000 = Rs. 11,00,000.

Business Income u/s 41(3) = Rs. 5,00,000

Answer 6A(ii)

Section 10AA(1) of the Income Tax Act, 1961 : In computing the total income of an assessee, being an entrepreneur as referred to in clause (j) of section 2 of the Special Economic Zones Act, 2005, from his Unit, who begins to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after the 1st day of April, 2006, but before the first day of April, 2021, the deduction shall be allowed u/s 10AA of the Income tax Act, 1961.

The deduction is available for units that begin operations before 01.04.2020, which has been extended to 30.09.2020 through the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

As the XY & Co. (a partnership firm) of its 2nd year of operation ended on 31.03.2025. Therefore, assessee is not eligible for deduction u/s 10AA of the Income Tax Act, 1961.

Computation of Profits and Gains from Business of XY & Co. for AY 2025-26

Particulars		Amount in Lakhs
Profits as per Profit and Loss Account		10.00
Add: Depreciation as per Books		3.00
Less: Depreciation as per Income Tax Act		(2.55)
Working:		
Depreciation at 15% under SLM (Given)	Rs. 3.00 Lakhs	
Therefore, Original Cost = Rs. 3 Lakhs ÷ 15%	20.00 Lakhs	
Less: Depreciation for PY 2023-2024 at 15%	3.00 Lakhs	
(Depreciation for Previous Year is 15%)		
WDV as on 01.04.2024	17.00 Lakhs	
Less: Depreciation for PY 2024-2025 at 15%	2.55 Lakhs	
(Depreciation for Previous Year is 15%)		
Closing WDV as on 31.03.2025	14.45 Lakhs	
Taxable Business Income of XY & Co.		10.45

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 6A(iii)

Computation of Capital Gains

Particulars	Amount (Rs.)
Sale consideration (1000 shares x Rs. 700)	7,00,000
Less: Brokerage @ 1%	(7,000)
Net sale consideration	6,93,000
Less: Cost of acquisition The cost of acquisition shall be higher of (i) Cost of acquisition Rs. 155 per share AND (ii) Lower of (a) FMV as on 31.01.2018 - Rs. 450 per share (b) Sale Price - Rs. 700 per share Hence the cost of acquisition shall be Rs. 450 per share.	(4,50,000)
Long-Term Capital Gain (A)	2,43,000
Capital gain on Bonus Shares (200 shares)	
Sale Consideration (200 shares x Rs. 700)	1,40,000
Less: Brokerage @ 1%	(1,400)
Net sale consideration	1,38,600
Less: Cost of acquisition The cost of acquisition shall be higher of (i) Cost of acquisition Rs. 260 per share (FMV) AND (ii) Lower of (a) FMV as on 31.01.2018 - Rs. 450 per share (b) Sale Price - Rs. 700 per share Hence the cost of acquisition shall be Rs. 450 per share.	(90,000)
Long-Term Capital Gain (B)	48,600
Capital gain on Bonus Shares (800 shares)	
Sale consideration (800 shares x Rs. 700)	5,60,000
Less: Brokerage @ 1%	5,600

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Net sale consideration	5,54,400
Less: Cost of acquisition The cost of acquisition shall be higher of (i) Cost of acquisition NIL AND (ii) Lower of (a) FMV as on 31.01.2018 - Rs. 450 per share (b) Sale Price - Rs. 600 per share Hence the cost of acquisition shall be Rs. 450 per share.	3,60,000
Long-Term Capital Gain (C)	1,94,400
Total Long Term Capital Gain (A+B+C)	4,86,000

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

LABOUR LAWS & PRACTICE

GROUP 2 ELECTIVE PAPER 7.3

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

NOTE : *Answer All Questions.*

Question 1

Case Study

Air Noise Company Private Ltd. was suffering continuous losses as there was no work for employees for a long period. Considering the condition that there is no sufficient work for many of the employees, the company retrenched its 297 employees.

The retrenchment was carried out under Section 25F of the Industrial Disputes Act, 1947 for three categories of employees namely Attender, Transmission and Engineering. The Company issued notices notifying retrenchment of 297 employees and the retrenchment letters were sent to the last known addresses of the employees by registered post citing reasons for retrenchment. The retrenchment letters were uploaded on the website of the Company and were pasted at the prominent places of each office of the Company. Each retrenchment letter had details of payment of notice pay and retrenchment compensation with the basis of calculation and the notice pay and retrenchment compensation were transferred in the bank account of each of the retrenched employees. The retrenched employees were requested to approach the company along with the relevant forms in case of any inadvertent calculation error. The Company also notified the Appropriate Authority in the prescribed form along with necessary formalities in compliance of Section 25F of the Industrial Disputes Act. The Company also displayed the notice giving the Seniority List of three categories of employees in compliance with Section 25G read with Rule 77 of the Industrial Disputes Act and it has strictly followed the principle of last come first go in the process of retrenchment. In the retrenchment letters, it was categorically mentioned that in case of re-employment the Company shall comply with Section 25G read with Rule 78 of the Industrial Disputes Act, 78 retrenched employees have accepted their retrenchment and have also withdrawn their gratuity amount.

The Employee Union of the Company has filed writ petition challenging the retrenchment of 297 employees on various grounds that the Company is amenable to writ jurisdiction as it satisfies the public function test.

(a) Decide on the maintainability of the writ petition in brief. (Cite relevant case laws also, if applicable).

(5 marks)

(b) The scope and ambit of Section 2 (oo) relating to retrenchment is well explained in the case of Santosh Gupta vs. State Bank of Patiala (1980) Lab.I.C.687 SC), discuss.

(5 marks)

(c) Whether the labour court or tribunal, when adjudicating a matter, can go beyond the scope of its reference under the Industrial Disputes Act ?

(5 marks)

(d) Some of the workers of a company indulged in cessation of work in the support of the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

demands of workmen belonging to other employer. Whether such cessation of work will amount to a strike ? Discuss its legal validity.

(5 marks)

(e) There are certain establishments to which scheduled Act applies, are exempted from furnishing or maintaining of returns and registers required under certain labour laws. Name and define these establishments. Also discuss the provisions relating to exemption from furnishing or maintaining of returns and registers by small and very small establishments.

(5 marks)

Answer 1(a)

The law is well settled by the Supreme Court that a writ petition should not be entertained in respect of industrial disputes for which a statutory remedy is available under the Industrial Disputes Act, 1947 unless 'exceptional circumstances' are made out. The writ jurisdiction is a discretionary jurisdiction and the discretion should not ordinarily be exercised, if there is an alternative remedy available.

The Sole Test laid down by the Supreme Court for entertaining a writ petition relating to an industrial dispute is the existence of 'exceptional circumstances'. If the Court is satisfied on the existence of 'exceptional circumstances', then and only then, the Court shall proceed to ascertain whether the writ involves disputed questions of fact. If the Court finds 'exceptional circumstances' but the writ involves disputed questions of fact, then the writ petition shall not be entertained, meaning thereby that the writ petition may be entertained only if the Court is satisfied firstly, on the existence of 'exceptional circumstances' and secondly, the writ petition does not involve disputed questions of fact.

In *Rajasthan SRTC case [(1995) 5 SCC 75: 1995 SCC (L&S) 120 : (1995) 31 ATC 110]* , the Court observed that the idea has been to ensure that the workmen do not get caught in the labyrinth of civil courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedures followed by civil courts would not facilitate a prompt and effective disposal of these disputes. As against this, the courts and tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and remake the contracts, settlements, wage structures etc. Their awards are amenable to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extraordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a civil court. That is the entire policy underlying the vast array of enactments concerning workmen. This legislative policy and intendment should necessarily weigh with the courts in interpreting these enactments and the disputes arising under them.

The retrenched employees have a statutory remedy to raise an industrial dispute under the Industrial Disputes Act. The petitioners have based their claims on the alleged violation of the provisions of the Industrial Disputes Act. There are no exceptional circumstances for exercise of the writ jurisdiction under Article 226 of the Constitution in these writ petitions.

Based on above, the writ petition by the employees against Air Noise Company Pvt. Ltd. is not maintainable.

This case is similar to a decided case, *PTI Employees Union vs Press Trust Of India Ltd on 18 September, 2020* and also covered by *State of Uttar Pradesh v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti*.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 1(b)

Section 2(oo) of the Industrial Disputes Act, 1947 defines "retrenchment" as the termination of the service of a workman for any reason other than:

- voluntary retirement,
- superannuation,
- non-renewal of contract,
- continued ill-health.

The scope and ambit of Section 2(oo) of the Industrial Disputes Act, 1947 relating to retrenchment is explained in the case of *Santosh Gupta v. State Bank of Patiala, (1980) Lab.I.C.687 SC),* wherein it was held that if the definition of retrenchment is looked at unaided and unhampered by precedent, one is at once struck by the remarkably wide language employed and particularly the use of the word 'termination for any reason whatsoever'. If due weight is given to these words, i.e. they are to be understood as to mean what they plainly say, it is difficult to escape the conclusion that retrenchment must include every termination of service of a workman by an act of the employer. In the case of *Punjab Land Development Corporation Ltd. v. Labour Court, Chandigarh, (1990) II LLJ 70 SC*, the Supreme Court held that expression "retrenchment" means termination by employer of services of workman for any reason whatsoever except those expressly excluded in the Section itself.

Answer 1(c)

In *Delhi Cloth and General Mills Co. Ltd. vs. The Workmen and Others (AIR 1967 SC 469)*, it was held that under Section10(1)(d) of the Industrial Disputes Act, 1947, it is open to the appropriate Government when it is of opinion that any industrial dispute exists to make an order in writing referring the dispute or any matter appearing to be connected with, or relevant to the dispute to a Tribunal for adjudication.

As per Section 10(4) of the Industrial Disputes Act, 1947, where in an order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section has been made and the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto.

Hon'ble Supreme Court in case titled *Oshiar Prasad and Ors* v. *Employers* in Relation to *Management of Sudamdih Coal Washery of M/s Bharat coking coal limited, Dhanbad, Jharkhand, (2015) 4 SCC 71*, has held that Tribunal while answering reference has to confine its inquiry to the question referred and has no jurisdiction to travel beyond the question or/and the terms of the reference.

From the above, it is clear that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the Tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto.

Answer 1(d)

Cessation of work in support of the demands of workmen belonging to other employer is called a sympathetic strike. This is an unjustifiable invasion of the right of employer who is not at all involved in the dispute. The management can take disciplinary action for the absence of workmen. However, in *Ramalingam v. Indian Metallurgical Corporation, Madras, 1964-I L.L.J. 81*, it was held that such cessation of work will not amount to a strike since there is no intention to use the strike against the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

management. However, sympathetic strike may be illegal if not supported by valid reasons or done in violation of standing orders or contracts.

Answer 1(e)

Section 4(1) of the the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988 provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act.

It may be noted that such employer –

(a) furnishes, in lieu of such returns, annual return in Form I; and

(b) maintains at the work spot, in lieu of such registers, –

(i) registers in Form II and Form III, in the case of small establishments, and

(ii) a register in Form III, in the case of very small establishments.

Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

As per Section 2 (e) of the Act, small establishment means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months.

As per Section 2 (f) of the Act very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.

Question 2

(a) Mihir Sen was in service of Sona Motors India Private Ltd (Sona Motors) during the period 2006 to 2014. Sona Motors decided to post him on a foreign assignment with its group company, Mona Motors (Japan). Accordingly, an Agreement of Assignment of Contract of Appointment was executed between Sona Motors and Mihir Sen, by which his services were placed with the Host Company, Mona Motors (Japan) w.e.f. 1st March 2014 wherein Mihir Sen continued to work in terms of the said agreement upto 25th June 2022 when he came to be relieved by the host company, consequent to the resignation tendered by him on 5th April 2022.

Sona Motors declined to treat Mihir Sen's connection with Sona Motors after he was assigned to the Host Company for the purpose of payment of Gratuity.

Decide with the help of case law, whether transfer of Mihir Sen to another company under same management, i.e., Mona Motors (Japan) will be considered as continuity of service for payment of Gratuity ?

(5 marks)

(b) A complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

and Redressal) Act, 2013 was filed by Ms. Shanti against Om, who was working as the General Manager of the Company in Mumbai. The complaint was referred to the Internal Complaint Committee (ICC), constituted by the Company. The ICC, upon analysing the complaint, came to the conclusion that the relationship between Shanti and Om were based on personal grounds with mutual consent and that the allegations of sexual, emotional and mental harassment were not substantiated by Shanti.

Accordingly, the complaint against Om was rejected by the ICC. However, the ICC observed that the behaviour of the parties had been inappropriate and unbecoming of Officers/ Employees of the Company and accordingly recommended the Competent Authority to take suitable action against the Parties, as deemed fit.

Based on the report from ICC and certain other facts which the Company had ascertained out of the various communications between Om and Shanti, a charge- sheet was served upon Shanti, under Employees' (Discipline & Appeal) Regulations of the Company. Aggrieved by the Charge Sheet, Shanti preferred a petition :

(i) Decide the validity of recommendation by ICC and consequent charge sheet to Shanti.

(5 marks)

(ii) 'Moral Policing' is not the job of the Management or of the Internal Complaint Committee. Discuss with the help of any case law.

(5 marks)

(c) Prasanna Kumar, the respondent was appointed as a Personnel Officer of the appellant company. His services were confirmed after satisfactory completion of probation. It was provided in the terms of employment that the services of the respondent could be terminated with a month's notice or salary in lieu thereof. On 10th October 2020 the employment of the respondent was terminated by giving a month's salary in lieu of notice. The respondent challenged the legality and validity of the order of termination by filing a writ petition before the High Court.

The respondent contended that he was assured at the time of appointment by the General Manager that he would be promoted as Assistant Manager (Personnel) after confirmation and his pay would be fixed accordingly. But after confirmation, his salary was not increased as per the assurances given. Since he insisted for implementing the assurances, his employment was unjustly terminated on 10th October, 2020. The respondent also held a contention that by virtue of his appointment as Personnel Officer he had to look after the welfare of the labours employed in the factory. Accordingly, his appointment must be considered to be statutory appointment under the Provisions of Factories Act, 1948. In view of this, as per the Act and rules made there under termination cannot be made without the concurrence of the Labour Commissioner. As such the said termination is illegal and void.

Answer the following questions based on the above facts :

(i) Whether the appointment of Prasanna Kumar could be considered as Labour Welfare Officer and termination thereafter as invalid ?

(5 marks)

(ii) What are the statutory provisions for appointment of Labour Welfare Officer ? Have they been complied with in this case ?

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 2(a)

According to Section 2A(1), for the purposes of this the Payment of Gratuity Act, 1972, an employee shall be said to be in 'continuous service' for a period if he has, for that period been in un-interrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), layoff, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

In the case of *Mercedes Benz India Private Limited Vs. Noshir Nadir Desai*, the High Court held that mere transfer of employees to another company wherein the ultimate management is common cannot be termed as discontinuation of service. The employer Mercedes Benz continued to be the primary/parent employer even during assignment of the employee to the Host Company Daimler AG. High Court also observed that it is because of the common management of both the companies that this transfer took place and also referred the Agreement where it was clearly mentioned that the provisions of the existing employment contract with the Home Company shall continue to apply unless this Supplementary Agreement provides otherwise.

In view of the above decided case, transfer of Mihir Sen to another company under same management, i.e, Mona Motors (Japan) will be considered as continuity of service for payment of Gratuity.

Answer 2(b)(i)

Section 13(2) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides that where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

As per the above provisions, if the allegations of sexual harassment or any other form of harassment, as contemplated under the Act, are not proved before the ICC, the ICC can only recommend the employer to not take any action in the particular matter. However, the ICC, in the given case, has gone beyond its statutory mandate, as recognised under Section 13(2) of the Act. It has given observations stating that both the parties i.e., Shanti and Om have indulged in inappropriate and unbecoming conduct and indiscipline, and has recommended the competent authority to take suitable action against them. Giving such a recommendation is clearly beyond the jurisdiction of the ICC.

Further, as one of the factors leading to the charge-sheet was the recommendation of ICC, the charge-sheet which seeks to take disciplinary action against Shanti is liable to be rejected.

Answer 2(b)(ii)

In the case *Bibha Pandey vs Punjab National Bank & Ors on 16th December, 2020*, it was held that "Moral Policing" is not the job of the Management or of the ICC. Any consensual relationship among adults would not be the concern of the Management or of the ICC, so long as the said relationship does not affect the working and the discipline of the organisation and is not contrary to the Rules or code of conduct binding on the said employees. It is only if a complaint is made of sexual harassment under the Act that the Management can constitute the ICC to enquire into the same. The ICC cannot make comments on the personal conduct of the parties and the ICC's jurisdiction would be restricted to the allegations of sexual harassment and whether a complaint is made out or not, to that effect.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

The recommendation of the ICC, which comments on the conduct of the parties and recommends to the competent authority to take action against Shanti for their inappropriate disciplinary conduct is not tenable.

Answer 2(c)(i)

Under the Factories Act, 1948, Section 49(1) mandates that in every factory where 500 or more workers are ordinarily employed, the occupier shall employ, in the prescribed manner, Welfare Officers. This is a statutory post, and appointment or termination must follow:

- The rules framed under Section 49, such as the Welfare Officers (Recruitment and Conditions of Service) Rules framed by respective State Governments.
- These rules typically prescribe:
  - Qualifications,
  - Selection procedures,
  - Duties and responsibilities, and
  - Conditions for termination (often requiring approval or consultation with the Labour Commissioner or State Government).

In the given case, the appointment of Prasanna Kumar shall be considered as Personal Officer only and not as Labour Welfare Officer simply because he was taking care of the problems and issues of labourers. It should be clear in the appointment order itself. As per the terms of appointment, service may be terminated by giving one month's notice or 1 month's pay in lieu of notice. Having followed that the termination order is valid as per the provisions of the Industrial Disputes Act, 1947.

Answer 2(c)(ii)

As per Section 49(1) of the Factories Act, 1948, in every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).

In the given case, if the company has employed five hundred or more workers, the company is require to appoint welfare officers in accordance with above provisions.

Question 3

(a) The relevant provisions of the Conduct, Discipline & Appeal Rules (CDA Rules) of the company, contain a deeming provision of continuation of employment to enable dismissal from service even post superannuation. The subject CDA Rules provide that inquiry could be held in the same manner as if the employee had continued in service and the appropriate major and minor punishment commensurate to guilt can be imposed including dismissal and in case pecuniary loss had been caused, that can also be recovered.

In the above given circumstances, decide whether an employer is permitted to withhold gratuity during the pendency of disciplinary proceedings against a superannuated employee ?

(5 marks)

(b) Ramu was working as a driver. Once driving his Bus along with conductor on his assigned route during peak traffic hours, when driving remains a stress, Ramu informed the conductor that he is feeling chest pain and unable to run the bus. Immediately the Conductor took Ramu to Government Hospital, but the Medical Officer declared him dead due to heart attack.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Whether the death of Ramu caused due to stress from work can be considered to be death of an employee due to injury by accident arising out of and in the course of employment ?

(5 marks)

(c) As to the matters relating to payment of wages, its fixation and enforcement, who can file an appeal under the Code on Wages, 2019 and state the time limit for preferring an appeal to the appellate authority.

(5 marks)

(d) As a compliance officer, the Company Secretary has to ensure various provisions under Labour Codes. Discuss.

(5 marks)

(e) PTR, an industrial unit in Ludhiana was established in the year 2002 under the Companies Act. They are into the business of manufacturing electronic goods and allied products and have 226 employees. PTR is discriminating employees in wage payment based on the gender. What are the provisions relating to equal remuneration in Code on Wages, 2019 ? Discuss.

(5 marks)

Answer 3(a)

Section 4(6) of the Payment of Gratuity Act, 1972 allows an employer to forfeit gratuity, either wholly or partially, if the employee's services are terminated for disorderly conduct, an offence involving moral turpitude, or willful omission causing loss to the employer.

In the matter of *Chairman-cum-Managing Director, Mahanadi Coalfields Limited v. Sri Rabindranath Choubey, [Civil Appeal No. 9693 of 2013 decided on 27th May, 2020],* the Supreme Court observed that the provisions of Section 4(6) of the Payment of Gratuity Act, provides for recovery or forfeiture of gratuity, where services of employee have been terminated for the reasons prescribed in Section 4(6)(a) and 4(6)(b) of the Payment of Gratuity Act. As the forfeiture is conditional upon the delinquent employee being terminated or dismissed from the services, no forfeiture is possible where the employee is not capable of being dismissed, presumably upon being superannuated. However, the situation is different, where the Conduct, Discipline & Appeal Rules (CDA Rules) of the company contain a deeming provision of continuation of employment to enable dismissal from service even post superannuation.

The Supreme Court observed that the Payment of Gratuity Act makes no provision with respect to departmental inquiries. Hence, no fetter is caused upon operation of provisions of the CDA Rules providing for a continuation of the inquiry and deemed continuation of the employee in service after the age of superannuation.

After referring to various decisions, the Supreme Court observed that it was apparent under CDA Rules that inquiry could be held in the same manner as if the employee had continued in service and the appropriate major and minor punishment commensurate to guilt can be imposed including dismissal as provided in the CDA Rules and in case pecuniary loss had been caused, that can also be recovered. Gratuity can be forfeited wholly or partially.

Relying on the Full Bench decision in the case of *State Bank of India v. Ram Lal Bhaskar, [(2011) 10 SCC 249*], the Supreme Court ruled that, where the relevant disciplinary rules permit continuation of disciplinary proceeding against a superannuated employee and imposition of penalty of dismissal as if the employee had continued to be in employment:

(i) it is permissible in law for the employer to withhold the payment of gratuity to the employee after retirement from service on account of pendency of the disciplinary proceedings against him; and

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(ii) it is permissible for the disciplinary authority to impose penalty of dismissal after the employee stood retired from service.

Answer 3(b)

A claim for compensation for the death of an employee could be made under Section 3, read with Section 4 of the Employees' Compensation Act, 1923 only if the death of that employee had occurred due to an injury sustained by accident out of and in the course of his employment.

It is well settled by judicial pronouncements that the word 'accident' should be taken to a mean a mishap or untoward event, not expected or designed; that if a person suffers heart attack and dies, it necessarily means that, there has been an injury to the heart and that, event being a mishap not expected or designed, is an accident.

In the given case, the very nature of the work of the deceased, Ramu, was driving a heavy vehicle like a bus, which involves stress and strain, that too it is stated that he was driving the vehicle on his assigned route during peak traffic hours. Definitely during peak traffic hours, the drivers have to face a lot of stress and strain because of the movements of the vehicles and public and other persons moving on the road and driving the vehicles, which cannot be determined or measured with any apparatus.

In the light of the above, if it can be reasonably established that the stress or exertion of driving during peak traffic hours was a contributory or aggravating factor, or at least the immediate trigger was work-related stress, then it can be said that the death of Ramu caused due to stress from work and can be considered to be death of an employee due to injury by accident arising out of and in the course of employment.

Answer 3(c)

As per Section 49 of the Code on Wages, 2019, any person aggrieved by an Order passed by the authority under sub-section 2 of Section 45 may prefer an appeal to the appellate authority having jurisdiction appointed by the appropriate Government.

The appeal can be filed within 90 days from the date of such order. The appellant authority may entertain an appeal even after 90 days if it satisfied that the delay in filing the appeal has occurred due to sufficient cause.

Answer 3(d)

As a Compliance Officer, the Company Secretary has to ensure the following:

- The Contractors, being an Immediate Employer, would be primarily responsible for compliance with all the applicable provisions of the Code and have a license to engage the contract labour. The organization, being a Principal Employer, will be liable for the defaults committed by the contractors under the Labour Codes, and the relevant authorities could proceed against the organisation as being Principal Employer for defaults committed by such contractors.
- The engagement of contract labour in core activities in the organisation is avoided except in case of utmost requirement as stated in the Code. The Code states that the principal employers are responsible for providing the prescribed welfare facilities and occupational health and safety to the contract labour engaged in the organisation.
- The Service condition and the applicable provisions of the Code are made applicable to all employees, including those in managerial and supervisory cadre as well as for fixed-term employment, and the fixation of wage period, deduction from wages, payment of wages and bonus should be as mentioned in the Code

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

- The organisation is duly registered under the Labour Codes as required and also complies with the licensing requirements and closure requirements as stated in the Code. Further, the Registers, returns and reporting requirements as stated in the Codes are maintained as required by the Code.
- Prior permission from the Government is obtained for lay-offs and retrenchment if the number of workers is more than 300 workers and also to pay the retrenchment compensation as fixed by the appropriate Government. Further, in case of strike and lock-out to ensure that the workers are allowed to go on a strike/ declare lockout, only after giving notice as stated in the Code and not to permit strike or lockout during the pendency of a proceeding before tribunal, national tribunal, arbitrator and 60 days, after the conclusion of such proceedings; or any period in which a settlement or award is in operation.
- The certification of Standing Orders is completed within 60 days of the applicability by the appropriate authority in case the industrial organisation is employing more than 300 workers or has employed 300 or more workers in the preceding 12 months, and if not done, adopt the model standing orders as notified by the Central Government.
- The appointment letter/employment contract is issued to all employees, containing amongst other things, governing health, safety and working conditions for all employees and implications of these rules.
- A person, including a Director but not an Independent Director, having ultimate control of a factory, is appointed as Occupier.
- The women employees are employed with adequate safety measures before their employment. Further, the women employees can be employed in night shifts between 7.00 P.M. to 6 A.M., subject to the consent of the woman is obtained before employing women employees during night shifts, and compliance with additional safeguards relating to their safety, holidays, working hours, etc., to be prescribed by the appropriate Government.
- The establishment working environment is safe, without risk to the health of the employees, adequate welfare facilities such as separate shelter-rooms, rest-rooms, canteens, ambulance facilities etc to all employees including transgender employees.

Answer 3(e)

According to Section 3(1) of the Code on Wages, 2019, there shall be no discrimination in an establishment or any unit thereof among employees on the ground of gender in matters relating to wages by the same employer, in respect of the same work or work of a similar nature done by any employee.

Section 3(2) states that no employer shall, –

- for the purposes of complying with the provisions of sub-section (1), reduce the rate of wages of any employee; and
- make any discrimination on the ground of sex while recruiting any employee for the same work or work of similar nature and in the conditions of employment, except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force.

Further, Section 4 provides that where there is any dispute as to whether a work is of same or similar nature for the purposes of section 3, the dispute shall be decided by such authority as may be notified by the appropriate Government.

In the given case, PTR's wage discrimination on gender grounds is unlawful under Section 3 of the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Code on Wages, 2019. The Code mandates equal remuneration for the same or similar work and prohibits discrimination in wage payment. Employees have legal remedies through claims and penalties can be imposed on the employer for such violations.

Question 4

(a) Can a court interfere in respect of a notification fixing the minimum wages ? Discuss citing relevant case laws.

(5 marks)

(b) Rohit was a regular conductor working with the State Road Transport Corporation (SRTC). He died on 18th October 2013 while in service. Krishna, son of Rohit was a minor at that time. On attaining the age of majority i.e. 18 years on 10th July 2018 and having acquired the educational qualification of high school and intermediate, his mother, moved an application seeking compassionate appointment for him under the State Recruitment of Dependents of Government Servants Dying in Harness Rules. Vide letter dated 19th October, 2020, the SRTC informed that in connection with her application for compassionate appointment, the corporation has decided to appoint Krishna on preferential basis as a contract conductor and he was requested to deposit a security amount of ₹ 10,000/-. Krishna submitted the security deposit and entered into an agreement with the SRTC on 12th December 2020 to function as a contract conductor. During his service as contract conductor, he was found guilty of misconduct. As he was a Contract Conductor, his services were terminated on 30th January, 2025 without holding any disciplinary enquiry.

Whether the services of a contract employee be terminated without holding any disciplinary enquiry ?

(5 marks)

(c) XYZ is a registered partnership firm running a small readymade garment's shop at Raipur, which was registered under M.P. Shops and Establishment Act, 1958. On 12th March, 2021, establishment of the firm was inspected by the Insurance Inspector, E.S.I., Raipur. Considering 17 persons employed by the firm for the work of alteration of cloth and ironing in the premises of shop, the ESI Inspector reported it as ''manufacturing process'' as per the definition of E.S.I. Act, 1948. ESI Authorities vide their order dated 27th April 2021 held that the shop of the firm comes under the coverage of provisions contained in E.S.I. Act, 1948, as the premises of the firm comes under the definition of factory as per Section 2(12)(a) & 2(12)(b) of the E.S.I. Act, 1948.

Decide whether the activity of selling of readymade garments and its alteration can be considered as ''manufacturing'' under the definition of E.S.I. Act 1948 and whether the premises of the shop of the firm XYZ comes under the definition of ''factory'' as per E.S.I. Act 1948 ?

(5 marks)

(d) The need for protecting and safeguarding interest of labour as human beings has been enshrined in various Articles of Constitution of India giving an idea of the conditions under which labour had to be for work. Accordingly, various labour laws ensure the right to life and personal liberty and right against exploitation to labours. Discuss briefly.

(5 marks)

(e) Popsco Ltd. is a Company engaged in manufacture and sale of textile goods, falling within the purview of Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The workforce of the Company is around 1000, including two foreign Nationals. The Company was remitting

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

the provident fund contribution in respect of those foreign nationals also. However, since the said two workers happened to be foreign nationals, the company, Popsco Ltd. was under the impression that it was enough if the company pays the contribution on wage ceiling of ₹ 15,000/- alone. The company had adopted this approach in view of Paragraph 2 (f) of the Employees' Provident Fund Scheme, 1952, which defines an excluded employee as an employee whose pay at the time exceeds ₹ 15,000/- per month.

The Regional Provident Fund Commissioner (RPFC) brought to the notice of the Company that it ought to have remitted the contribution based on their entire pay of these two employees also and therefore, the Company has erred in remitting contribution on the wage ceiling of ₹ 15,000/- alone. Based on the notice by RPFC, the Company not only made good the shortfall in the contribution, but also the interest thereon. However, RPFC wanted to penalize Popsco Ltd. under Section 14B of the Act.

Discuss with respect to the legal provision and offer your comments.

(5 marks)

Answer 4(a)

In the case of *Mangalore Ganesh Beedi And Allied Beedi ... vs State Of Karnataka And Ors. on 3 June, 2003*, the Court summarized the law on the limitations on interference with the fixation of rates of minimum wages in writ jurisdiction under Article 226 of the Constitution of India.

This Court held that it is well-settled that the notification fixing the minimum wages cannot lightly be interfered with by the High Court under Article 226 and that the High Court can interfere with such notification only where it finds the concerned appropriate Government has exceeded its jurisdiction and/or acted ultra vires the provisions of the Act.

Answer 4(b)

As provided in the case, in connection with the application for compassionate appointment, SRTC decided to appoint Krishna on preferential basis as a contract conductor. He was also requested to deposit a security amount of ₹10,000/-. On deposit of the requisite security deposit, Krishna entered into an agreement with the SRTC on 12th December 2020 to function as a contract conductor.

From the above, it is clear that Krishna was not appointed on compassionate basis. He was appointed as a contract conductor on preferential basis, being the son of the deceased employee.

In a similar case, *U.P. State Road Transport Corporation vs Brijesh Kumar*, decided on 28th August, 2024, where the services of the contract employee were determined solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him, the Court held that the order of termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice is bad in law.

As such, termination of the services of Krishna without holding any disciplinary enquiry or giving him an opportunity to present his case is against the Principles of Natural Justice and cannot be sustained.

Answer 4(c)

As per the Employees' State Insurance Act, 1948, manufacturing process shall have the meaning assigned to it in the Factories Act, 1948. The Manufacturing process as defined under Section 2(k) (i) of the Factories Act, 1948 means any process including making altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Further, Section 2(12) of the Employees' State Insurance Act, 1948 defines the term factory which means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

In the given case. 17 employees were working in the ready-made garment's shop of the firm. Alteration and ironing of ready-made garments were being carried out at the premises. Firm used to sell ready-made garments and, in this process, he also used to alter the garments and, thereafter, ironing it by using electricity. The activity of the firm XYZ brings it within the definition of manufacturing process under Section 2(k)(i) of the Factories Act, 1948 and Section 2(12) of the E.S.I. Act, 1948 also brings the firm within the purview of the definition of "factory".

Answer 4(d)

Articles 12 to 35 of the Constitution pertain to the Fundamental Rights of the people. The Indian Constitution guarantees essential human rights in the form of Fundamental Rights under Part III and also Directive Principles of State Policy in Part IV, which are fundamental in the governance of the country. Freedom and civil rights granted to all under Part III have been liberally construed by various pronouncements of the Supreme Court in the last half a century. The object has been to place citizens at the centre stage and make the State accountable. Fundamental Rights must not be read in isolation, but together with Directive Principles and fundamental duties. The need for protecting and safeguarding the interest of labour as human beings has been enshrined in Articles 14, 16, 19, 21, 23 and 24, giving an idea of the conditions under which labour has to be for work.

Right to Life and Personal Liberty

Article 21 assures every person the right to life and personal liberty. It states that no person shall be deprived of his life or personal liberty except according to a procedure established by law. The liberal interpretation of Article 21 by the judiciary has led to two very spectacular results. Many Directive Principles, which, as such, are not enforceable, have been activated and have become enforceable.

a) Right to livelihood;

b) Right to live with human dignity;

c) Right to medical care;

d) Health of labour;

e) Sexual harassment;

f) Right to health;

g) Economic Rights.

The Supreme Court has implied a number of Fundamental Rights from Article 21.

Right Against Exploitation

According to Article 23(1), traffic in human beings, begar, and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with law. Article 23(1) prescribes three unsocial practices, viz., (1) begar; (2) traffic in human beings; and (3) forced labour.

The term 'begar' means compulsory work without any payment. Begar is labour or service which a person is forced to give without receiving any remuneration for it. Withholding of pay of a government employee as a punishment has been held to be invalid in view of Article 23, which

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

prohibits begar. 'To ask a man to work and then not to pay him any salary or wages savours of begar. It is a Fundamental Right of a citizen of India not to be compelled to work without wages.' (*Suraj v. State of Madhya Pradesh, AIR 1960 MP 303*).

Article 24 of the Constitution of India states that "no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment". Article 24 is also enforceable against private citizens and lays down a prohibition against the employment of children below the age of fourteen years in any factory or mine, or any other hazardous employment. This is also in consonance with Articles 39(e) and (f) in Part IV of the Constitution which emphasizes the need to protect the health and strength of workers and also to protect children against exploitation. Article 39(f) of the Constitution of India enumerates the importance of protecting children from exploitation and to give them proper opportunities and facilities to develop.

Answer 4(e)

Section 14 (B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides that where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.

The object of levying damages under Section 14 (B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is to penalize wilfull default. Mens rea is an essential ingredient for the levy of damages under Section 14(B) of the Act. For levying damages, the Authority ought to have given a factual finding that the Establishment intentionally and willfully delayed in remitting the contribution.

In the given case, when the Regional Provident Fund Commissioner (RPFC) brought to the notice of Popsco Ltd. that the company ought to have remitted the contribution based on their entire pay, the Company not only made good the shortfall in the contribution, but also the interest portion.

Therefore, by no stretch of imagination, any prudent authority can come to the conclusion that the company, Popsco Ltd., had willfully short paid the contribution.

Mens rea cannot be established in this case. As such, Popsco Ltd. may not be penalized under Section 14 (b) of the Act.

(*Loyal Textile Mills Limited v. Regional Provident Fund Commissioner*).

***

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

BANKING AND INSURANCE – LAWS AND PRACTICE

GROUP 2 ELECTIVE PAPER 7.4

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

NOTE : *Answer All Questions.*

Part-I

Question 1

Central Bank Digital Currency (CBDC)

Central Banks are an important pillar of the financial ecosystem. Fundamentally, they have always provided efficient, quick, seamless, stable solutions for their respective economies. This includes payment systems and the issue of currency. Recent advancements in Technology and the Global Economy have pushed these apex bodies to revisit their basic functions and adapt.

The Reserve Bank of India (RBI) has defined Central Bank Digital Currency (CBDC) as the legal tender issued by a Central Bank in a Digital Form. It is the same as a Fiat Currency and is exchangeable one-to-one with the Fiat Currency.

Money as a concept has evolved over time, beginning with the barter system where goods were exchanged as 'Money' to metallic and paper currency, banking instruments and now Digital Currency. Despite the changing forms of money, it has always had three basic characteristics :

- It is a store of wealth.
- It can be used as a medium of exchange.
- It acts as a unit of account

Currency is this 'form' of money which the Central Bank of any jurisdiction issues, assumes liability for and accepts as legal tender.

Due to its various forms, rapid innovation and private nature (not Sovereign Issued), the emergence of Digital Money was accompanied by a lot of hesitation with respect to usage.

There were also concerns about its security and decentralized nature, which gave rise to a very volatile environment for Cryptocurrency or Stable Coins. However, over time, increased usage of these forms of digital money gave Central Banks across the world a push to meet this demand, especially with the growing preference for Electronic Payment Methods and the increasing Cost and Operational hassles involved in printing money.

Central Banks around the World, including those of China, Russia or the USA, are developing or researching the use of CBDC. A survey conducted by the Bank of International Settlements (BIS) in 2021 revealed that 86% of Central Banks around the Globe were actively researching the potential for CBDCs, 60% were experimenting with the Technology and 14% were deploying Pilot Projects. Retail CBDC Projects appear to be more advanced in emerging economies with Financial Inclusion stated as an expected outcome. Wholesale efforts are mostly conducted in more advanced economies with more developed Interbank Systems and Capital Markets.

They come with their own set of benefits that the Governments of these Countries can leverage.

The RBI has also talked about CBDC in its 'Report on Currency and Finance 2020-21 and is exploring the case for issuing and Operationalizing a CBDC.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

A CBDC is a Digital Form of the fiat currency issued by the central bank of a country and is in lieu of the Paper/Metal Currency issued which is the direct liability of the Central Bank that, it is denominated in the National Unit of Account. A CBDC acts as a safe, government-backed, and ultimate medium of settlement by eliminating all claims that occur during a transaction.

A General-purpose CBDC needs an underlying system for issuance and distribution to the public in a convenient way. Depending on the model adopted, the whole ecosystem will need various players to function, which includes the RBI, Public and Private Banks, Payment Service Providers (PSPs) and Operator(s). If we consider the wider ecosystem, we can also include other financial institutions and third-party service or application providers. While issuance models implemented may not be inherently different from the current intermediary system of currency issuance, every Central Bank and Commercial Bank will need to adopt parallel end-to-end blockchain enabled system for CBDC issuance and circulation.

Wholesale CBDC can play a significant role in the evolution of Wholesale Payments which Central Banks are trying to Modernize. Wholesale CBDC will facilitate Interbank Settlements on Net Basis. It will also support conditionality of payment where settlement will be dependent on another payment transaction or delivery of an Asset/Security. Wholesale CBDC can be used for interbank settlements, Cross-border remittances, and Capital and Security Markets. It is expected that Wholesale CBDC will make existing payment transactions efficient.

Ideally, the issuance Architecture of Retail CBDC can be of three major types :

- **Direct Issuance :** The Central Bank issues directly to the public. The CBDC claim is on the Central Bank.
- **Hybrid Issuance :** The Central Bank issues to PSPs, which onboard clients and execute payments. The Bank periodically records the Retail Balances.
- **Indirect (Two-Tier) :** The Claim is on the Intermediary Commercial Bank but backed by the Central Bank. The Banks on-board Customers and handle Retail Payments. The Central bank Handles Wholesale Payments.

In a Country like India, where around 550 Million people still use feature phones, it is important for CBDC to not only cater to the Tech-savvy Youth, but also to include feature Phone Users and People from lower socioeconomic groups within the country. Another 845 million people have Smartphones, out of which many still don't use Mobile Banking or Digital Payments in their daily lives.

There is a plethora of reasons for Exclusion to occur in the case of something like CBDC. These can range from economic factors, lack of knowledge, propensity of people in Tier-2 or Tier-3 Cities to use Cash, and unawareness of the existence of CBDC in some markets.

To build a CBDC Ecosystem and make it sustainable, it is essential to address all these issues and for CBDC to act as a Tool for inclusion by solving the problems through innovation, as in the case of Offline Payments.

On the basis of the above facts, Answer the following Questions :

(a) What is Digital Rupee ?

(b) How can 'e'' be held and used ?

(c) What is an 'e'' Wallet ?

(d) Is 'e'' wallet safe ?

(e) How is Digital Rupee created and issued ?

(f) Is there any difference between 'e'' and UPI ?

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(g) What is offline feature of 'e'' ?

(h) What is Wholesale CBDC and how does it differ from retail CBDC ?

(i) What are the current use cases in 'e'-W' and what are the benefits ?

(j) Whether 'e'' is legal tender ?

(2×10=20 marks)

Answer 1(a)

Digital Rupee or e₹, is India's Central Bank Digital Currency (CBDC). It is the digital form of India's physical currency, the Rupee (₹). **e₹** is issued by the Reserve Bank of India (RBI) in digital form and offers features similar to physical cash like convenience of use, guarantee of RBI, finality of settlement, etc. **e₹** is stored in the user's digital wallet and can be used to receive / send money, and / or make payment for transactions, just like any physical **₹.**

Answer 1(b)

e₹ can be held and transacted through **e₹** wallets offered by banks and non-banks for person-to-person payments or person-to-merchant transactions. One can start using the **e₹** wallet by downloading the **e₹** app from the Play Store or the App Store and by following the App instructions. Detailed instructions on using the **e₹** wallet can be checked with the banks and non-banks providing the wallet. Payments to merchants can be made by scanning either the CBDC QR code or the UPI QR code available at the respective merchant location.

Answer 1(c)

e₹ wallet is a digital wallet that can be opened on one's mobile phone / device. **e₹** wallet stores the Digital Rupee, similar to the physical wallet / purse that stores the physical currency. **e₹** wallets are being currently provided by Banks and Non-banks, which are part of the retail CBDC Pilot.

Answer 1(d)

e₹ wallets are safe and secure. There is a robust cyber-security framework to ensure that **e₹** is kept secure in the user's wallet. The **e₹** stored in the **e₹** wallet is safe even if the mobile device on which the e₹ wallet is installed is lost. The **e₹** wallet can be recovered using the same phone number / SIM on a new mobile device.

Answer 1(e)

Creation and issuance of retail **e₹** is identical to the arrangement for issuance of paper currency i.e., RBI creates **e₹** and issues them to banks and non-banks electronically. Banks and non-banks, thereafter, are responsible for facilitating onboarding and opening **e₹** wallets for their customers on their mobile phones. The **e₹** issuance, distribution, and usage within the retail segment (for members of the public) is live in pilot mode with effect from December 1, 2022. The users and merchants of identified Pilot Banks and Non-banks across the country can use **e₹**.

Answer 1(f)

e₹ is a digital form of ₹ whereas UPI is a means of payment. In addition to being used for payments, **e₹** also serves as a 'Store of Value', i.e., **e₹** can be withdrawn from one's bank account and kept separately in the **e₹** wallet.

In the case of P2P and P2M payments made at any CBDC-QR, the transactions happen between two **e₹** wallets, and are settled instantaneously without passing through user's bank accounts.

For P2P and P2M payments, the functionality of scanning a UPI QR from an **e₹** App has also been enabled. In such cases, the settlement will be based on the UPI settlement timelines.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 1(g)

The offline feature of **e₹** enables the user to transact in locations with limited or no internet connectivity. It is expected to mirror the advantages of physical cash, making it a reliable solution for usage in remote areas. Currently, different solutions are being explored. One solution facilitates transactions without internet but still requires telecom connectivity, while another solution is testing transactions leveraging NFC Communication,

Answer 1(h)

Wholesale Central Bank Digital Currency (**e₹-W**) is designed for use by financial institutions and intermediaries, primarily to streamline interbank settlements and large-value transactions. It operates within a restricted ecosystem and enhances the efficiency, speed, and security of wholesale payment systems by using the functionalities of programming and smart contracts. Wholesale CBDC focuses on improving the financial system's infrastructure and reducing settlement risks, retail CBDC aims to enhance accessibility, financial inclusion, and convenience for individuals / businesses. Retail CBDC is intended for the general public and is used for everyday transactions, much like physical cash but in digital form.

Answer 1(i)

There are Two ongoing use cases of **e₹-W**:

(i) Funds settlement of secondary market transactions in Government Securities, and

(ii) Settlement of inter-bank lending and borrowing in call money market. Settlement in central bank money is expected to reduce transaction costs by pre-empting the need for settlement guarantee infrastructure or for collateral to mitigate settlement risk and benefitting from the programmability and smart contracts functionalities of **e₹-W**.

Answer 1(j)

In terms of Section 26 of the Reserve Bank of India (RBI) Act, 1934, every ₹ bank note shall be legal tender at any place in India in payment or on account for the amount expressed therein and is guaranteed by the Central Government. **e₹**, being a digital form of the ₹ Bank Note, is also legal tender and is the liability of Reserve Bank of India.

Question 2

(*a*) "The National Housing Bank (NHB) has played a crucial role in supporting the government's initiative of providing shelter to the mass population of our country by promoting a sound housing finance system, developing housing finance institutions, and making housing credit more affordable, especially for low and moderate income groups."

(i) Do you agree with this statement ?

(ii) What is the role of NHB in the growth of housing infrastructure in India ?

(*2+3=5 marks*)

(*b*) Online banking is an advanced financial solution that uses technology to provide a complete set of services. Going beyond the basic features of checking your account balance or transferring funds, digital banking covers services which may include online banking, mobile banking, virtual assistance and more. This means digital banking incorporates both online and mobile banking, as these forms of banking are an important part of the broader digital banking ecosystem. In this context answer the following :

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(i) What is meant by Digital Banking ?

(4 marks)

(ii) What are the key features of Digital Banking ?

(6 marks)

Answer 2(a)(i)

In India there was no institutional arrangement for long term financing of individuals' housing, for a long time. This short coming was identified by the Sub-Group on Housing Finance for the Seventh Five Year Plan (1985-90) as a stumbling block, hindering the progress of the housing sector and recommended setting up of a nodal, national level institution. The Government of India, accepted the recommendation of the sub-group of the planning commission and a High Level Group under the Chairmanship of Dr. C. Rangarajan, the then Deputy Governor of RBI, was set-up to examine the proposal. The high level group recommended the setting up of National Housing Bank ('NHB') as an apex housing finance institution which was accepted by the Government. While presenting the union budget in 1987-88 the Hon'ble Prime Minister of India, announced the decision to establish the NHB as an apex level institution for housing finance. Following that, NHB bill was passed and became an Act of Parliament. The National Housing Policy, formulated in 1988 envisaged the setting up of NHB as the Apex level institution for housing. All these steps resulted in setting up of NHB on July 9, 1988 under the NHB Act, 1987. NHB is wholly owned by Reserve Bank of India, which contributed the entire paid-up capital. RBI later divested its entire stake in NHB in favour of Government of India. With this, the Government of India now holds 100% stake in NHB. This was done on the basis of the recommendation of Narasimham Committee II Report and the Discussion Paper prepared by RBI on Harmonizing the Role and Operations of Development Financial Institutions and Banks.

The Preamble of the National Housing Bank Act, 1987 describes the basic functions of the NHB as –

"… to operate as a principal agency to promote housing finance institutions both at local and regional levels and to provide financial and other support to such institutions and for matters connected therewith or incidental thereto." The National Housing Bank (NHB) plays a crucial role in India's housing finance sector, primarily focusing on promoting and regulating it, providing refinance to housing finance institutions, and supporting the development of the secondary mortgage market.

Answer 2(a)(ii)

Role of National Housing Bank (NHB)

NHB supports the development of the secondary mortgage market in India, which facilitates the buying and selling of mortgages. It devises schemes to lend at affordable rates to those in need of housing finance. NHB mobilises resources from provident funds, insurance funds, mutual funds, etc., for house building activities. It develops innovative instruments to mobilize domestic savings. NHB also helps in project finance, equity support, securitization, and guarantee as part of its activities.

(i) Promotion and Development: Fostering the growth of housing finance institutions and developing the overall housing finance market, promoting housing finance, facilitating affordable housing, supporting infrastructure:

(ii) Refinancing: The National Housing Bank (NHB) offers refinance assistance to Primary Lending Institutions (PLIs) in respect of their housing loans to individuals, and also for their loans to other institutions for housing finance and construction finance for affordable housing.

(iii) Supervision of HCF: Although regulatory powers shifted to RBI in 2019, NHB still supervises HFCs to ensure their financial health and adherence to prudential norms

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 2(b)(i)

Digital banking is part of the broader context for the move to online banking, where banking services are delivered over the internet. The shift from traditional to digital banking has been gradual, remains ongoing, and is constituted by differing degrees of banking service digitization. Digital banking involves high levels of process automation and web-based services and may include APIs enabling cross-institutional service composition to deliver banking products and provide transactions. It provides the ability for users to access financial data through desktop, mobile and ATM services.

Digital banking gives the luxury of freely accessing and performing all traditional banking activities 24x7 without having to personally go to a bank branch to get your work done. Digital Banking can be done through a laptop, tablet, or mobile phone.

A digital bank represents a virtual process that includes online banking, mobile banking, and beyond. As an end-to-end platform, digital banking must encompass the front end that consumers see, the back end that bankers see through their servers and admin control panels and the middleware that connects these nodes. Ultimately, a digital bank should facilitate all functional levels of banking on all service delivery platforms. In other words, it should have all the same functions as a head office, branch office, online service, bank cards, ATMs, and Point of Sale (POS) machines.

Answer 2(b)(ii)

The following are the key features of Digital Banking:

(i) **Convenient remote banking platforms:** You may access your bank account digitally via internet banking or eponymous mobile apps of the bank that you download on your smartphone to access your account anytime.

(ii) **Easy on boarding:** You can now complete the account opening and the subsequent KYC process online and digitally via a video call. The Reserve Bank of India has permitted banks to conduct a Video KYC to open a bank account on par with a full KYC bank account.

(iii) **Speedy fund transfers:** Digital Banking comes with a host of online fund transfer provisions. You can transfer any sum of money to any bank account in India via NEFT, IMPS, RTGS or UPI or make overseas wire transfers.

(iv) **Time-saving auto-debit facility:** You can recharge your mobile and DTH subscriptions online and enable auto-payment facilities, so you do not miss any payment. You can also pay off outstanding credit card dues by setting up the auto-debit facility.

(v) **Faster utility bill payments:** You can also consolidate all your utility bills and set up billers instead of bothering with physical bill payments by logging in on the internet or mobile banking platforms of your bank to complete the payments.

(vi) **Quick investment solutions:** it is possible to open fixed and recurring deposits, buy insurance, make investments or apply for loans on digital banking platforms.

(vii) **24x7 account tracking:** The accountholder can check account balances and get mini statements. One can easily monitor the transactions and sign up for SMS alerts and notifications after every transaction by registering the mobile number with the bank.

(viii) **Convenient online shopping facilities:** Payment for expenses on online shopping websites via net banking or by entering the debit card details like card number, expiration date, and CVV and authenticating payments via OTP is also a useful feature.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

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

Question 3

(a) X has a Term Loan of Rs. 20.00 Lakh at ABC Bank with outstanding liability of Rs. 25.00 Lakh on 31.03.2024, this account was classfied as NPA as on date due to overdue instalments. Bank demanded repayment of the loan u/s 13(2) of SARFAESI ACT. The borrower is willing and is ready to pay the highest bid price or reserve price of the mortgaged property in public auction. Bank made an auction of his property for the highest bid of Rs. 22.50 lakh. X participated in the bid and paid the bid amount. He refused to pay balance amount of Rs. 2.50 Lakh, taking a plea that he is not liable to pay because his property was sold out and nothing is left with him.

Can X has the right to deny the payment of the balance amount ?

Explain with reference to a decided case law.

(2+3=5 marks)

(b) "The Reserve Bank of India's (RBI) objective for the Voluntary Transition of Small Finance Banks (SFBs) to Universal Banks is to Strengthen the Banking System and Financial Inclusion".

Explain the RBI Roadmap for Voluntary Transition of Small Finance Banks to Universal Banks.

(5 marks)

(c) Ajith Menon, is the Auditor of Trivandrum Branch of XYZ Bank. He verified the provisions made by the Branch as on 31st March, 2024 in respect of the following Non-performing Assets :

Name of the Account	NPA Category	Balance outstanding as on 31st March, 2024 (₹ in lakh)	Amount of Provision made (₹ in Lakh)
Raju Industries	Doubtful (D1 category)	10.00	5.00
AJK Tyres	Sub-Standard Asset	50.00	7.50
ATV and Company	Doubtful (D2 Category)	30.00	30.00
DAS & Sons	Loss Asset Category	1.00	1.00

Outstanding amount as on 31st March, 2024, relating to each NPA Accounts listed above (Except DAS & Sons) are fully secured.

However, only Personal Guarantee of Proprietor (Net Worth of Proprietor ₹ 50 Lakh) is available in the account of DAS & Sons.

Comment on the correctness of the above Provisions.

The auditor has doubts regarding classification of above accounts as NPA, though these are fully secured or guaranteed. Explain.

(3+2=5 marks)

Answer 3(a)

In the given case whether the borrower can be discharged of his liability to pay the entire amount

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

as demanded by the bank under section 13 (2) of SARFAESI Act, if the borrower is willing and ready to pay the highest bid price or reserve price in the public auction.

The Supreme Court has observed in the case *of Bank of Baroda v. M/s Karwa Trading Company & Anr. (10.02.2022 SC)* that the borrower needs to pay all outstanding dues to redeem the secured asset under Section 13(8) of the SARFAESI Act. A borrower cannot redeem the mortgaged property by just paying the reserve price for the auction or the highest bid amount as per the public auction conducted pursuant to the SARFAESI Act.

The Supreme Court has again highlighted the legal principle that the liability of the borrower continues until all the outstanding dues of a borrower, are satisfied in full either by payment by the borrower or by enforcement of security on the assets of a borrower. The borrower will continue to be liable to pay the amounts that are outstanding even after the sale of the secured asset, if such security enforcement does not satisfy the liability of the borrower in full.

Hence on the basis of above Mr. X cannot deny the payment of the balance amount.

Answer 3(b)

The Reserve Bank of India (RBI) has issued guidelines facilitating the voluntary transition of Small Finance Banks (SFBs) to Universal Banks. These "Guidelines for 'on-tap' Licensing of Small Finance Banks in Private Sector," present a structured path for SFBs seeking to convert. This transition, subject to various criteria, signifies a significant evolution in the banking landscape, enhancing the scope and services offered by these institutions.

Detailed Analysis:

1. **Transition Criteria:** To qualify for the transition, SFBs must fulfil specific prerequisites:
   - Minimum paid-up capital/net worth requirement applicable to Universal Banks.
   - Satisfactory performance track record as an SFB for at least five years.
   - Compliance with RBI's due diligence exercise.
2. **Effective Provisions:** The circular issued by RBI, exercising its authority under Section 22(1) of the Banking Regulation Act, 1949, outlines the commencement and applicability of the transition provisions. It applies uniformly to all SFBs.
3. **Eligibility Criteria Clarification:**
   - Scheduled status with a proven track record of performance.
   - Listing of shares on recognized stock exchanges.
   - Minimum net worth of ₹1,000 crore as of the last audited quarter.
   - Compliance with prescribed CRAR requirements.
   - Sustained net profit in the preceding two financial years.
   - Maintaining GNPA and NNPA within specified limits.
4. **Shareholding Patterns:**
   - No mandatory requirement for an identified promoter.
   - Existing promoters continue as promoters during the transition. Restriction on addition or change in promoters during the transition.
   - No new mandatory lock-in requirement for existing promoters.
   - Preservation of approved promoter shareholding dilution plan.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

5. Application Process: SFBs desiring transition must submit a detailed rationale.

Assessment follows the guidelines for 'on-tap' Licensing of Universal Banks and RBI (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023.

Compliance with NOFHC structure norms.

The voluntary transition of Small Finance Banks to Universal Banks, as per RBI guidelines, reflects a strategic move towards enhancing the banking ecosystem's robustness and efficiency. This transition empowers SFBs to expand their offerings, increase market penetration, and contribute more comprehensively to the nation's financial inclusion objectives. By adhering to stringent eligibility criteria and procedural guidelines, the RBI ensures the stability and integrity of the banking sector while fostering innovation and growth opportunities for financial institutions.

Answer 3(c)

The Bank is required to ensure that provision for NPA is made as per its Classification in different categories which are given as under:

Categories of Non-Performing Assets	Provision required
Substandard Assets: Would be one, which has remained NPA for a period less than or equal to 12 months	**(Secured + Unsecured)** 15%
Doubtful Assets: Would be one which has remained in the Substandard Category for a period of 12 months **Sub-Categories**: Doubtful upto 1 Year (D1) Doubtful 1 to 3 Years (D2) Doubtful more than 3 Years (D3)	**(Secured + Unsecured)** 25%+100% 40%+100% 100%+100%
Loss Assets	100%

From the above provisions, it can be concluded that in case of:

i. Raju Industries: It has been Classified as Doubtful (D1) Category. Therefore, it requires provision of 25% of Secured Amount. That is Provision of ₹ 2.50 Lakhs (25% of ₹ 10 Lakhs) should be made instead of ₹ 5 Lakhs.

ii. AJK Tyres: It has been Classified as Substandard Asset. It requires provision of 15% of outstanding amount (i.e., 15% of ₹ 50 lakhs) which comes to ₹ 7.50 Lakhs. Therefore, provision made by the branch is correct.

iii. ATV & Company: It has been Classified as Doubtful (D2) Category. It requires Provision of 40% of Secured Amount. That is provision of ₹ 12.00 lakhs (40% of ₹ 30 Lakhs) should be made instead of ₹ 30 Lakhs.

iv. DAS & Sons: It has been classified as Loss Asset which requires Provision of 100% of outstanding amount. Therefore, the provision made by the Branch is correct.

Classification as NPA should be based on the record of Recovery. Availability of Security or Net Worth of Borrower / Guarantor is not to be taken into account for purpose of treating an advance as NPA or otherwise. Hence, these accounts have been Classified as NPA on the record of recovery, although they are fully Secured or Guaranteed.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

OR (Alternate Answer to Q. No. 3)

Question 3A

(i) Gopal availed a Term Loan of ' 10 lakhs for 'Repairs and Paintings' of Existing House from M/s XYZ Bank. The Bank offered a Term Loan with an Annual Interest Rate of 7.2% and the Tenure of the Loan is 10 Years.

Calculate EMI for the Term Loan i.e., Monthly Instalment to be paid by Mr. Gopal.

(*5 marks*)

(ii) Who is an NRI and a PIO ? What are the accounts that a Tourist Visiting India can open ?

(*5 marks*)

(iii) The following data pertain to Premier Wires Ltd for the financial year 2024-25 (figures Rs. in lakh)

Creditors for trade Rs. 375

Creditors for expenses Rs. 25

Other current liabilities Rs. 200 (Other than bank borrowings)

Existing bank borrowings Rs. 50 (for working capital)

Raw materials and work in progress Rs. 840

Finished goods Rs. 360

Book debts Rs. 220

Bank fixed deposits Rs. 60.

Calculate Maximum Permissible Bank Finance (MPBF) as per Tandon Committee recommendations using the norm of current ratio of 1.33.

(*5 marks*)

Answer 3A(i)

As per the formula, the Monthly Loan Repayment Amount (EMI) will be:

P x R x (1+R) ^ N / [(1+R) ^ N-1] where,

N is 10 Years or 120 Months.

R is 7.2% = (7.2/12/100) = 0.006

EMI = ₹ 10,00,000 * 0.006 * (1 + 0.006) ^120 / ((1 + 0.006) ^120 – 1) = ₹ 11,714.

Hence, Mr. Gopal will be paying the EMI of ₹ 11,714 every month for 10 years.

Some Banking Institutions may show the Break-up between the Principal Amount and Interest Rates to help the Borrowers to Assess EMI Payments.

Answer 3A(ii)

A 'Non-resident Indian' (NRI) is a person resident outside India who is a citizen of India.

A 'Person of Indian Origin (PIO)' is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or

(b) Who belonged to a territory that became part of India after the 15th day of August, 1947; or

(c) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or

(d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

A PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955. Such an OCI Card holder should also be a person resident outside India.

An NRO (Current/ Savings) account can be opened by a Foreign National of Non-Indian origin visiting India, with funds remitted from outside India through banking channel or by sale of foreign exchange brought by him to India. The balance in the NRO account may be paid to the account holder at the time of his departure from India provided the account has been maintained for a period not exceeding six months and the account has not been credited with any local funds, other than interest accrued thereon.

Answer 3A(iii)

Total Current Assets

Raw materials & WIP	Rs.840
Finished goods	Rs.360
Book debts	Rs.220
Bank deposits	Rs.60
Total Current Assets	Rs.1480

Current liabilities other than bank borrowings Rs. 200

Creditors for trade and expenses Rs.400

Total = Rs.600

Working capital gap Rs.1480-600 = Rs.880

Less 25% of Current assets = Rs.370

MPBF = 880-370=Rs. 510

Less existing bank borrowings Rs.50

So, the company can go for additional bank finance (as per Tandon Committee norms) of Rs.510-50= Rs.460

Then the total Current Liabilities will be Rs. 600+ Rs. 510= Rs. 1110

Current assets Rs.1480:1110 = 1.33:1

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

PART-II

Question 4

Insurance Contracts

Insurance Contracts follow a few basic principles. Generally, these principles are applicable for most of the Insurance Policies. But it must be remembered that there are exceptions. That is to say, a particular principle may not be applicable to a specific contract.

The basic principles are :

(1) Insurable Interest : Which means that in case of loss of or damage to the property/ subject matter, the proposer must suffer financial loss. This gives the proposer legal right to insure the property/subject matter.

One can have insurable interest in a property for anyone/more of the following reasons :

(i) Ownership.

(ii) Bailor/Bailee.

(iii) Lessor/Lessee.

(iv) Mortgagor or Mortgagee.

(v) Goods held in trust/by agreement.

(2) Indemnity : According to Legal Dictionary, 'Indemnity' means

(1) Protection of security against damage or loss.

(2) Compensation for damage or loss sustained.

(3) Something paid by way of such compensation.

(4) Protection, by insurance, from liabilities or penalties incurred by one's actions.

The principle of Indemnity therefore ensures that the insured gets only the 'compensation' for the loss incurred by him. He should never stand to gain financially through settlement of any insurance claim. Please note that, the 'monetary cost' of one's life cannot be evaluated. It is assumed to have infinite value to oneself. Hence, strictly speaking, this principle is not applicable for Policies covering life.

(3) Utmost Good Faith : The Principle of Utmost Good Faith states that a contract "in which knowledge of the material facts generally lies with one party alone; that party is under a duty to make a full disclosure of these facts, and failure to do so, makes the contract voidable."

(4) *Subrogation* : 'Subrogation' means transfer of right from Insured to the 'Insurer'. When a loss or damage takes place, and if such loss is indemnifiable by others as per law or contract, Insurers (after indemnifying the insured) exercise their right to recover the loss from persons/ organization responsible for indemnifying such loss. It is clear that, in absence of this principle, Insured may gain financially out of settlement of a claim. Therefore, principle of subrogation is essentially a corollary of the principle of Indemnity.

(5) Proximate Cause : 'Proximate Cause' can be formally defined as "active, direct, and efficient cause of loss in insurance that sets in motion an unbroken chain of events which bring about damage, destruction, or injury without the intervention of a new and independent force".

(6) Contribution : 'Contribution' arises when there is more than one insurance policy which can cover the same loss. It is generally applicable for property insurances. The usual practice is to

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

share the loss on proportionate basis between the Policies. Careful study would reveal that 'Contribution' clause is also a corollary of the basic principle of Indemnity. 'Contribution' clause is not applicable for Policies covering life e.g. Personal Accident Policy.

After reading the above, provide the correct answers for the below mentioned situations.

(a) Raja made a proposal to an insurance company for an insurance policy on his life for ₹ 8,00,000 and paid the insurance premium. He truthfully answered all questions on the proposal form and had disclosed all relevant facts. A few days later, but before the proposal was accepted, Raja fell ill with pneumonia. The proposal was accepted by the company on the next day. Two days later Raja died of pneumonia and the company learnt for the first time of his illness. Raja's family claimed the insurance amount. Is the insurance company liable to make the payment.

(*4 marks*)

(b) There are numerous definitions of insurance. Based on the definition of insurance stated in the text, indicate whether each of the following guarantees is considered insurance.

(1) A television set is guaranteed by the manufacturer against defects for 90 days.

(2) A new set of radial tyres is guaranteed by the manufacturer against road defects for 50,000 miles.

(3) A builder of new homes gives a ten-year guarantee against structural defects in the construction.

(4) A large group of homeowners agree to pay for losses to homes during the year because of fire.

(*4 marks*)

(c) How can you differentiate between a warranty and a representation ?

(*4 marks*)

(d) Discuss the legal authority of the insurer to repudiate its liabilities. (*3 marks*)

(e) An Insured applies for life insurance and states in the application that he has not visited a doctor during the last five years. However, six months earlier, he had surgery for lung cancer. He passed away three months after the policy issuance. Can the company deny the claim?

(*3 marks*)

(f) A sells his house to B, and a fire occurs before the insurance on the house is cancelled by A. Who can collect the insurance monies ? A or B.

(*2 marks*)

Answer 4(a)

A contract of insurance is a contract of absolute good faith. The duty of observing utmost good faith by the proposer to an insurance contract continues throughout the negotiations till the proposal is accepted by the insurance company and the contract becomes operative. Thus, the insurance company is entitled to get notice of any material alteration in the risk between the day of the proposal and its acceptance. In this case, such notice was not given, and therefore there was a breach of good faith. The insurer is, therefore not liable for making the payment.

Answer 4(b)

Insurance is form of contract or an arrangement where one party agrees in return for a consideration

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

to pay an agreed amount of money to another party to make good the loss, damage or injury to something of value in which the insured has an interest. Being a contract of indemnity, it is based on the principle of utmost good faith. A guarantee, on the other hand, cover the non-performance of a specific obligation.

In the given questions all the cases are guarantees which don't have insurable interest. They don't fall under the definition of insurance contracts.

Answer 4(c)

The differences between a representation and a warranty are as follows:

i. A representation, even when material, need only be substantially correct, whereas a warranty must be strictly and literally complied with.

ii. Before a misrepresentation can be held to be sufficient to enable the insurer to avoid the contract, it must be shown to be material to the risk. On the other hand, with a warranty, any breach is sufficient to avoid the contract, whether it is material or not.

iii. Whereas a representation does not appear in the policy, a warranty must be incorporated in the policy, whether expressly or by reference.

A warranty is a statement that is considered guaranteed to be true and, once declared, becomes an actual part of the contract. Typically, a breach of warranty provides sufficient grounds for the contract to be voided. Conversely, a representation is a statement that is believed to be true to the best of the other party's knowledge. In order to void a contract based on a misrepresentation, a party must prove that the information misrepresented is indeed material to the agreement. According to the laws of most states and in most circumstances, the responses that a person gives on an insurance application are considered to be a representation, and not warranties.

Answer 4(d)

To protect the claimants and policyholders against any excessively harsh application of the duty of disclosure on the part of the proposer, by the insurer, Section 45 of the Insurance Act, 1938, also called Indisputability or Incontestability Clause, has given the authority to the insurer to safeguard his interest in the following cases:

The policyholder suppressed certain facts and those facts were material for the underwriting decision-making by the insurer, if any death claim arises within 3 years from the date of commencement of risk. But if any death claim occurs after 3 years from the date of commencement of the risk, an insurer may repudiate its liability to honour the claim under the following criteria:

The policyholder suppressed certain facts and those facts were material for the underwriter's decision-making by the insurer and also those facts were intentionally suppressed by the insured.

Answer 4(e)

The Company can deny the claim because the policy owner's statement is both false and material.

In insurance, "utmost good faith" (uberrimae fidei) is a fundamental principle requiring both the insurer and the insured to act with the highest degree of honesty and transparency. This means disclosing all material facts and details relevant to the insurance contract.

When a fact that affects the policy issuance decision is not disclosed in the proposal, it is termed as, 'non-disclosure'. Similarly, withholding information or providing incorrect information while answering questions in the proposal form is termed as, 'misstatement'

Insurance is sharing of risk by creating a common pool of the premiums paid by all policyholders.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

This means that when a claim arises, the claim settlement is made from the same common pool, which belongs to all the policyholders.

Hence, an insurer has a duty to protect the interests of all policyholders and cannot pay fraudulent claims out of the common pool. Based on this principle, a claim can be repudiated or rejected by the insurer because of non-disclosure or misstatement.

In legal terms, if one party commits breach of contract by not maintaining the declaration (in the proposal form) of having replied truly and correctly, the other party i.e. the insurer is not liable to honor the claim.

Rationale: An application for life and health insurance is the applicant's proposal to the insurer for protection and is the beginning of the policy contract. The proposed insured is required to give accurate answers to questions in the application relating to his personal and family history, habits, employment, insurance already in force, and other applications for insurance that either are pending or have been postponed or refused etc. A failure to do so leads the insurer being estopped [i.e., prevented] from denying the correctness or truth of information in the application.

Answer 4(f)

Neither Mr. A nor Mr. B can collect the insurance monies. It is because Mr. A has no longer insurable interest on the house and Mr. B is not named as insured under the policy.

Insurable Interest means an interest which can be or is protected by a contract of insurance. This interest is considered as a form of property in the contemplation of law. It is only the presence of Insurable Interest that distinguishes a contract of insurance from a wagering contract and hence it is sine qua non for the validity of the contract of insurance. All the statutes say that an insurance contract will become a wagering contract and hence void if it is taken place without an insurable interest.

It is also defined as, "When the assured is so stipulate that the happening of the event on which the insurance money is to be payable would as an approximate result involve in the loss or determination of any right recognized by law or in any legal liability there is an insurable interest to the extent of the possible loss or liability."

Rationale: It is an important legal principle. Insurable interest provides the right to insure. All insurance contracts must be supported by insurable interest. Insurable interest exists when the policyholder has a pecuniary or monetary interest in the life or property, which he has insured.

Question 5

(a) X purchased a Life Insurance Policy on 3rd day of March 2024. He had declared in the Proposal Form that he was suffering with heart disease. He expired on 29th day of December 2024 due to heart attack. The Insurance Company denied the claim on the grounds of 'Early Claim'.

What is meant by 'Early Claim' ? *(4 marks)*

(b) "The recent initiative by IRDAI, "Bima Sugam" is perceived to be a big game changer in the general insurance market development. It is a revolutionary step with ambitions of becoming the largest online market for insurance products and services which has not been practiced anywhere in the world."

Explain the objectives and key features of "Bima Sugam" ? *(6 marks)*

(c) IRDA issued revised Guidelines on Motor Insurance Third-Party obligations. Explain.

(5 marks)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 5(a)

Any Claim occurring within 2/3 years of taking a Life Insurance Policy is categorized as `Early Claims'.

An "early death claim" in life insurance refers to a death claim filed within a specific timeframe (usually within the first two to three years) from the policy's start date or reinstatement. Insurers may investigate such claims more thoroughly due to the possibility of pre-existing health conditions or other circumstances being undisclosed

This raised a suspicion of breach of the condition of 'utmost good faith', the obligation on the part of the Life assured to disclose the status of his/her health in the Proposal form correctly without hiding any material information. If Insurance Company found with evidence to verify the status of health of the life assured at the time of taking the policy and the investigation reveals any adverse finding which were not disclosed in the proposal from for Life Insurance, the claim may be repudiated in terms of Section 45 of the Insurance Act, 1938.

In essence, an early death claim is a death claim filed within a defined period where the insurer has the right to investigate and potentially deny the claim if certain conditions are met, particularly regarding the disclosure of health conditions and other material facts

Even if the pre - existing condition is declared, the company will still scrutinize the claim to ensure all relevant information was accurately provided.

Answer 5(b)

Bima Sugam aims to revolutionise the Indian insurance landscape. This online marketplace acts as a central hub, connecting insurers, policyholders and intermediaries. Its mission is multifaceted. It promotes transparency by asking for clear product information from insurers, allowing consumers to make informed choices. By offering 24/7 access to a wide range of insurance products, it improves accessibility and simplifies the process of finding, comparing and purchasing insurance. The platform also streamlines processes like renewals and claim management. It fosters competition by bringing various companies together, which provides better rates and features to consumers. Consequently, Bima Sugam strives for a more transparent, convenient and inclusive insurance market in India, benefiting both consumers and the insurance sector.

Key Features:

The Bima Sugam Platform, approved by IRDAI in 2024, represents a significant shift in the Indian insurance landscape. This government-backed online marketplace will serve as a comprehensive portal for life, health, motor and travel insurance products, allowing policyholders to compare and purchase insurance policies with ease.

One-stop platform: It aims to centralise the insurance process, enabling users to compare premiums, buy policies, file claims and track claim status in one place. This enhances transparency and efficiency across the insurance sector.

Wide stakeholder involvement: The platform involves all stakeholders in the insurance industry, including insurers, policyholders, intermediaries, agents and brokers. This inclusive approach is expected to democratise access to insurance.

Free services to consumers: Consumers will not be charged for using Bima Sugam services, making it an accessible option for a broader audience.

Governance and security: Bima Sugam will operate under strict governance and security protocols. IRDAI will nominate two members to the Board of the company managing the platform, and there will be a risk management committee to mitigate various risks.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Consent-based architecture: The platform will implement a consent-based structure to ensure privacy and security, adhering to the highest standards of data protection.

Answer 5(c)

Motor Insurance Third-Party Obligations

The regulations for motor insurance third-party insurance have been revised by IRDAI. Insurers are now required to ensure a minimum percentage increase in the number of goods-carrying vehicles, passenger-carrying vehicles and tractors insured over the previous financial year. The new criteria exclude the coverage of new vehicles, focusing instead on renewals and uninsured vehicles that have had a lapse in insurance of at least 30 days. This aims to stabilize the motor third-party insurance market and ensure continuous coverage of vehicles already in the system. Additionally, insurers are mandated to underwrite a minimum number of goods-carrying vehicles, passenger-carrying vehicles and tractors in the first financial year after the regulations are notified. This will likely lead to an increase in underwriting activities and a more significant emphasis on maintaining and renewing existing policies, which will ultimately safeguard the third party interest.

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

Question 6

(*a*) What is the difference between subject-matter of insurance and the subject-matter of a contract of fire insurance ?

(*3 marks*)

(b) Three friends, Mr. Ashok, Mr. Lalit, and Mr. Hari-teamed up to start a lobster export business. Mr. Ashok owned a boat which was used in the business for fishing as well as for transporting the processed lobsters to foreign shores. They insured their ship, the cargo, freight, profits and commission, for a total of ₹ 80 lakh. Expecting to obtain enormous profits on their cargo, it was overvalued by the insured. A few months later, the boat sank in mid-ocean as it had a hole. Consequently, the cargo was also lost. The insured approached the insurance company to file a claim for compensation for the lost boat and cargo. However, the insurance company refused payment of the entire claim amount. It only made partial payment of the claim stating that the cargo was insured for an amount more than its actual market value. Moreover, investigation by the insurance company surveyor revealed that the insured had intentions to sink the boat. The vessel was retrieved by the insurance company and was offered for sale as salvage. The insured approached the court to prevent the sale of the ship.

Answer the following :

(i) Was the insurance company violating the insurance contract by refusing payment to the insured ? Justify your answer.

(ii) Discuss the duty of an insurer pertaining to salvage.

(*3+3=6 marks*)

(c) Hemant Patel, a real-estate broker, lived in Delhi with his wife and two children. He owned a bungalow in Karol Bagh which was insured with Elite Insurance Company, New Delhi, for Rs. 35 lakh. On December 31st 2024, Hemant went to the local club with his family to attend a New Year party. When they returned home in the early hours of the next day, they found that their house was burgled and many valuables were taken away. While the police investigation was going on, the insurer sent his surveyor to look into the cause of the loss, the compliance of the insured with the terms of the policy, and the amount of loss suffered by the policyholder. During the course of investigation, the surveyor observed significant

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

discrepancies in the statements given by the insured. These discrepancies pertained to the list of items reported to have been stolen and the mismatch between the true value of these items and the amount supposedly involved in the burglary. When the surveyor submitted his report to the insurance company, he mentioned that the financial condition of the insured was not good before the burglary and he had increased the insurance coverage on his house just a few days before the burglary took place.

Hemant's claim form was therefore rejected by the insurance company on the grounds of fraud. Hemant filed a lawsuit against the insurance company.

(i) Was Hemant eligible to receive the claim amount for the reported loss that he had suffered ?

(ii) Why do insurers make payments for suspicious claims ?

(*3+3=6 marks*)

Answer 6(a)

The main object of the contract of insurance is to indemnify the assured from the loss caused by damage or destruction by fire of the property of the assured. This physical object is called the subject matter of insurance. On the other hand, the subject-matter of contract of fire insurance is not the physical object or property of the assured but is money and money alone. It must be noted that what is insured is not the physical property of the assured but only loss of it by fire, because by this contract, loss by fire cannot be prevented. It is not an insurance against accidents but an agreement to protect against damage by a fire accident.

Answer 6(b)

(i) An insurance contract legally binds an insurer to pay the policyholder for the damages or losses caused by the perils against which the policyholder has insured himself. In the given case, the sinking of the boat and the loss incurred by the insured was due to willful or fraudulent act of the insured and not by the perils against which the ship was insured. An insurer is not liable for refusing to accept a claim pertaining to a loss caused by the fraudulent act of the insured. Such losses are not covered by insurance policies.

(ii) However, in taking over the ship to sell as salvage, the insurer was violating the insurance contract because salvage belongs to the insurer only after he has made the payment of the loss suffered to the insured. In this case, the insurer should have rejected any further dealings with the insured once it was apparent that the insured had involved in fraudulent act by intentionally causing the ship to sink to claim the insurance amount. Instead, the insurance company took over the insured's property for salvage without the latter's approval.

Thus, the insurer was not acting within the framework of the insurance contract and was liable to be legally penalized.

The term salvage refers to partially damaged property. Salvage belongs to the insurer after the insurer has paid the insured for the loss incurred. Thus, insurers are entitled to any material that remains after damage provided, they pay the full amount for the loss. Hence, an insurer can claim his right on the salvage only after he makes the payment for it to the insured.

The insurer is also entitled to the salvage after paying the claim amount when the insured is unwilling to retain it or unable to dispose it.

Answer 6(c)

(i) Hemant failed to give convincing replies to the questions posed by the surveyor. Even the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

information he supplied was full of discrepancies. Further, he increased the value of the insurance coverage on the house, which proves that the insured's motive behind obtaining insurance was purely to obtain financial gain rather than protection against risk. Therefore, Hemant is not eligible to receive the claim amount for the reported loss.

(ii) Insurers often make payments towards suspicious claims for fear of being blamed for tardiness in claim settlement. The fear of loss of goodwill, and the need to maintain good standing with the insurance regulators is also responsible for the insurers making hasty settlements of suspicious claims.

OR (Alternate Answer to Q. No. 6)

Question 6A

(*i*) Explain how the Insurers address the growing concern over unclaimed amount as per IRDAI's Guidelines.

(*6 marks*)

(ii) IRDAI notified to Insurers on Health Insurance Scheme Regulations on 29th May, 2024. What are the key features of the said Regulations ?

(*6 marks*)

(iii) A, purchased a flat of Rs. 25.00 lakh, taking a loan of Rs. 20.00 lakh from a bank and balance of Rs. 5.00 lakh was paid out of his past savings. Bank obtained an Insurance policy of Rs. 25.00 lakh from an Insurance Company. Thereafter an earthquake occurred and entire flat was destroyed, nothing could be realized from this property. Bank has submitted an Insurance Claim to the Insurance Company. What is your opinion about insurable interest of bank in this property and how much amount of claim that bank is eligible to receive from the insurance company ?

(*1+2=3 marks*)

Answer 6A(i)

The Insurance Regulatory and Development Authority of India (IRDAI) issued a circular on February 16, 2024, addressing the growing concern over unclaimed amounts with insurers. This circular, referenced as *IRDAI/Life/CIR/Misc/41/2/2024,* introduces modifications to the Master Circular on Unclaimed Amounts of Policyholders dated November 17, 2020. These modifications aim to tackle the issue of unclaimed insurance amounts due to various reasons, including litigation, rival claims, government intervention, and non-contractability of consumers.

Details:

Context and Concern: The IRDAI's circular highlights a significant regulatory concern regarding the increase in unclaimed amounts within the insurance sector. It was observed that, despite the traceability of consumers, insurers were unable to disburse claims for reasons such as litigation, rival claims, government freezing/blocking of policies, and lapses in claiming benefits. This situation necessitated a re-evaluation of existing guidelines to ensure efficient disbursement to rightful recipients.

Modifications to the Master Circular: The circular introduced several key modifications aimed at addressing these concerns:

1. *Definition Adjustments:* The definitions of "Due date" and "Unclaimed Amounts" have been updated to clarify the timing and nature of unclaimed funds. Notably, unclaimed amounts now include funds due to consumers that remain unpaid beyond twelve months from the due date, regardless of contractability status.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

2. *Litigation and Other Exceptions:* Amounts under litigation, rival claims, or government action are now categorized under a separate sub-heading, "Litigation and others," ensuring they are accounted for, until resolution.
3. *Consumer Definition Expansion*: A new clause broadens the definition of 'consumer' to encompass all individuals with a financial interest in the policy, advocating for comprehensive efforts to trace and disburse funds to rightful claimants.

Strategies for Reduction and Disbursement of Unclaimed Amounts by Insurers are:

The circular outlines proactive measures for insurers to reduce existing unclaimed amounts and prevent future accumulations. These include updating policyholder details, engaging with various platforms for consumer tracing, advertising for non-traceable consumers and implementing robust systems to validate contact information. Additionally, insurers are encouraged to utilize online tools for processing and payment of unclaimed amounts, alongside establishing systems to combat fraudulent claims.

To Conclude, the IRDAI's modifications to the Master Circular represent a significant step towards addressing the issue of unclaimed insurance amounts. By clarifying definitions, refining categorizations, and introducing comprehensive measures for tracing and disbursement, the authority aims to protect consumer interests and ensure the rightful payment of due amounts. Insurers are now tasked with adopting these guidelines and enhancing their efforts to reduce the burden of unclaimed funds, ultimately fostering a more transparent and consumer-friendly insurance landscape in India.

Answer 6A(ii)

On 29th May, 2024, Insurance Regulatory and Development Authority of India (IRDAI) notified the Master Circular on IRDAI (Insurance Products) Regulations 2024-Health Insurance. This master Circular was effective with immediate effect i.e., 29th May 2024.

This Circular is subdivided into 3 Chapters as under:

1. Chapter I talks about General Information for the Policy Holder / Prospect / Customer.
2. Chapter II talks about Broad Requirements to be complied with by the Insurer for offering Health Insurance Business.
3. Chapter III talks about some miscellaneous provisions related to submission of returns, model policy for persons with disability / HIV.

Key Features:

Customisation in Policies and Products: Now Customers have options for a greater range of products and add-ons to protect assets, risks, and liabilities from various situations. This further enhances the flexibility and provides greater product options to best cater varied customer needs.

Customer Information Sheet (CIS): This sheet would provide easy-to-understand policy details, exclusions, warranties, and claim settlement procedures, comprising coverage scope, etc. to ensure transparency and provide greater clarity for policyholders.

Simplified Claim Procedure: Claims cannot be dismissed because of any deficiency in the documents. Documents will be requested during underwriting, and only will be required for claim settlement if cashless options are not available.

Product Cancellation: Consumers have an option to cancel their insurance policies at any time by notifying the insurer. On the other hand, Insurers can only cancel plans if fraud is proven, with proportionate premiums refunded for the remaining period. After the Moratorium Period, which is

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

60 months of continuous coverage, health insurance policies and claims cannot be challenged for non-disclosure or misrepresentation until proven fraudulent.

Grievance Redressal Mechanism: Insurers shall setup a robust grievance redressal mechanism in place to address all their customer concerns. Further, Details like the insurance ombudsman's contact details, where the grievance can be escalated, etc. must be included in the insurer's response letter to any complaints.

Submission of Returns: Insurers are required to submit periodic returns on Premium, claims etc. as per the provisions of the master circular on submission of returns issued by the Competent Authority.

Answer 6A(iii)

In this case the banker provides a loan or mortgage secured by the property or asset, they then have an insurable interest in that property or asset. If a borrower is provided with a loan to purchase a property, the bank will have an equivalent insurable interest in that property as was equal to the loan. It will decrease over time as the loan is paid back until it reaches zero, at which time the lender will no longer have an insurable interest in the property.

In the present case, the Banker only have an insurable interest in this property to the extent of Rs.20.00 lacs only.

****

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

INSOLVENCY AND BANKRUPTCY – LAW AND PRACTICE

GROUP 2 ELECTIVE PAPER 7.5

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

NOTE : *Answer All Questions.*

Part-I

Question 1

(*a*) Read the following and answer the questions below based on the relevant case laws and the applicable provisions of the Insolvency and Bankruptcy Code, 2016 ('IBC, 2016') and the Regulations made thereunder in this regard.

Facts of the case

Thakur Engineering Products Private Limited ['the company'] engaged in the business Industrial Machinery supplies. It got Machinery supplies worth ₹ 21,10,11,054/- from a supplier ('Respondent'), which was due and payable by the company. Several cheques were issued by the company in favour of the respondent towards amounts payable for supplies, all of which were returned dishonoured for the reason "funds insufficient".

As a result, the respondent issued a statutory demand notice under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 ('NI Act'), calling upon the company and its three Directors, to pay the amount within 15 days of the receipt of the notice.

Subsequently, two cheques for a total amount of ₹ 90,80,123/- presented by the respondent for encashment were returned dishonoured for the reason "funds insufficient". A second demand notice was therefore issued under the same Sections by the respondent, calling upon the company and the appellants to pay this amount within 15 days of the receipt of the notice.

Since no payment was forthcoming pursuant to the two statutory demand notices, two criminal complaints, were filed by the respondent against the company and the appellants under Section 138 read with Section 141 of the Negotiable Instruments Act before the Additional Chief Metropolitan Magistrate ['ACMM']. Summons were issued by the ACMM to the company and the appellants in both the criminal complaints.

Meanwhile, as a statutory notice under Section 8 of the IBC, 2016 had been issued by the respondent to the company, and an order was passed by the Adjudicating Authority admitting the application under Section 9 of the IBC and directing commencement of the corporate insolvency resolution process with respect to the company, a moratorium in terms of Section 14 of the IBC was ordered.

Pursuant thereto, the Adjudicating Authority stayed further proceedings in the two criminal complaints pending before the ACMM. In an appeal filed to the National Company Law Appellate, Tribunal ('NCLAT'), the NCLAT set aside this order, holding that Section 138, being a criminal law provision, cannot be held to be a "proceeding" within the meaning of Section 14 of the IBC, 2016. In an appeal filed before the Court, the Court ordered a stay of further proceedings in the two complaints pending before the learned ACMM.

Subsequent thereto, since a resolution plan submitted by the promoters of the company

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

had been approved by the committee of creditors, the Adjudicating Authority approved such plan as a result of which, the moratorium order ceased to have effect. It may only be added that at present, an application for withdrawal of approval of this resolution plan has been filed by the financial creditors of the company before the Adjudicating Authority. Equally, an application to extend time for implementation of this plan has been filed by the resolution applicant before the Adjudicating Authority. Both these applications have yet to be decided by the Adjudicating Authority.

On the above background, referring the provisions of IBC, 2016 and applicable case laws answer following questions :

(i) What is the main purpose of the moratorium under Section l4 of the IBC, 20l6, and how did the Supreme Court apply it to Section 138 of the NI Act ?

(*2 marks*)

(ii) Why did the Supreme Court classify proceedings under Section 138 of the NI Act as "criminal" for the purpose of the Section l4 moratorium ?

(*2 marks*)

(iii) In a case with similar facts, Supreme Court made a landmark decision, how does this decision affect the creditors who have initiated Section 138 proceedings against a company undergoing Corporate Insolvency Resolution Process (CIRP) ?

(*2 marks*)

(iv) If a personal guarantor for Thakur Engineering Products Private Limited had also issued a cheque which had bounced, would the Section l4 moratorium apply to the personal guarantor ? Why or why not ?

(*2 marks*)

(v) Whether arbitration proceedings are included under moratorium imposed under Section l4 ? Explain in detail with the relevant provisions of the IBC, 2016.

(*4 marks*)

(vi) Whether moratorium imposed under Section 14 and 85 of IBC, 2016 are subject specific ? Whether Section 14(1) applies only to legal proceedings ? Explain in detail quoting the relevant provisions of the IBC.

(*4 marks*)

(b) Answer the following questions :

(i) Can a Resolution Professional withdraw or modify a successful Resolution Plan submitted with the Adjudication Authority ? Answer with suitable provisions of the IBBI Regulations and applicable case law.

(*3 marks*)

(ii) In the context of Bankruptcy and Insolvency process under IBC, 20l6, what is the Swiss Challenge method for making an auction to get the best available price ? Quoting applicable case laws, state whether Courts in India generally accept the adoption of this method in the Bankruptcy and Insolvency process under IBC, 2016.

(*3 marks*)

(iii) During the course of Liquidation process, if a liquidator finds that some stocks of a Corporate Debtor is deteriorating very quickly and losing its present value, what are the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

various courses of action available for the Liquidator. Answer briefly quoting applicable case law.

(3 marks)

Answer 1(a)(i)

The primary purpose of the moratorium is to protect the corporate debtor's assets and prevent any actions that could deplete them during the Corporate Insolvency Resolution Process(CIRP), allowing for a smooth resolution. The Supreme Court held that despite the civil consequences of the proceedings under Section 138 of the Negotiable Instruments Act, they are essentially criminal in nature, and therefore fall within the scope of the moratorium.

Answer 1(a)(ii)

Proceeding under section 138/141 of the Negotiable Instruments Act is a quasi-criminal and would amount to a "proceeding" within the meaning of Section 14(1)(a) of Insolvency and Bankruptcy Code -held by Supreme Court of India *in P. Mohanraj & Ors. Vs. M/s. Shah Brothers Ispat Pvt. Ltd.*

The Court recognized that while Section 138 proceedings lead to civil consequences (like compensation), they are initiated by a criminal complaint and can result in imprisonment. The punitive nature of these proceedings led the Court to conclude they are fundamentally criminal, thus falling under the moratorium's purview.

Answer 1(a)(iii)

Creditors who have initiated Section 138 proceedings against the Company must halt those proceedings during the moratorium period. They will have to pursue their claims through the resolution process outlined in the Insolvency and Bankruptcy Code, submitting their claims to the Resolution Professional.

Answer 1(a)(iv)

No, the Section 14 of the Insolvency and Bankruptcy Code moratorium would not apply to the personal guarantor. The moratorium applies specifically to the corporate debtor. Personal guarantors are separate legal entities, and the moratorium does not extend to their liabilities.

The legal impediment contained in Section 14 of the Insolvency and Bankruptcy Code would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 Negotiable Instruments Act proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against the persons mentioned in Section 141(1) and (2) of the Negotiable Instruments Act. This being the case, it is clear that the moratorium provision contained in Section 14 of the Insolvency and Bankruptcy Code would apply only to the corporate debtor, the natural persons mentioned in Section 141 continuing to be statutorily liable under Chapter XVII of the Negotiable Instruments Act.

The question that came before the Supreme Court in *SBI v. V. Ramakrishnan* was whether Section 14 Insolvency and Bankruptcy Code, which establishes a temporary moratorium, would also apply to a personal guarantor of a corporate debtor. The Supreme Court made it clear that personal guarantors are not covered by the moratorium; rather, it only applies to the corporate debtor.

Answer 1(a)(v)

A cursory look at Section 14(1) of the Insolvency and Bankruptcy Code , makes it clear that subject to the exceptions contained in sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall mandatorily, by order, declare a moratorium to prohibit what

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

follows in clauses (a) to (d).

Section 14(1)(a). It will be noticed that the expression "or" occurs twice in the first part of Section 14(1)(a) – first, between the expressions "institution of suits" and "continuation of pending suits" and second, between the expressions "continuation of pending suits" and "proceedings against the corporate debtor…". The sweep of the provision is very wide indeed as it includes institution, continuation, judgment and execution of suits and proceedings. It is important to note that an award of an arbitration panel or an order of an authority is also included. This being the case, it would be incongruous to hold that the expression "the institution of suits or continuation of pending suits" must be read disjunctively as otherwise, the institution of arbitral proceedings and proceedings before authorities cannot be subsumed within the expression institution of "suits" which are proceedings in civil courts instituted by a plaint. Therefore, it is clear that the expression "institution of suits or continuation of pending suits" is to be read as one category, and the disjunctive "or" before the word "proceedings" would make it clear that proceedings against the corporate debtor would be a separate category.

Answer 1(a)(vi)

Sections 14(1)(a) and (b) of the Insolvency and Bankruptcy Code,2016 together form a scheme which shields the corporate debtor from pecuniary attacks against it in the moratorium period so that the corporate debtor gets breathing space to continue as a going concern in order to ultimately rehabilitate itself.

It is clear from the language of Section 85 that it is only in respect of debts, whereas the moratorium contained in Section 14 is not subject specific. The only exception provision is contained in Section 14(3)(a) which is that "transactions" are the subject matter of Section 14(1). "Transaction" is a much wider expression than "debt" and subsumes it. Also, the expression "proceedings" used by the legislature in Section 14(1)(a) is not trammelled by the word "legal" as a prefix that is contained in the moratorium provisions qua individuals and firms. A legal action or proceeding in respect of any debt would, on its plain language, include a Section 138 proceeding.

At the heart of the section is the extinguishment of criminal liability of the corporate debtor, from the date the resolution plan has been approved by the Adjudicating Authority, so that the new management may make a clean break with the past and start on a clean slate. Whereas section 14, does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, which shadow is lifted when the moratorium period comes to an end. Also, section 32(A)(1) operates only after the moratorium comes to an end.

(*P. Mohanraj & Ors*. V *Shah Brothers Ispat Pvt Ltd.*) (Civil Appeal No: 10355 of 2018 dated 1st March, 2021)

Answer 1(b)(i)

When a resolution plan has been submitted under Section 31(1) of the Insolvency and Bankruptcy Code, 2016, the IBC has not mentioned anything to do on the part of the AA.

However, the Apex Court ruled in the case of *SBI & others (Appellant)* v. *Consortium of Mr. Murari lal Jalan & Mr. Florian Frits CH & another*, in its judgement dated 7th November, 2024, citing the question raised in the case of Swiss Ribbons (P) Ltd, that the Adjudicating Authority(AA) lacks such power to allow withdrawal or modification in the plain terms of IBC 2016. The apex Court clearly observed that the plan is approved by the CoC , at the behest of the successful applicant , once it is submitted before the AA it is binding and become irrevocable as between the CoC and the Applicant , even the AA has not given its stamp.

Therefore, there is absolutely no scope for modification of the terms of a resolution plan which has

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

received the imprimatur of the AA, be it by the AA itself, the CoC, or the Successful Resolution Applicant.

Answer 1(b)(ii)

The Swiss Challenge method of auction is a bidding process, in an auction process, in which the original bidder makes an unsolicited bid to the auctioneer. After obtaining the indicative price, if approved, the auctioneer then seeks counter proposals against the original proposal and chooses the best amongst all options including the original bid. This method tries to maximize the value of the item is auctioned. The original bidder in most cases is granted the right to first refusal. If the original bidder matches its offer to the challenging proposal, the bid is awarded to him, else it is awarded to the challenging bidder

MRG Estates LLP Vs. Akash Shinghal, Liquidator, Amira Pure Foods Pvt. Ltd. &Ors. [W.P.(C) 10023/2020] HC, New Delhi order dt. 15.12.2020

The High Court directed IBBI to consider the petition as a representation on the issue of adoption of Swiss Challenge method as a form of an auction under the Liquidation Process Regulations.

Answer 1(b)(iii)

In the matter of *Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Limited,* an application was filed by the liquidator under Regulation 33(2)(d) of the Liquidation Regulations for seeking prior permission from the Adjudicating Authority(AA) to sell the assets of the corporate debtor by means of a private sale.

The Adjudicating Authority (AA) considered the issue whether all the requirements of Regulation 33(2)(d) of the Liquidation Regulations are compiled and held that "To our mind the proper interpretation on clauses (a) & (b) would be that a liquidator is entitled to sell the assets without requirement of prior permission after reaching the conclusion that the assets are perishable, and it is likely to deteriorate significantly in value if not sold immediately. Otherwise, the purpose of regulation would be defeated if the time is required to be spent in filing an application and taken permission because the assets which are perishable may not remain available for sale and perish or it may deteriorate significantly in value if not sold immediately."

The NCLT also observed that, unless the liquidator does that immediately the very purpose of these regulations would be defeated if time is consumed in filling an application and seeking permission thereof, because the asset may not remain static / intact and available for sale at desirable price.

Question 2

(a) Kulu Floriculture Private Limited is in the business of floriculture. The investment in plant and machinery is of ₹ 15 lakhs only. It has availed term loan of ₹ l2 lakhs from a bank.

The company earned a good profit up to 2 years. However, in the current financial year, its turnover went down due to stiff competition from the local competitors. The loan outstanding of the company also reduced from ₹ 12 lakhs to ₹ 9 lakhs, but during the current year the company could not pay the instalment of the term loan, as a result its account was classified as Non-Performing Asset (NPA) in the books of the bank. The company decides to initiate Pre-Packed Insolvency Resolution Process (PPIRP) and sought an opinion from one of the Insolvency Professional (IP). The IP suggested to convene a meeting of the financial creditors. A declaration was also made by the directors in the meeting. The company also passed a resolution in the general meeting of the members.

Based on above background answer the following questions by selecting from the choices given for each question (Write the correct answer in full) :

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(i) For classification of any company as a MSME (Micro Classification) company the investment in Plant and Machinery should be :

A. Not more than ₹ 25 lakh

B. Not more than ₹ 50 lakh

C. Not more than ₹ 75 lakh

D. Not more than ₹ 100 lakh

(ii) For initiation of the PPIRP the minimum amount of default should be :

A. ₹ One Lakh

B. ₹ 5 Lakh

C. ₹ 7 Lakh

D. ₹ 10 Lakh

(iii) Initiation of the PPIRP on the part of the corporate debtor is :

A. Optional

B. Mandatory

C. Subject to approval by Adjudicating Authority

D. At the discretion of the Court

(iv) In which form the company shall make an application for initiating PPIRP ?

A. Form 1

B. Form 2

C. Form 3

D. Form 4

(v) If in the given case, the company has no outstanding against the financial creditors, but is unable to pay the dues to the operational creditors. How the meeting shall be convened :

A. The company shall convene a meeting of operational creditors

B. The company shall convene a meeting of workmen

C. The company shall convene a meeting of employees

D. The company shall convene a meeting of operational creditors who are not related parties of the corporate debtor

(vi) A declaration made by majority of the directors shall contain :

A. The Corporate Debtor shall file an application for initiation within a definite time not exceeding 90 days

B. The PPIRP is not being initiated to defraud any person

C. The name of the IP approved by creditors to be appointed as the RP

D. All of the above

(vii) The members of the Corporate Debtor shall pass a special resolution :

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

A. Approving the solvency of the CD

B. Approving the filing of an application for initiating PPIRP

C. Approving the appointment of Insolvency Professional

D. Approving the appointment of authorised representatives of creditors

(viii) Who shall prepare the Base Resolution Plan (BRP) under PPIRP ?

A. The Corporate Debtor

B. The Insolvency Professional

C. The Committee of Creditors

D. The Resolution Applicant

(1×8 = 8 marks)

(b) Violet Corp Limited (VCL) carries on the business of specialised chemicals used in synthetic dyes and its businesses have spread across the globe. Due to environmental impact its products lost markets and started facing financial difficulties. The Purple Bank of India (PBI) one of its financial creditors had filed an application under Section 7 of the IBC, 2016 against VCL. The Adjudicating Authority passed order against VCL initiating the Corporate Insolvency Resolution Process (CIRP) in the middle of 2022. However, before kickstart of the aforesaid CIRP, one more Bankruptcy proceeding was initiated against its overseas assets provided as security to a foreign Bank in a European country, and a **Trustee** was appointed by the European court having jurisdiction over its overseas properties. The Trustee has approached Adjudicating Authority (NCLT) to recognize their proceedings and to halt Indian proceedings.

However, The NCLT declined to accept/consider the application and declared that their proceedings as null and void, mentioning their reasons/observations. Aggrieved by the decision, the Trustee made an appeal before the NCLAT to consider their appeal and preyed relief as stated above.

In this background, state the decision for denial by the NCLT and also the decision of the NCLAT by citing appropriate case law in this regard.

(6 marks)

(c) Kapil Kumar, a prominent businessman, had provided personal guarantees to several financial institutions for loans extended to his company, "KK Enterprises Limited", institutions invoked Kapil's personal guarantees and initiated insolvency proceedings against him under the Insolvency and Bankruptcy Code, 2016 (IBC, 2016), specifically under the provisions related to personal guarantors to corporate debtors. Kapil challenged the validity of these proceedings, arguing that the notification bringing personal guarantors within the ambit of the IBC was arbitrary and discriminatory.

On this background, mentioning relevant provisions of the IBC, 2016 and applicable case laws answer the following questions :

(i) What is the significance of Section 1(3) of the IBC, 2016 in this case ?

(1 mark)

(ii) According to the Supreme Court's ruling in a case with similar facts, what is the nature of a personal guarantor's liability and what did the Supreme Court rule about the validity of the November 15, 2019 notification issued by the Ministry of Corporate Affairs under IBC, 2016 ?

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

(*2 marks*)

(iii) What is the effect of the Supreme Court ruling on financial Creditors (Banks and Financial Institutions) ?

(*1 mark*)

(iv) What are the implications of the judgment for Corporate Debtor in a similar case ?

(*1 mark*)

(v) Which other provision (of a commercial law) had a significant bearing on the decision of the Supreme Court in the above case ?

(*1 mark*)

(d) "Resolution Professional/Liquidator is facing possibility of physical assault and non- co-operation from the various participants of the Corporate Insolvency Resolution Process/ Liquidation." In the above situations whether Resolution Professional (RP)/Liquidator can seek police protection by obtaining order from Adjudicating Authorities (AA). Referring relevant case law brief whether AA has power to direct the police authorities to assist the Resolution Professional or Liquidator and also brief on the powers of AA under the above circumstances.

(*5 marks*)

Answer 2(a)

(i) (D) Not more than ₹ 100 lakh

(ii) (D) ₹ 10 Lakh

(iii) (A) Optional

(iv) (A) Form 1

(v) (D) The company shall convene a meeting of operational creditors who are not related parties of the corporate debtor

(vi) (D) All the above

(vii) (B) Approving the filing of an application for initiating PPIRP

(viii) (A) The Corporate Debtor

Answer 2(b)

The facts are similar to the first cross border insolvency case of *Jet Airways (India) Ltd v. State Bank of India and another,* the NCLT referred that the section 234 and section 235 of the Insolvency and Bankruptcy Code, 2016 and also mentioned the absence of any sure-shot legal regime on the cross-border insolvency declared in that European country, the Netherland. So, the NCLT declared that Dutch proceeding is null and void.

Aggrieved by that order of NCLT, the Dutch court appointed Trustee filed appeal against that order of NCLT- Mumbai, the NCLAT allowed stating that it is a matter of cross – border insolvency protocol arranged between the 2 officials based on the model law. The Centre of Main Interests (COMI) of the Jet Airways was recognized to be India as the Jet Airways (India) limited was incorporated in India and it's primary business is operated in India. This is the first cross border insolvency case in India, so the AA was somewhat shaky to arrive at a constructive decision at the same time the IBC being a newer law and is ever-evolving.

The 'Dutch Trustee (Administrator) will work in cooperation with the 'Resolution Professional of India'

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

and, if any, suggestion is required to be given, he may give it to the 'Resolution Professional'.

NCLAT set asides part of the impugned order dated 20th June, 2019 passed by the NCLT, Mumbai Bench in so far it relates to the observations that the 'Dutch Court' has no jurisdiction in the matter of 'corporate insolvency resolution process' of 'Jet Airways (India) Limited, (Offshore Regional Hub) and the consequential directions as given to the 'Resolution Professional' in respect of 'Offshore proceedings. However, it is was made clear that NCLAT have not interfered with the order of admission of application under Section 7 of the I&B Code filed by the 'State Bank of India' against 'Jet Airways (India) Limited', therefore, joint 'Corporate Insolvency Resolution Process' will continue in accordance with 'Insolvency and Bankruptcy Code, 2016.

Answer 2(c)(i)

Section 1(3) of the Insolvency and Bankruptcy Code 2016 grants the Central Government the authority to implement different sections of the IBC at different times. This power was used to bring the provisions concerning personal guarantors into effect. Specifically, a notification in November 2019 made Part III applicable to personal guarantors, bringing them within the IBC's purview.

Answer 2(c)(ii)

Following the notification by the Ministry of Corporate Affairs on 15-11-2019, in a significant ruling dated 21-5-2021, in *Lalit Kumar Jain v. Union of India* the Supreme Court addressed the constitutionality of the provisions of the Insolvency and Bankruptcy Code that permitted the initiation of insolvency process against personal guarantors, including the promoters, of a corporate debtor that is facing insolvency.

The Supreme Court maintained the terms of the notification, ruling that the guarantor remains liable even if the corporate debtor or principal borrower is released from their obligation to the creditor through an involuntary process like insolvency. In essence, the Supreme Court opened the door for creditors to file for bankruptcy against the personal guarantors of a company debtor going through liquidation or insolvency.

Answer 2(c)(iii)

The Supreme Court has affirmed the notification's constitutional validity, and opened the door for banks and other financial institutions to file for the bankruptcy of personal guarantors of corporate debtors facing insolvency or liquidation proceedings before the NCLT.

Answer 2(c)(iv)

Corporate Debtors may face increased scrutiny and pressure from creditors, as personal guarantors can now be pursued for recovery of debts. This may lead to more responsible borrowing and lending practices.

Answer 2(c)(v)

Section 128 of the Indian Contract Act,1872 though not part of the Insolvency and Bankruptcy Code had a profound bearing and relevance in the judgment, as it deals with the liability of the surety (personal guarantor).

Answer 2(d)

In *Punjab National Bank v. Mintri Tea Company (P) Limited [2018] 98 taxmann. com.494* (NCLT – Kolkata bench). The NCLT Kolkata, directed the Superintendent of Police (SP) of that jurisdiction, to provide adequate police protection, so that the RP may discharge his duties and take over the management of the Corporate Debtor (CD).

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

They also observed that in this regard, it is also expected from the CD to fully co-operate with the Resolution Professional, failing which action will be initiated against CD under Section 70 of the Insolvency and Bankruptcy Code, 2016.

Question 3

(*a*) Bhuj Tools Co. Private Limited, was incorporated in the state of Gujarat with an authorised and fully paid-up equity share capital was 20,00,000 equity shares of ₹ l0 each, stood at ₹ 2 Crore.

The promoters would not want like to carry on the business anymore and decided to Voluntarily Liquidate the business of the Company. The Company being closely held, the Shareholders of the Company has passed necessary resolution to liquidate the Company and appointed one Parikh as Liquidator.

The 20,00,000 equity shares are held by the 4 persons :

Tessilis Technology, Italy	15,80,000
P Dave	2,00,000
Shah	2,00,000
Girija Kapadia	20,000
Total number of equity shares of `. 10 each fully paid up	20,00,000

The Balance Sheet as on Liquidation commencement date was as follows : Surplus in the Profit & Loss account was ₹ 76,52,277 The Asset side shown as :

Bank & Cash ₹ 94,48,300

Short Term Advances ₹ 2,03,977

Total : ₹ 96,52,277

Expenses Paid	₹	₹
1. Liquidation Fee		11,62,000
2. Newspaper publications		6,900
3. Prof Fee–FEMA	25,000	
4. RoC compliance	11,200	
5. GST, Income Tax, Audit etc.,	1,77,000	
6. Accounting Expenses	17,700	
7. NCLT Application Fee	28,000	2,58,900
8. Misc. Expenses		20,500
Total Expenses made		14,48,300

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Out of the Assets, Short Term Advances considered not realisable. Based on the above facts and information answer the following questions :

(i) Calculate the final amount available for distribution to the shareholders.

(3 marks)

(ii) Prepare a shareholder-wise distribution schedule showing the amount to be distributed to each shareholder and the percentage of the amount available for each shareholder out of the total amount.

(6 marks)

(iii) What forms and returns to be filed with Registrar of Companies and within what period at the commencement of Voluntary Liquidation. Whether any change will happen in the Company status in the MCA 'Master data', upon approval of this forms, if so, what status will be shown in the MCA portal.

(3 marks)

(iv) Whether the Company need to file Annual forms after commencement of Voluntary Liquidation but before receiving the final order from NCLT.

(2 marks)

(v) Upon receipt of order from National Company Law Tribunal, whether any communication to be made to Registrar, if yes, indicate the form and also brief when the dissolution status of the Company will appear in the MCA portal.

(2 marks)

(b) Match the following dictum/issue involved with the case law(s) based on ratios/decisions pronounced under IBC, 2016 :

Sl. No.	*Case Title*	*Sl. No.*	*Issue*
1.	Shivam Water Treaters Private Limited Vs. Union of India, Secretary to Government, Ministry of Corporate Affairs	A	The Court noted that the purpose of the IBC is solitary as it has been enacted to ensure that an industry under distress does not fade into oblivion and can be reviewed by virtue of the resolution plan.
2.	Swiss Ribbons Pvt Ltd and Another Vs. Union of India and Others	B	The Operational Creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedure
3.	Ultra Tech Nathdwara Cement Ltd Vs. Union of India and Others	C	The Court held that Article 19(1)(g) has not been infracted but has been saved by Article 19(6) as the Amendment Act is made in public interest, and it cannot be said to be unreasonable restriction on the Petitioners' fundamental rights under Article 19(1)(g)

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

4.	Pioneer Urban Land and Infrastructure Limited and Another Vs. Union of India and Others	D	The 'right to sue' accrues when a default occurs
5.	Arcelor Mittal India Pvt Ltd Vs. Satish Kumar Gupta and Others	E	The Adjudicating Authority observed that the resolution plan cannot be considered at the stage when the CoC has, by majority decision, decided to proceed with liquidation
6.	K. Kishan Vs. Vijay Nirman Company Limited	F	The Ministry of Corporate Affairs, Government of India stated that the Directorate of Enforcement has no jurisdiction to attach the property of the Corporate Debtor, which is undergoing corporate insolvency resolution process
7.	State Bank of India Vs. Coastal Projects Ltd.	G	The Ministry of Corporate Affairs, Government of India stated that the Directorate of Enforcement has no jurisdiction to attach the property of the Corporate Debtor, which is undergoing corporate insolvency resolution process
8.	B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates	H	The High Court was requested not to enter into the debate pertaining to the validity of the Insolvency and Bankruptcy Code, 2016 or the constitutional validity of the NCLT
9.	The Deputy Director, Directorate of Enforcement Vs Axis Bank and Others	I	It would render the remedy of appeal inefficacious and a circuit Bench be established at every place where aggrieved party could avail of his remedy. On this point, the Attorney General assured the Court that judgement of Madras Bar Association will be followed and Circuit Benches will be established as soon as it is practicable
		J	The Court held that the Bonafide third party claimant has a legitimate right to proceed ahead with enforcement of its claim in accordance with law not- withstanding the order of attachment under PMLA
		K	It was held that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

		L	Provisions of Section 7 of the code are not unconstitutional, and the principles of natural justice are implicit in Section 7 of the code
		M	It felt that the latter action (that is attachment under PMLA) is not rendered irrelevant or unenforceable

(1×9=9 marks)

Answer 3(a)(i)

Amount available for distribution to Shareholders	
Amount realised - Only Cash and Bank Balances	Rs.94,48,300
Less:	
Liquidation Fees	Rs. 11,62,000
Less:	
Other Expenses (considered as all approved expenses)	Rs. 2,86,300
Balance amount available for distribution	Rs. 80,00,000

Answer 3(a)(ii)

	No. of Shares held	*Amount available to each individual shareholder(Rs)*	*Percentage of amount distributed to each shareholder*
Tessilis Technology, Italy	15,80,000	63,20,000	79%
P Dave	2,00,000	8,00,000	10%
Shah	2,00,000	8,00,000	10%
Girija Kapadia	20,000	80,000	1%
Total number of equity shares of Rs.10 each fully paid up	20,00,000	80,00,000	100%

Answer 3(a)(iii)

On commencement of Voluntary Liquidation, Special Resolution passed by Shareholders for approval Voluntary Liquidation have to be filed with Registrar through Form MGT-14 within 7 days

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

of passing of resolution along with Declaration of Solvency and other declarations in Form GNL-2 within 7 days.

Upon approval of these Form MCA Master data status will be changed to 'Under Liquidation'.

Answer 3(a)(iv)

On commencement of Voluntary Liquidation, the Status of the Company will be changed to 'Under Liquidation' and the Board Directors shall not have any power. Further, the Shareholders of the Company becomes contributories. Hence, there is no need to file Annual Forms after the commencement of the Voluntary Liquidation.

Instead, the liquidator is responsible for submitting reports, including the Annual Status Report, to track the progress of the liquidation. Once the winding up process is complete, the liquidator files the final report and seeks dissolution, according to the Insolvency and Bankruptcy Board of India (IBBI).

Answer 3(a)(v)

Rule 161 of the National Company law Tribunal Rule, 2013 deals with filing of Order of the Tribunal with the Registrar of Companies. It provides that:

The certified copy of the order passed by the Tribunal shall be filed by the company in form INC-28 along with fee of Rupees five hundred with the Registrar of Companies within the time specified in the Act or specified by the Tribunal. Where no time limit is prescribed by the Tribunal, such order shall be filed within thirty days from the date of receipt of certified copy of the order.

Upon approval of INC-28 by the Registrar the MCA Master data status of the Company will be changed to 'dissolved', which is the final status after Voluntary Liquidation.

Answer 3(b)

Sl. No.	*Case Title*	*Sl. No.*	*Issue*
1.	Shivam Water Treaters Private Limited Vs. Union of India, Secretary to Government, Ministry of Corporate Affairs	H	The High Court was requested not to enter into the debate pertaining to the validity of the Insolvency and Bankruptcy Code, 2016 or the constitutional validity of the NCLT
2.	Swiss Ribbons Pvt Ltd and Another Vs. Union of India and Others	I	It would render the remedy of appeal inefficacious and a circuit Bench be established at every place where aggrieved party could avail of his remedy. On this point, the Attorney General assured the Court that judgement of Madras Bar Association will be followed and Circuit Benches will be established as soon as it is practicable
3.	Ultra Tech Nathdwara Cement Ltd Vs. Union of India and Others	A	The Court noted that the purpose of the IBC is solitary as it has been enacted to ensure that an industry under distress does not fade into oblivion and can be reviewed by virtue of the resolution plan

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Sl. No.	*Case Title*	*Sl. No.*	*Issue*
4.	Pioneer Urban Land and Infrastructure Limited and Another Vs. Union of India and Others	C	The Court held that Article 19(1)(g) has not been infracted but has been saved by Article 19(6) as the Amendment Act is made in public interest, and it cannot be said to be unreasonable restriction on the Petitioners' fundamental right under Article 19(1)(g)
5.	Arcelor Mittal India Pvt Ltd Vs. Satish Kumar Gupta and Others	K	It was held that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage
6.	K Kishan Vs. Vijay Nirman Company Limited	B	The Operational Creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures
7.	State Bank of India Vs. Coastal Projects Ltd	E	The Adjudicating Authority observed that the resolution plan cannot be considered at the stage when the CoC has, by majority decision, decided to proceed with liquidation
8.	B K Educational Services Pvt Ltd Vs. Parag Gupta and Associates	D	'The right to sue' accrues when a default occurs
9.	The Deputy Director, Directorate of Enforcement Vs Axis Bank and Others	J	The Court held that the Bonafide third party claimant has a legitimate right to proceed ahead with enforcement of its claim in accordance with law notwithstanding the order of attachment under PMLA

Question 4

(*a*) Two appeals were preferred by the management of a Corporate Debtor (CD) against two orders wherein the Adjudicating authority had passed orders of liquidation under Section 33(1) of the Insolvency and Bankruptcy Board Code 2016 of companies with certain directions to the liquidator.

Prior to this, two separate appeals were preferred by resolution applicant(s) in respect of the 'Corporate Insolvency Resolution Process' (CIRP) initiated against the above said corporate debtor wherein opportunity was given to them to submit better revised resolution plan(s) and the 'committee of creditors' were directed to consider them. However, subsequently, the resolution applicants withdrew their appeals.

Sekar, the appellant, raised concerns regarding the actions of the liquidator, Amit, specifically regarding the handling of asset sales.

The core issue was whether the liquidator had acted in accordance with the provisions of the

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

IBC and the associated regulations, particularly regarding the maximization of asset value and the exploration of options like "going concern" sales.

The appellant argued that the liquidator's actions, such as selling spare parts, were detrimental to the company's value and that a "going concern" sale should have been prioritized.

On the above background referring the relevant case law(s) and provisions of the IBC, 2016 and regulations made thereunder answer the following questions :

(i) What are the primary duties of a liquidator under Section 35 of the IBC, 2016 ?

(ii) What is the significance of "going concern" sales in the liquidation process ?

(iii) How does Regulation 32 of the IBBI (Liquidation Process) Regulations, 2016, impact the liquidator's actions ?

(iv) In the given case, what concerns were raised by Sekar regarding the liquidator's actions ?

(v) What is the role of Section 230 of the Companies Act 2013, in the liquidation process ?

(vi) What was the overall outcome of the court's rulings in this case ?

(vii) How does this case contribute to the interpretation of the liquidator's powers and duties under the IBC, 2016 ?

(viii) What are the implications of this case for future liquidation proceedings ?

(ix) What is the importance of maximising the value of the corporate debtors' assets during liquidation ?

(x) What is the difference between selling assets in piecemeal, and selling the company as a going concern ?

(1×10=10 marks)

(b) Comment on the correctness of the following factual situations or statements referring applicable provisions of the IBC, 2016 and Regulations made thereunder :

(i) In a Corporate Insolvency Resolution Process, there were no Financial Creditors and only there were 25 Operational Creditors and Employees and workers. Out of 25 Operational Creditors, 10 Operational Creditors formed a committee within themselves including the 5 representatives of workers and employees.

(ii) Unlike a civil law, SARFAESI Act, 2002 does not provide any option to apply for Caveats before the Courts.

(iii) Can the Secured Creditor prematurely close any in-built compensation clause to the directors, managerial personnel of the borrower as per their contractual agreement under SARFAESI Act ?

(iv) A debtor having income of ₹ 6,000 per month and asset base of ₹ 25,000 the debtor is embarrassed with huge debts, he wants to file an application for fresh start under the IBC, 2016.

(v) One of the Financial Creditor to a Corporate Debtor has claimed that "the IBC, 2016 cannot prevail over the SARFAESI Act, 2002 as the later act also a special act and having non obstante provisions"

(5×2=10 marks)

(c) As a part of 'professional ethics' prescribed by the IBBI, for registered Insolvency Professionals,

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

charging a "Success Fee" in CIRP/Liquidation assignments (which denotes fee maximization policy in common parlance) is not an ethical practice and Resolution Professionals are barred from indulging in it.

So, Resolution Professionals shall restrict themselves, to the fees fixed by the Committee of Creditors/Stakeholders Consultation Committee/Adjudicating Authority under the IBC 2016.

Referring to Regulations/Guidelines issued by IBBI in this regard, explain the exceptions, if any in the aforesaid general principles.

(*5 marks*)

Answer 4(a)(i)

The primary duties of liquidator under section 35 of the Insolvency and Bankruptcy Code, 2016 include:

- verifying claims,
- taking control of assets, protect and preserve the assets
- realizing assets according to Liquidation Regulations,
- to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary; and
- distributing proceeds according to the waterfall mechanism.

Answer 4(a)(ii)

"Going concern" sales aim to preserve the operational value of the corporate debtor, potentially yielding higher returns for creditors and saving jobs. The company will not be dissolved and will continue to conduct business under its name and retain its corporate entity. The primary objective of a Resolution Plan, as well as the sale of a Corporate Debtor (CD) as a Going Concern, is the revival of the CD's business.

Answer 4(a)(iii)

It provides the liquidator with the framework how to sell the assets of the corporate debtor, and provides the different methods that can be used.

Answer 4(a)(iv)

Concerns were raised about the liquidator's decisions regarding asset sales, particularly parts regarding the maximisation of asset value and the perceived failure to prioritize explore options like a "going concern" sale.

Answer 4(a)(v)

It provides a mechanism for schemes of compromise or arrangements, that can be used during liquidation, in order to try and provide a better return to creditors.

Answer 4(a)(vi)

The rulings reinforced the liquidator's responsibilities to maximize asset value and explore all viable options, including "going concern" sales.

Answer 4(a)(vii)

It provides clarity on the liquidator's obligation to act diligently and transparently, with a focus on

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

maximizing stakeholder value.

Answer 4(a)(viii)

It emphasizes the need for liquidators to conduct thorough due diligence and consider all available options before making decisions about asset sales.

Answer 4(a)(ix)

Maximising the value of the corporate debtors' assets, ensures that the creditors get the best possible return on their owed debts.

Answer 4(a)(x)

Selling assets piecemeal, is when the assets are sold off individually. Selling the company as a going concern, is when the company is sold as a whole, so that it can continue to operate. This can provide a greater return to the creditors.

Answer 4(b)(i)

(i) Incorrect

As per IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee formed under this Regulation shall consist of members as under –

(a) eighteen largest operational creditors by value:

Provided that if the number of operational creditors is less than eighteen, the committee shall include all such operational creditors;

(b) one representative elected by all workmen other than those workmen included under sub-clause (a); and

(c) one representative elected by all employees other than those employees included under sub-clause (a).

Hence, the committee is not validly constituted pursuant to the above provisions.

Answer 4(b)(ii)

(ii) Incorrect

As per Section 18 (C) of SARFAESI Act , 2002:

(1)Where an application or an appeal is expected to be made or has been made under 17(1) or section 17A or 18 (1) or section 18B, the secured creditor or any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.

Answer 4(b)(iii)

(iii) Correct

Section 18 of SARFAESI Act, 2002 empowers the secured creditors to make premature termination of any contract of managerial personnel, Directors etc., and no compensation for loss of office be paid. However, if the secured creditors have fully received their dues, then they should be restored their original position in the borrower company.

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

Answer 4(b)(iv)

(iv) Incorrect

The debtor can't be allowed to file application for a fresh start under Section 80 under the Insolvency and Bankruptcy Code, 2016 as his / her income is beyond the limit of Rs. 60,000 p.a. and futher his asset value is more than Rs 20,000 at the time of application.

Answer 4(b)(v)

(v) Incorrect

Since both are special law and contains non obstante provisions. In case any Corporate Debtor / Borrower is subjected simultaneously under the two special law, the NCLT in the case, of *re: Canara Bank v. Sri Chandramoulishvar Spg. Mills (P) Ltd,* held that the Insolvency and Bankruptcy CodeCode will prevail over the SARFAESI Act 2002.

Answer 4(c)

As a part of professional ethics, Code of Conduct for Insolvency Professionals in IBBI (IP) Regulations, 2016 states that an insolvency professional must provide services for remuneration which is charged in a transparent manner, is a reasonable reflection of the work necessarily and properly undertaken, and is not inconsistent with the applicable regulations.

In one case of CIRP of *Ariisto Developers Pvt Ltd*, wherein NCLAT upheld the order of AA not approving the success fee of 3 cr. though approved by CoC, on the ground that this success fee was in the nature of a contingency and speculative, hence did not form part of the provisions of IBC and its regulations.

IBBI vide IBBI (CIRP) Regulations, 2016 effective from September 13, 2022, has inserted a new clause i.e., 34B to provide guidance over the remuneration structure comprising of: i. Minimum Remuneration ii. Performance Linked Incentive iii. Period of Remuneration.

This amendment provides a regulatory framework of professional fee payable to IPs comprising fixed and variable fee with a minimum and maximum basis.

Regulation 34B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the fee of interim resolution professional or resolution professional, under regulation 33 and 34, shall be decided by the applicant or committee in accordance with this regulation. The fee of the interim resolution professional or the resolution professional, appointed on or after 1st October 2022, shall not be less than the fee specified in clause 1 for the period specified in clause 2 of Schedule-II of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations.

Provided that the applicant or the committee may decide to fix higher amount of fee for the reasons to be recorded, taking into consideration market factors such as size and scale of business operations of corporate debtor, business sector in which corporate debtor operates, level of operating economic activity of corporate debtor and complexity related to process.

After the expiry of period mentioned in clause 2 of Schedule-II, the fee of the interim resolution professional or resolution professional shall be as decided by the applicant or committee, as the case may be. For the resolution plan approved by the committee on or after 1st October 2022, the committee may decide, in its discretion, to pay performance-linked incentive fee, not exceeding five crore rupees, in accordance with clause 3 and clause 4 of Schedule-II or may extend any other performance-linked incentive structure as it deems necessary.

The fee under this regulation may be paid from the funds, available with the corporate debtor, contributed by the applicant or members of the committee and/or raised by way of interim finance

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

and shall be included in the insolvency resolution process cost.

Regulation 4 of the Liquidation Regulations provides that the liquidator is entitled to the fee as decided by the Committee of Creditors (CoC) during the CIRP under Regulation 39D of the CIRP Regulations. In case no such fee has been fixed, then the Stakeholders' Consultation Committee (SCC) can fix the fee of the liquidator (this provision is applicable only from 16.09.2022). Further, in case, no fee is fixed in above-mentioned manners, the liquidator shall, for the period of compromise or arrangement, be entitled to a fee at the same rate as the resolution professional was entitled to during the CIRP, and for the balance period of the liquidation, a fee at a percentage specified in the table given in regulation 4(2)(b) of the Liquidation Regulations is applicable.

With the above regulatory framework being developed for fee of Resolution Professional(RP), RP cannot accept fee higher than fixed by CoC unless it is revised by CoC itself .

***

Downloaded from LectureKart.com Downloaded from LectureKart.com

Downloaded from LectureKart.com Downloaded from LectureKart.com

NOTES

Downloaded from LectureKart.com Downloaded from LectureKart.com