GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME

Syllabus 2017

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MODULE 2

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
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(Under the jurisdiction of Ministry of Corporate Affairs)
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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

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MODULE 2

SECRETARIAL AUDIT, COMPLIANCE MANAGEMENT AND DUE DILIGENCE

MODULE 2 PAPER 4

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

NOTE : *Answer All Questions.*

Part-I

Question 1

(a) (i) What will be the last date up to which, the Statement of Account and Solvency, for the financial year 2023-24 of Limited Liability partnership, should be filed with the Registrar, as per Section 34(3) read with sub-rule (4) Rule 24 ?

(ii) Rangoli Ranjan Portfolio LLP was incorporated on November 2l, 2023. What will be the last date of filing for its First Annual Return, in Form no. 11, with the Registrar ?

(iii) Anuradha Vajpayee, practicing Company Secretary, having l2 years of experience, has passed the Limited Insolvency Examination of IBBI on January 18, 2024 and she has also completed her Pre-registration educational course on October 30, 2024. She applied on February 01, 2025 for the enrolment with the Insolvency Professional Agency of IBBI. She was denied the registration by the IPA of IBBI. State the reasons for such denial.

(2+2+1=5 marks)

(b) Compliance risk monitoring makes it possible for the business to test if risk mitigation activities are working properly and to identify new or changed risks. The plan for monitoring must be documented and reviewed and, if necessary and must be updated annually and more frequently based on other framework activities and monitoring results. State the methodology that may be adopted for accessing the compliance mechanism of the company.

(5 marks)

(c) "There is no mandatory minimum paid-up capital requirement for One Person Company. One Person Companies are exempt from compliance under CARO, reducing the auditor's reporting requirements. The financial statements can be signed by just one director, instead of needing multiple signatures in an OPC." Discuss this statement in the context of exemptions available to OPC and also state the compliance requirements which are not required to be followed by One Person Company.

(5 marks)

(d) State the applicability of Personal Data Protection Bill, 2019 and what are the rights of an Individual and what are the obligations of Data Fiduciary under this Bill.

(5 marks)

Answer 1(a)(i)

Law:

As per Sub-section (3) of Section 34 of the Limited Liability Partnership Act, 2008 read with sub rule (4) Rule 24 of the Limited Liability Partnership Rules, 2009:

Every limited liability partnership shall file the Statement of Account and Solvency in Form 8 with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates.

Analysis of the situation:

For the Financial Year 2023-24, as per rule last date of Form 8 will be the 30th October, 2024.

Answer 1(a)(ii)

Rangoli Ranjan Portfolio LLP was incorporated on November 21, 2023.

As per section 35 of the Limited Liability Partnership Act, 2008 read with rule 25 of the Limited Liability Partnership Rules, 2009, the last date of its First Annual Return duly authenticated in Form no. 11 to the Registrar will be for the financial year starting from November 21, 2023 to March 2025 will be as follows:

May 30, 2025.

Legal Provisions and analysis of the situation:

(i) Section 35 of Limited Lability Partnership (LLP) Act states that every LLP is required to file an Annual Return duly authenticated with the Registrar in 60 days of closure of financial year in Form 11.

(ii) Further, proviso to section 2(l) of the LLP Act, states "Provided that in the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year. Since LLP incorporated after September during the financial year 2023-24, hence its first financial year will be spread from November 21, 2023 to 31 March 2025.

Answer 1(a)(iii)

As per Regulation 5(a) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, an individual shall be eligible for registration, if he has passed the Limited Insolvency Examination within twelve months before the date of his application for enrolment with the Insolvency Professional Agency.

In this case, Anuradha Vajpayee was required to apply for enrolment before January 18, 2025, but she submitted her application in February 2025. Therefore, her application is subject to denial due to non-compliance with the prescribed timeline for application submission.

Answer 1(b)

The following methodology may be adopted for accessing the compliance mechanism of the company:

Risk/Cultural Assessment: Through employee surveys, interviews, and document reviews, a company's culture of ethics and compliance at all levels of the organization is validated. The basis of this assessment is to identify gaps between company's current practices and the regulatory requirements.

Program Design/Update: In this approach the review of the guideline documents that outline the reporting structure, communications methods, and other key components of the code of ethics and compliance program is accessed. This encompasses review of all aspects of the compliance program, from grass root policies to structuring board committees that oversee the program.

Policies and Procedures: In this approach of compliance assessment, the company should review, develop or enhance the detailed policies of the program, including issues of financial reporting, anti-

trust, conflicts of interest, gifts and entertainment, records accuracy and retention, employment, the environment, global business, fraud, political activities, securities, and sexual harassment etc.

Communication, Training, and Implementation: In this stage of compliance assessment, the Company focuses on the articulation, communication and reinforcement of the various policies and procedure of the company along with the philosophy behind such policies. Further training program on such policies help in the adoption of such policies in day-to-day realities and helps inculcation the same incorporate it into the attitudes and behaviors of the employees of the company.

Ongoing self-Assessment, Monitoring, and Reporting: The true test of a company's ethics and compliance program comes over time. How does one know in one year or five years that both the intent and letter of the law are still being observed throughout organization? How does the program and the organization adapt to changing legislation and business conditions? As the organization evolves for example, through mergers and acquisitions will the program remain relevant? The cultural assessment, mechanisms, and processes put in place including employee surveys, internal controls, and monitoring and auditing programs, help organizations achieve sustained success.

Answer 1(c)

Yes, the above statement is correct as the exemptions available to a One Person Company and the compliance requirements which are not required to be followed by a One Person Company (OPC) are as follows:

- An OPC has only one director, Secretarial Standard-1 (SS-1), pertaining to Board Meetings, will not apply.
- An OPC isn't required to hold an Annual General Meeting. Consequently, Secretarial Standard-2 (SS-2), which deals with AGMs, does not apply.
- Section 98 and Section 100 to Section 111 are not applicable on One Person Company.
- OPCs are exempt from preparing a Cash Flow Statement as part of their financial statements.
- OPCs are exempt from the mandatory rotation of auditors.
- Lesser penalties for OPC under Section 446B of the Companies Act, 2013.

Answer 1(d)

The Personal Data Protection Bill, 2019 was introduced in Lok Sabha on December 11, 2019. The Bill seeks to provide for protection of personal data of individuals, and establishes a Data Protection Authority for the same.

Applicability: The Bill governs the processing of personal data by:

(i) Government,

(ii) Companies incorporated in India, and

(iii) Foreign companies dealing with personal data of individuals in India.

Obligations of data fiduciary: A data fiduciary is an entity or individual who decides the means and purpose of processing personal data. Such processing will be subject to certain purpose, collection and storage limitations.

For instance, personal data can be processed only for specific, clear and lawful purpose. Additionally, all data fiduciaries must undertake certain transparency and accountability measures such as:

(i) implementing security safeguards (such as data encryption and preventing misuse of data), and

(ii) instituting grievance redressal mechanisms to address complaints of individuals

They must also institute mechanisms for age verification and parental consent when processing sensitive personal data of children.

Rights of the individual: The Bill sets out certain rights of the individual (or data principal). These include the right to:

(i) obtain confirmation from the fiduciary on whether their personal data has been processed,

(ii) seek correction of inaccurate, incomplete, or out-of-date personal data,

(iii) have personal data transferred to any other data fiduciary in certain circumstances, and

(iv) restrict continuing disclosure of their personal data by a fiduciary, if it is no longer necessary or consent is withdrawn.

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

Question 2

(a) Elucidate the mode in which the Newspaper Advertisements are required to be given/ published by the private companies under the provision of Companies Act, 20l3 in respect of the following purpose :

(A) Acceptance of Deposits.

(B) Voting through Electronic means.

(C) Closure of Register of Members or debenture holders, Shareholders or other Security holders.

(D) Quorum at the meeting.

(E) Application for Grant of License under section 8 by existing company. (1×5=5 marks)

(b) Explain various records to be verified for each of the following item :

(i) Main Objects of the company.

(ii) Address of Registered Office.

(iii) List of Member with details as to shares held by each of them.

(iv) Corporate Identity Number/Company number.

(v) Paid-up capital of the company divided into ..... Shares of ₹ ..... each.

(1×5=5 marks)

(c) The companies are required to prepare a policy statement relating to the preservation of its documents and archival of documents in the website. List out the factors that need to be considered in the preparation of the preservation and archival policy of the company.

(5 marks)

(d) "Certificate under section 65-B (4) cannot be secured by persons who are not in possession of an electronic device" is wholly incorrect. An application can always be made to a Judge for production of such a certificate.

Discuss this statement under the context of famous case of Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantayal and Ors (Supreme Court of India dated 14.07.2020).

Answer 2(a)

The mode in which the Newspaper Advertisements required to be given/ published by the private companies under the provision of Companies Act, 2013 is as follows:

A) Acceptance of Deposits

[Section 73(2)(a) of the Companies Act, 2013 read with Rule 4(1) of the Companies (Acceptance of Deposits) Rules, 2014] : Circular in Form DPT-1 may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

In case of private company - Clause (a) to (e) of Sub- section 2 of Section 73 shall not apply to Private Companies which accepts from its members monies not exceeding one hundred percent, of aggregate of the paid -up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. (Notification dated 5th June, 2015)

B) Voting through Electronic means

[Section 108 read with Rule 20(4)(v) of the Companies (Management and Administration) Rules, 2014] : A company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty- one days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country-wide circulation, and specifying the matters prescribed in the said sub-rule.

Alternate Answer:

For Private Companies voting through electronic means is not applicable. Section 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014 specifies that, every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means. Therefore, the private companies do not require adhere with the compliance of newspaper advertisement for voting through electronic means.

C) Closure of Register of Members or debenture holders, Shareholders or other Security holders

[Section 91(1) read with Rule 10(1) of the Companies (Management and Administration) Rules, 2014] : A company should publish a 7 days prior notice for the closure of the register of members or shareholders or other security holders at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated.

Alternate Answer:

For Private Companies provisions related to closure of register of members or debentures holders, shareholders or other security holders is not applicable. Section 91(1) read with Rule 10(2) of the Companies (Management and Administration) Rules, 2014 states, the provisions contained in sub-rule (1) shall not be applicable to a private company provided that the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture holders or other security holders.

D) Quorum at the meeting [Section 103 (2)]

If the Quorum is not present within half an hour in respect of meeting of members, such meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date, time and place as the Board may determine by giving not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

In case of private company, Section 103 shall apply, unless otherwise specified in such section or the articles of the company provide otherwise vide Notification No. G.S.R. 464(E) dated 5th June, 2015.

E) Application for Grant of License under section 8 by existing company

[Rule 20(3) of the Companies (Incorporation) Rules, 2014]: The company shall within one week from the date of application, publish a notice in Form No. INC- 26 at least once in a one vernacular newspaper in the principal vernacular language of the district in which the registered office of the proposed company is to be situated or is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

Answer 2(b)

S. No	Item	Records to be verified
(i)	Main Objects of the company	Memorandum of Association
(ii)	Address of Registered Office	Form INC-22, Form MGT-14 Resolution(s) of Board/ General Meeting, Form INC 23/Form INC-28 with copy of Order of Central Government.
(iii)	List of Member with details as to shares held by each of them	Form PAS-3, Annual Return, Register of Members, Register of Directors.
(iv)	Corporate Identity Number/ Company number	Certificate of Incorporation/Fresh Certificate upon change of name/ Certificate of Registration, copy of Central Government order for shifting registered office to another State.
(v)	Paid-up capital of the company divided into _____Shares of ₹ ____ each.	Form MGT-14, Form PAS-3, Register of Members, Accounts Ledger, Annual Return.

Answer 2(c)

The following factors need to be considered in the preparation of the preservation and archival policy of the company:

- Analysis and Restructuring Existing Systems
  - reviewing and revising legislation and policies
  - reviewing and revising organizational policies and structures
  - determining resource requirements, such as facilities and staffing
  - developing strategic and business plans.

- Organizing and Controlling Records
  - building sound record-keeping systems
  - managing the creation, maintenance, and use of files.
- Providing Physical Protection for Records
  - implementing and maintaining preservation measures
  - developing emergency plans to protect records
  - identifying and protecting vital records.
- Managing Records in Records Centers
  - developing and maintaining records center facilities
  - transferring, storing and retrieving records according to disposal schedules
  - disposing of records as indicated by the schedules.
- Managing Archives
  - acquiring and receiving archives
  - arranging and describing archives according to archival principles
  - providing public access to the archives.
- Supporting and Sustaining the Program
  - promoting records services to the government and the public
  - promoting education for records and archives personnel
  - developing and expanding the records and archives professions.

Answer 2(d)

Case: In Re *Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantayal and Ors.(Supreme Court of India dated 14.07.2020)*

Facts of the case:

Civil Appeals were referred to a Bench of Judges of Supreme Court by a Division Bench, dealing with the interpretation of Section 65B of the Indian Evidence Act, 1872 by two judgments. It was found by the court that a Division Bench judgment in *Shafhi Mohammad* v. *State of Himachal Pradesh (2018) 2 SCC 801* may need reconsideration by a Supreme Court Bench of a larger strength. In the case of *Shafhi Mohammad (supra),* it was observed by Supreme Court, that it can be safely held that electronic evidence is admissible and provisions under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant, the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B (4).

Decision:

The Supreme Court observed that the major premise of *Shafhi Mohammad (supra)* that the certificate under section 65- B (4) cannot be secured by persons who are not in possession of an electronic device is incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under Section 65B (4) in cases in which such person refuses to give it.

OR (Alternate Question to Q. No. 2)

Question 2A

(i) Pramod Mehta, Practicing Company Secretary is having expertise in managing regulatory compliances under GST. He provides guidance and advisory services to his business entities to interpret GST laws & also renders value added services. He manages the tax planning, maintenance of GST records, drafting legal documents, impact analysis etc of XYZ Limited. Due to his expertise, he was being offered GST audit from one of his relative's friends. He comes to you for advice that whether he should accept this assignment or not. Kindly advise him in context of role and advisory services given by the Company Secretaries.

(5 marks)

(ii) As per Companies (Appointment and Qualification of Directors) Rules, 2014, every individual who holds a Director Identification Number (DIN) as on 3lst March of a financial year, has to submit DIR-3- KYC for the said financial year to the Central Government. Comment on this statement and discuss about the applicability of DIR-3 KYC, its due date, its prerequisite and certifications, and if any DIN is deactivated then what is the procedure to activate it ?

(5 marks)

(iii) An informed investor is more precious than the investment. Investors provide the much-needed capital, which combined with entrepreneurial skills, results in successful corporate. These corporates provide goods and services, employment and fuel economic growth. Therefore, it is very important that investors are educated, enlightened and well informed to be able to take sound investment decisions and to protect their interests. Explain the role of a Company Secretary in Investor Education and Protection, as well as role in Board development of the company.

(5 marks)

(iv) K was appointed as a Company Secretary of FGH Ltd. a newly established company, manufacturing toys. Its Annual Return was filed 3 months after the date of AGM with ROC. Management of FGH Ltd. was of view that signing of the annual return as per section 92(I) is to be done by the Company Secretary in Practice and not by the Company Secretary who was employed. Management was in a dilemma as what to do, guide them for all the following confusions :

(i) The return to be filed with ROC in how many days from the date of AGM.

(ii) If in any year AGM is not held, then when to file the return ?

(iii) Signing of the annual return as per section 92(1) to be done by whom ?

(iv) Whether annual return to be reviewed/verified by a different professional before it is certified.

(v) Whether non-filing of Annual Return is compoundable offence.

(5 marks)

Answer 2A(i)

Role of Company Secretary in GST:

Company Secretaries can provide guidance and advisory services to business entities to interpret GST laws and assist in effectively discharging various compliances under GST while undertaking activities like tax planning, maintenance of GST records, drafting legal documents like replying to show cause notices, impact analysis, etc.

Though, the Company Secretaries cannot perform Audit in matters related to GST, but he can provide the following services:

(i) **Advisory services or strategic advisor:** A Company Secretary can comprehensively interpret the law of GST and provide complete guidance and advisory to the business entities. Company Secretaries are more suited for their services because of their knowledge of laws and good communication skills.

(ii) **Tax Planning:** Company Secretaries are competent to understand the impact of laws and its various alternatives and can be helpful in proper tax planning under GST.

(iii) **Procedural Compliances:** Procedural Compliance includes registration, filing of returns, payments of taxes, assessment etc. Since a Company Secretary is already playing the role of a Compliance Officer under various other laws, he can assist in the same under GST law also.

(iv) **Book / Record Keeping:** Like any other tax laws, introduction of GST would also require proper record keeping and maintaining systematic records of credit of input/input service and its proper utilisation etc.

(v) **Representation:** A Company Secretary can provide the service of representation with confidence because of practical exposure due to appearing before various competent authorities.

(vi) **Appellate work:** Because of their legal bent of mind, a Company Secretary can provide better services in the field of appellate work.

Conclusion: Hence, Pramod Mehta cannot accept GST Audit as Company Secretaries cannot perform Audit in matter related to GST.

Answer 2A(ii)

Applicability of e-form DIR - 3 KYC:

E-form DIR-3 KYC is required to be filed by every Director who holds DIN on or before 31st March, of a Financial Year and whose DIN status is 'Approved'.

Due Date:

Due date of filing of e-form DIR-3KYC is on or before 30th September of immediate next financial year.

Prerequisite Mandatory Information e-form DIR-3 KYC:

(1) Unique Personal Mobile Number

(2) Personal Email ID

(3) Email ID and Mobile Number for receiving OTP

Certification of e-form DIR-3 KYC;

(1) First by the affixing Registered Digital Signature of respective person / Director

(2) Certification by practicing professional by affixing Digital Signature (CS/CA/CMA)

The procedure to reactivate the deactivated DIN:

The de-activated DIN shall be re-activated only after e-form DIR-3-KYC or the web service DIR-3-KYC-WEB as the case may be is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014. No fee is payable if Form DIR-3 KYC is filed within the due date of the

respective financial year. However, if filed after the due date, for DIN status 'Deactivated due to non-filing of DIR-3 KYC' a fee of Rs.5000 (Rupees Five Thousand Only) shall be payable.

Answer 2A(iii)

Role of Company Secretary in Investor Education & Protection:

Recognizing the importance of shareholder rights and investor protection, the Companies Act, 2013 introduced some important changes to the company law regime in India and has plugged many loopholes. It upholds shareholders democracy and investor protection in many ways.

A significant development has been the inclusion pertaining to 'Class Action Suit' (Section 245) to strengthen the concept of shareholders democracy.

Under various securities laws such as -

- Securities Contracts (Regulation) Act, 1956,
- Depositories Act, 1996, regulations and guidelines issued by SEBI under SEBI Act, 1992 and
- The listing agreement with the stock exchanges for equity, debt listing, IDRs,

Company Secretaries have been recognized to verify compliances and to issue certificates. A better regulated capital market automatically brings development for the country and a strong regulated capital market instils confidence among the investors that their money is safe.

The Company Secretaries (CS) are expected to exercise sensitive professional and moral judgments in all their activities, while carrying out their professional responsibilities. They should accept the obligation to act in a way that will serve public interest, honor public trust and demonstrate commitment to professionalism. The CS is expected to maintain and broaden public confidence and perform all professional responsibilities with the highest sense of integrity

Role in Board development:

All directors should have access to the advice and services of the Company Secretary.

- The Company Secretary should build effective working relationships with all board members, offering impartial advice and acting in the best interests of the company
- In promoting board development, the Company Secretary should assist the chairman with all development processes including board evaluation, induction and training.
- This should involve implementing a rigorous annual board, committee and individual director assessment and ensuring actions arising from the reviews are completed
- Further, the Company Secretary should take the lead in developing tailored induction plans for new directors and devising a training plan for individual directors and the board.

Although these tasks are ultimately the responsibility of the chairman, the Company Secretary can add value by fulfilling, or procuring the fulfilment of, these best practice governance requirements on behalf of the chairman.

Answer 2A(iv)

Following is the solution to the given confusions of K:

(i) As per section 92 of the Companies Act, 2013, the annual return in MGT-7 has to be filed with the Registrar of Companies within 60 days from the date of Annual General Meeting.

(ii) As per section 92(4), if the Annual General Meeting (AGM) is not held in any year, the return has to be filed within 60 days from the date on which AGM should have been held together

with the statement specifying the reasons for not holding the AGM, on payment of such fee or additional fee as prescribed.

(iii) Where a company is having a Company Secretary then signing of the annual return as per section 92(1) shall be done by the Company secretary in employment only, but not by the Company Secretary in Practice.

(iv) As a good practice, it is advisable to have the Annual Return reviewed/verified by a different professional before it is certified, as part of maker and checker concept for independent verification of the Returns being certified. These two different signing mechanisms include one for the purpose of signing under section 92(1) and the other for certification under section 92(2) of the Companies Act, 2013 by a practicing Company Secretary, if the company falls under the prescribed class.

(v) Offence in respect of default in filing Annual Return is compoundable (section 441), in accordance with the procedure laid down in this section for compounding of offences.

PART -II

Question 3

(a) (i) In appreciation of good services, Mohan Lal head of finance, has received an email regarding granting of 1000 ESOP (Employee Stock Option Plan) from XYZ Ltd on April 10, 2024 and these shares will be vested to him on April 10, 2025 . XYZ Ltd has disclosed his Annual financial result on 25 April, 2024. Now, advise whether this transaction of 1000 shares of XYZ Ltd. to Mohan Lal (Designated person) will come under the preview of Insider Trading as per SEBI Regulations ? And which date will be the opening date of Trading window closure period of the company, for the quarter and financial year ending on March 31, 2024 ?

(2 marks)

(ii) Who will be approving authority for trades done by the Rohan Lal, Compliance Officer or his immediate relatives, as Insiders as per SEBI (Prohibition of Insider Trading Regulations, 2015)?

(1 mark)

(iii) Up to which date, the company must have received Initial Disclosure regarding securities held by Rudra Pratap, on his Appointment of Key Managerial Person, as per SEBI (Prohibition of Insider Trading) Regulations, 2015. He was appointed as KMP on March 17, 2025.

(1 mark)

(iv) Up to which date, XYZ Ltd. will notify the particulars of such disclosure of Rudra Pratap to the stock exchange(s) on his appointment as KMP on March 17, 2025 ?

(1 mark)

(b) Money Bank was considered as one of the most stable and reputable banks. Its reputation took a severe hit when the Bank's ''Hit your Six'' strategy encouraged employees to sell six accounts per customer, whether needed or not. Branch employees were under constant pressure to meet daily sales targets, sometimes facing termination if they failed. The bank's aggressive sales culture, to meet unrealistic sales targets, led employees to create millions of fraudulent accounts without customer consent, including checking & savings accounts, online banking services, unauthorized bill payments, credit cards. Employees used forged signatures, fake email addresses, and fraudulent PIN numbers to register these accounts. Many customers were unknowingly charged fees for accounts they never requested. The whistle blowers were also ignored and fired when they reported unethical practices.

There is great importance of internal audit in ensuring financial integrity, compliance, and risk management. Since the objectives of Internal audit were not followed by the bank, hence it failed to identify, detect and prevent the creation of millions of unauthorized customer accounts fraud for years.

Elucidate through review and appraisal of what factors, the main objective of the internal audit process, to provide an assurance on the organization's risk management, internal control environment and governance framework can be achieved.

(5 marks)

(c) Enumerate the illustrative list of the compliance requirement under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

(5 marks)

Answer 3(a)(i)

As per SEBI (Prohibition of Insider Trading) Regulations, 2015 read with FAQs on SEBI (PIT) Regulations dated December 31, 2024:

Grant of ESOP refers to a right but not an obligation to acquire the shares of the company as and when the options are vested and correspondingly exercised by the Employees. Hence, grant of ESOP per se is not trading and accordingly can be made during trading window of closure.

Granting of ESOP to employees does not involve trading in the shares of XYZ Ltd, moreover, that shares will vest to him on April 10, 2025 that means after a year. Hence, since no trading is involved. Hence, No Insider trading take place.

Opening of trading window closure period:

Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015. Trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results.

Trading window closure period will be from April 1, 2024 to April 27, 2024. Hence opening of Trading window closure period will be from 27 April, 2024.i.e, 48 hours after the declaration of financial results by the XYZ Limited.

Answer 3(a)(ii)

As per SEBI (Prohibition of Insider Trading) Regulations, 2015 read with FAQs on SEBI (PIT) Regulations dated December 31, 2024

The Board of Directors of the company shall be the approving authority in the case of Compliance officer and his immediate relatives. Hence, In case of Rohan Lal, the Board of directors of the company will be the approving authority and they may stipulate such procedures as are deemed necessary to ensure compliance with these regulations

Answer 3(a)(iii)

Company has to receive the initial disclosure from every promoter, Key Managerial Personnel (KMP) and Directors with respect to the securities held by them in Company. The Company receives disclosure by every person on appointment as KMP or Director or upon becoming a promoter within seven working days of such appointment or becoming promoter.

Rudra Pratap must have deposited Initial Disclosure regarding his holding in the company by March 24, 2025 (within seven working days of such appointment of KMP in the company) as per Regulation 7(1)(b) of SEBI (Prohibition of Insider Trading)Regulations, 2015.

Answer 3(a)(iv)

As per Regulation 7 of SEBI (Prohibition of Insider Trading) Regulations, 2015, the Company has to notify the particulars of KMP Disclosure of his holding in the XYZ Ltd to the stock exchange(s) within two trading days of receipt of the disclosure. Assuming, that the disclosure is received by the Company by March 24, 2025, it should be disclosed to the stock exchange(s) by March 26, 2025 as per SEBI (Prohibition of Insider Trading) Regulations, 2015.

Answer 3(b)

The main objective of the internal audit process is to provide an assurance on the organization's risk management, internal control environment and governance framework through review and appraisal of:

(a) Operational control framework including fundamental and basic systems in all areas of the business. The adequacy of risk identification, assessment and mitigation in the organization. This shall include fraud risks.

(b) Extent, adequacy, relevance of, and compliance with existing policy, plans and procedure documents within the Organization.

(c) The extent of compliance with relevant statutory requirements.

(d) Status of implementation of internal / external audit recommendations.

(e) Evaluating internal control. Internal control is broadly defined as a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of the following core objectives for which all businesses strive:

- Effectiveness and efficiency of operations;
- Reliability of financial and management reporting;
- Compliance with laws and regulations;
- Accomplishment of established goals for operations;
- Safeguarding of assets.

(f) Determines the risk area of the Organization.

(g) Establishes the risk management framework.

(h) Identifies potential threats and assesses risks.

(i) Decides on response to risks like implementation of control.

(j) Monitors and coordinates the risk management processes and the outcomes.

(k) Provides assurance on the effectiveness of risk management processes

Conclusion; Hence, Money Bank should focus on doing Internal Audit for the Organization to achieve the objective.

Answer 3(c)

The illustrative list of the compliance requirement under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is as follows:

1. The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 is applicable to the company.

2. The contributions made by the employer and the employee and payment thereof are in accordance with para 29 and 30 of the Employees' Provident Funds Scheme, 1952.
3. The employer has obtained declarations from the persons taking up the employment. (Para 34 of the scheme)
4. The employer has prepared the contribution card in Form No. 3 or 3-A as appropriate in respect of every employee in his employment.
5. The employer has sent to the Commissioner:
   (a) Consolidated return in the form specified by the commissioner.
   (b) Monthly return in Form No. 5 together with declaration in Form No. 2.
   (c) In such form as the commissioner may specify of employees leaving service of the employer during the preceding month.(Para 36 of scheme)
6. The employer has furnished particulars of ownership in Form No. 5-A to the Regional Commissioner. (Para 36 of scheme)
7. The employer has forwarded the monthly abstract to the commissioner. (Para 38(2) of scheme)
8. Consolidated annual contribution statement in Form No. 6-A was sent to the commissioner. (Para 38(3) of scheme)
9. Submission of contribution card to the commissioner with a statement in Form No. 6. 10. Any proceedings under the Act have been initiated against the Directors for recovery of dues.
11. Terms of trust are more beneficial than those provided under the trust.
12. The conditions imposed by PF Commissioner for the creation of Trust are satisfied.
13. The provisions relating to Employees' Pension Scheme, 1995 have been complied with.
14. The provisions relating to Employees' Deposit Linked Insurance Scheme, 1976 have been complied with.

Question 4

(a) Explain the traits of an "Organisation Transparency Checklist."

(3 marks)

(b) State how the policy initiative taken by Indian Government, as per The Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 (January 24, 2024) to enable listing of Indian companies in GIFT-IFSC, will reshape the Indian capital market landscape and offers Indian companies, especially start-ups and companies in the sunrise and technology sectors, an alternative avenue to access global capital beyond the domestic exchanges.

(3 marks)

(c) The Auditor should identify and report all events/actions having major bearing on the Company's affairs/Governance in pursuance of the applicable laws, rules, regulations, guidelines, standards, all information which have bearing on performance/operation of the company or is price sensitive or affect payment of interest or dividend of nonconvertible preference shares or redemption of nonconvertible debt securities or redeemable preference shares etc. Give any six events or actions which have major bearing on Company's affair.

(3 marks)

(d) Sometimes due to circumstances like geographical constraints or want of expertise on any specific subject matter, an Auditor may be required to rely on the Third Party reports. What precautions should be taken by the Auditor while using the work of Third Party?

(3 marks)

(e) Write briefly on Business Responsibility and Sustainability Report (BRSR) as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2023 [Regulation 34(2)(f)].

(3 marks)

Answer 4(a)

An Organization Transparency checklist includes the below mentioned traits:

- Board meetings (Dates, times and locations of Board meetings are conveyed at least one week in advance of the meetings)
- Financial disclosure statements (Non-profits should consider posting their audited financial statements on their website)
- Freedom of information legislation (Rules that guarantee access to data held by the state; they establish a "right-to-know" legal process where requests can be made for government-held information)
- Budgetary reviews
- Annual audits
- Annual Reports (Posted on the organization's website for easy access)
- Straight talking leadership
- Open culture and operations (many voices on behalf of the organization)
- Disclosed partnerships
- Frank, open communications including the good and bad
- Core values & Code of conduct.

Answer 4(b)

The Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 (January 24, 2024): The Ministry of Corporate Affairs (MCA) vide its notification dated January 24, 2023 has notified "the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024" which has come into force on the date of its publication in the Official Gazette.

The new rules prescribe the provisions related to applicability, listing on permitted stock exchanges in permissible jurisdictions, certain companies not eligible etc. Further, the Ministry has launched the Form LEAP-1 under the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 for compliance related filings.

This policy initiative, to enable listing of Indian companies in GIFT-IFSC, will reshape the Indian capital market to lead to better valuation of Indian companies in line with global standards of scale and performance,

- Boost foreign investment flows,
- Unlock growth opportunities and broaden the investor base.
- The public Indian companies will have the flexibility to access both markets i.e. domestic

market for raising capital in INR and the international market at IFSC for raising capital in foreign currency from the global investors.

- This initiative will particularly benefit Indian companies going global and having ambitions to look at opportunities for expanding their presence in other markets.
- It is also expected to provide a boost to the capital market ecosystem at GIFT IFSC by provision of new investment opportunities for investors, diversification of financial products and by enhancing liquidity
- These, together, provide an overarching regulatory framework to enable public Indian companies to issue and list their shares in permitted international exchanges.

As of now, the framework allows unlisted public Indian companies to list their shares on an international exchange. SEBI is in the process of issuing the operational guidelines for listed public Indian companies. The international stock exchanges at GIFT-IFSC under the regulatory supervision of IFSCA namely, India International Exchange and NSE International Exchange have been, currently, prescribed as permitted stock exchanges under the Rules and the Scheme.

Answer 4(c)

An Event/action may be considered as having major bearing on Company's affairs includes the following situations:

a) Events/actions altering the Incorporation documents of the Company.

b) Changes in the Capital structure of the company.

c) Change in the affairs/management of the company.

d) Change in the licensing or permission for the business operation of the company.

e) Capacity expansion and utilization of the company.

f) Sale/Disposing of the substantial assets of the company.

g) Entering in to Joint ventures agreements etc.

Conclusion: these are among those events which have major effect on the company.

Answer 4(d)

As per CSAS-3 -Auditing Standard on Forming of opinion

Third Party Report or Opinion is used as one of the external sources of obtaining the Audit Evidences that would help in building the strong and quality Audit Opinion.

The Auditor shall adhere to the following while forming an opinion based on Third party reports or opinions:

(a) The Auditor shall indicate the fact of use of Third-party report or opinion and shall also record the circumstances necessitating the use of Third-party report or opinion;

(b) The Auditor shall indicate the fact if Third party report or opinion is provided by the Auditee;

(c) The Auditor shall consider the important findings/observation of Third party;

(d) The Auditor shall, if necessary and feasible, carry out a supplemental test to check veracity of the Third-party report or opinion.

While using the work of Third Party, the Auditor should:

- Consider the independence and objectivity of the Third Party;

- Take account of the Third Party's professional competence for the specific audit;
- Consider the scope of the Third Party's work;
- Determine the cost-effectiveness of using such work;
- Perform procedures to obtain sufficient appropriate Audit Evidence that the work of the Third Party is adequate in the context of the specific audit (which may require access to the Third Party's working papers); and
- Consider the significant findings of the other Auditor when analyzing and interpreting the results of that work. Where these findings are significant to the opinion, Auditor should discuss these findings with the Third Party and consider whether it is necessary to carry out additional audit testing him.
- When using the work of Third Party, Auditor should carefully consider that, the Third Party may only recognize a duty of care to the addressee of the audit report

Answer 4(e)

SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 on June 15, 2023. Vide this notification the following amendments have been made in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015:

Annual Report Disclosures Business Responsibility and Sustainability Report (BRSR):

For the top one thousand listed entities based on market capitalization, the annual report shall contain a Business Responsibility and Sustainability Report (BRSR) on the environmental, social and governance disclosures, in the format as may be specified by SEBI.

- The assessment or assurance of the specified parameters as per the BRSR Core shall be obtained, with effect from and in the manner as may be specified by SEBI.
- The listed entities shall also make disclosures and obtain assurance as per the BRSR Core for their value chain, with effect from and in the manner as may be specified by SEBI.
- The remaining listed entities, including the entities which have listed their specified securities on the SME Exchange, may voluntarily disclose the BRSR or may voluntarily obtain the assessment or assurance of the specified parameters as per Business Responsibility and Sustainability Report Core, for themselves or for their value chain, as the case may be.

Question 5

(a) Give the Format of the Secretarial Audit Report (Form no. MR-3) as prescribed under Section 204(l) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

(5 marks)

(b) In a cyber-attack on a large IT company named Think Safe Co, all IT devices including computers, laptops, smartphones, tablets and internet network etc., were hacked and all the crucial information was accessed by hacking agency and money by illegal means was collected from various clients. Think Safe Co. suffered more than 150 crore of financial loss before the company decided to go for the audit of the system and take corrective action. Examine the type of audit that Think Safe Co. should undertake and explain its scope.

(5 marks)

(c) (i) Sudhir Mukherjee is a Company Secretary in Practice and he certifies the Annual Return of the XYZ Ltd. otherwise than in conformity with the requirements of Section 92 regarding to

Annual Return. What could be the penalty levied upon him under the Companies Act, 2013 ?

(ii) What could be the penalty on Ashutosh Singh, an Employee of Blue Diamond Technology Limited, as he tampered with the Minutes of proceedings of General Meeting and Board Meeting and is found guilty of tampering with the minutes of the proceedings of meeting, as per section 118 of the Companies Act, 2013.

(iii) What could be the penalty under section 338 of Companies Act, 2013, where the Company is being Wound Up and it was discovered that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter.

(5 marks)

Answer 5(a)

FORM NO. MR-3

SECRETARIAL AUDIT REPORT FOR THE FINANCIAL YEAR ENDED.....

[*Pursuant to section 204(1) of the Companies Act, 2013 and rule No. 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014*]

To,

The Members,

..... Limited

I/We have conducted the secretarial audit of the compliance of applicable statutory provisions and the adherence to good corporate practices by..... (Name of the company). (Hereinafter called the company). Secretarial Audit was conducted in a manner that provided me/us a reasonable basis for evaluating the corporate conducts/statutory compliances and expressing my opinion thereon.

Based on my/our verification of the .....(name of the company's) books, papers, minute books, forms and returns filed and other records maintained by the company and also the information provided by the Company, its officers, agents and authorized representatives during the conduct of secretarial audit, I/We hereby report that in my/our opinion, the company has, during the audit period covering the financial year ended on, complied with the statutory provisions listed hereunder and also that the Company has proper Board-processes and compliance mechanism in place to the extent, in the manner and subject to the reporting made hereinafter:

I/we have examined the books, papers, minute books, forms and returns filed and other records maintained by .....("the Company") for the financial year ended on, according to the provisions of:

(i) The Companies Act, 2013 (the Act) and the rules made thereunder;

(ii) The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made thereunder;

(iii) The Depositories Act, 1996 and the Regulations and Bye-laws framed thereunder;

(iv) Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;

(v) The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') :

(a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

(b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;

(c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations,2009

(d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;

(e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;

(f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;

(g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and

(h) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

(vi) (Mention the other laws as may be applicable specifically to the company)

I/we have also examined compliance with the applicable clauses of the following:

(i) Secretarial Standards issued by The Institute of Company Secretaries of India.

(ii) The Listing Agreements entered into by the Company with Stock Exchange(s), if applicable;

During the period under review the Company has complied with the provisions of the Act, Rules, Regulations, Guidelines, Standards, etc. mentioned above subject to the following observations:

Note: *Please report specific non compliances / observations / audit qualification, reservation or adverse remarks in respect of the above para wise.*

I/we further report that

The Board of Directors of the Company is duly constituted with proper balance of Executive Directors, Non-Executive Directors and Independent Directors. The changes in the composition of the Board of Directors that took place during the period under review were carried out incompliance with the provisions of the Act.

Adequate notice is given to all directors to schedule the Board Meetings, agenda and detailed notes on agenda were sent at least seven days in advance, and a system exists for seeking and obtaining further information and clarifications on the agenda items before the meeting and for meaningful participation at the meeting.

Majority decision is carried through while the dissenting members' views are captured and recorded as part of the minutes.

I/we further report that there are adequate systems and processes in the company commensurate with the size and operations of the company to monitor and ensure compliance with applicable laws, rules, regulations and guidelines.

Note: Please report specific observations / qualification, reservation or adverse remarks in respect of the Board Structures/system and processes relating to the Audit period.

I/we further report that during the audit period the company has.(Give details of specific events / actions having a major bearing on the company's affairs in pursuance of the above referred laws, rules, regulations, guidelines, standards, etc. referred to above).

For example:

(i) Public/Right/Preferential issue of shares / debentures/sweat equity, etc.

(ii) Redemption / buy-back of securities.

(iii) Major decisions taken by the members in pursuance to section 180 of the Companies Act, 2013.

(iv) Merger / amalgamation / reconstruction, etc.

(v) Foreign technical collaborations.

Place: Signature :

Date: Name of Company Secretary in Practice /Firm

ACS/FCS No. :

CP No. :

Note: Parawise details of the Audit finding, if necessary, may be placed as annexure to the report.

Answer 5(b)

The Think Safe Co. should undertake Cyber audit in the given situation. Cyber security is an attempt to minimizing any risk of financial loss, disruption or damage to the reputation of an organization that may arises from the failure of its information technology systems. The objective of the cyber audit is to provide an assessment of the operating effectiveness of cyber security policies and procedures, identify, protect, detect, respond and recover processes and activities to the board.

Scope of a cyber security audit includes:

1. Data security policies relating to the network, database and applications in place.
2. Data loss prevention measures deployed
3. Effective network access controls implemented
4. Detection/prevention systems deployed
5. Security controls established (physical and logical)
6. Incident response programs implemented

Answer 5(c)(i)

Under Section 92(6) of the Companies Act 2013, if a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a penalty of two lakh rupees.

Sudhir Mukherjee is a Company Secretary in Practice and he certifies the Annual Return of the XYZ Ltd otherwise than in conformity with the requirements of Section 92 of Companies Act, 2013, he shall be liable to a penalty of two lakh rupees.

Answer 5(c)(ii)

Under Section 118(12) of the Companies Act, 2013, if a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Ashutosh Singh an employee of Blue Diamond Technology Limited has been found guilty of tampering with the minutes of the proceedings of meetings, as per section 118 of the Companies Act, 2013. He shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Answer 5(c)(iii)

Under Section 338(1) of the Companies Act, 2013, deals with the liability where proper accounts are not kept. It states where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter,

- every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable,
- be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years
- and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

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

Question 6

(a) Explain Environmental Due Diligence and List the important statutes for environment protection in India.

(5 marks)

(b) Auditing firm should establish policies and procedures for retention of engagement documentation for a period sufficient to meet the needs of the firm or as required by law or regulation. Comment and give the procedure that the Auditor adopts for retention of Engagement documentation.

(5 marks)

(c) Explain the Final Report of Reviewer under the reporting stage of the methodological approach involved in Peer Review.

(5 marks)

Answer 6(a)

Environmental due diligence analyses environmental risks and liabilities associated with an organisation. This investigation is usually undertaken before a merger, acquisition, management buy-out, corporate restructure etc.

Environmental due diligence provides the acquirer with a detailed assessment of the historic, current and potential future environmental risks associated with the target organisation's sites and operations.

It involves risk identification and assessment with respect to:

- Review of the environmental setting and history of the site.
- Assessment of the site conditions.

- Operations and management of sites.
- Confirm legal compliance and pollution checks from regulatory authorities etc.

List of important statutes for environment protection in India:

- The National Green Tribunal Act, 2010
- The Air (Prevention and Control of Pollution) Act, 1981
- The Water (Prevention and Control of Pollution) Act, 1974
- The Environment Protection Act, 1986
- The Wildlife Protection Act, 1972
- The Forest Conservation Act, 1980
- Public Liability Insurance Act, 1991
- The Biological Diversity Act, 2002

Answer 6(b)

Audit documentation is one of the fundamental building blocks on which the integrity of audits will rest. Quality and integrity of an audit depends on the existence of a complete and understandable record of the work the auditor performed, the conclusions the auditor reached, and the evidence the auditor obtained that supports those conclusions. Clear and comprehensive audit documentation is essential to enhance the quality of the audit. Audit documentation must be assembled for retention within a reasonable period of time after the auditor's report is released.

The needs of the firm for retention of engagement documentation, and the period of such retention, will vary with the nature of the engagement and the firm's circumstances, for example, whether the engagement documentation is needed to provide a record of matters of continuing significance to future engagements. The retention period may also depend on other factors, such as whether local law or regulation prescribes specific retention periods for certain types of engagements, or whether there are generally accepted retention periods in the jurisdiction in the absence of specific legal or regulatory requirements. In the specific case of audit engagements, the retention period ordinarily is no shorter than seven years from the date of auditor's report.

Procedure that the Auditor adopts for retention of engagement documentation:

- enable the retrieval of, and access to, the engagement documentation during the retention period, particularly in the case of electronic documentation since the underlying technology may be upgraded or changed over time.
- provide, where necessary, a record of changes made to engagement documentation after the engagement files have been completed.
- enable authorized external parties to access and review specific engagement documentation for quality control or other purposes.

Answer 6(c)

The Final Report of Reviewer under the reporting stage of the methodological approach involved in peer review is as follows:

a) The Reviewer will submit a Final Report to the Board with a copy to the Practice Unit (the Reviewer's Report), incorporating the findings. The Final Report will be examined/inspected by the Board in terms of the degree of compliance with the Technical Standards (ICSI Auditing Standards, Guidance Notes, Manuals, Referencers and advisories issued by the Institute) by

the reviewed Practice Unit. The model forms of such Final Reports shall be communicated to the Reviewer by the Board.

b) The Board may, if deems fit, issue Peer Review Certificate to the Practice Unit.

OR

c) The Board, having regard to the Report and any submissions or representations attached to it, may make recommendations to the Practice Unit concerned regarding the application by it of Technical Standards; if it is of the opinion that:

i) In case the review is related to a firm, any one or more or all of the partners in the firm may have failed to observe, maintain or apply, as the case may be, Technical Standards;

ii) In case the review is related to a member practicing on his own account, the member may have failed to observe, maintain or apply, as the case may be, Technical Standards; Then;

iii) Issue instructions to the Reviewer to carry out, within such period as may be specified in the instructions (which period shall not commence earlier than six months after the date on which the instruction is issued), a further Peer Review as regards the Practice Unit to which the report relates; and

iv) Specify in the instruction, the matters as regards which the review is to be carried out.

d) The Board will make recommendations to the Practice Unit where:

Based on the report of the Reviewer, it appears that the Practice Unit has satisfied all key control objectives, which the Board has determined and/or prescribed in respect of maintenance of/ adherence to Technical Standards but where further improvements could be made to internal quality control systems; and Based on the report of the reviewer, it appears that the Practice Unit has satisfied the major key control objectives but some weaknesses exist in others. The Practice Unit is expected to consider the recommendations for rectifying the weaknesses thus identified and informed by the Board and take all necessary actions to ensure that all key control areas are addressed.

e) A follow up review will be required where the Practice Unit has not satisfied the Board that all the key control objectives have been maintained and where, in the view of the Board the deficiencies are likely to materially affect the overall quality of engagements of the Practice Unit. In such cases the Board will also make recommendations, which it expects the practice unit to implement in order to ensure the maintenance of Technical Standards. The implementation of these recommendations will be examined during the follow up review.

OR (Alternate Question to Q.No.6)

Question 6A

(i) The management of KDBC Ltd. appointed Girish as their Secretarial Auditor. What should an auditor keep in mind for the proposed audit engagement, prior to acceptance of any audit engagement, in order to establish whether the preconditions for accepting professional assignment are present. If management or appointing authority imposes a limitation on the scope of the auditor's work in the terms of a proposed audit engagement, what should an auditor do in such a situation ? Highlight the other factors affecting engagement acceptance.

(ii) Explain the different theories and practices of Ethical Practices under the concept of Value, Ethics and Professional Conduct ?

(iii) Explain the procession of compounding application under FEMA, 1999 and the relevance of Personal Hearing.

(5 marks each)

Answer 6A(i)

Prior to acceptance of any Audit engagement, the auditor, in order to establish whether the preconditions for accepting professional assignment are present, the auditor should check that:

(a) Whether the reporting framework as required in the preparation, performance of audit, review of the secretarial/ non-financial statements is acceptable; and

(b) Whether the management is in agreement to acknowledge and understands its responsibility relating to:

(i) Preparation of the secretarial/ non-financial statements in accordance with the applicable reporting framework, including their fair presentation;

(ii) Development of internal control/systems/procedure to enable the preparation of secretarial/ non- financial statements which are free from material misstatement, whether due to fraud or error; and

(iii) Providing:

a) Access to all information of which management is aware that is relevant to the preparation/ audit/ review etc. of the secretarial/ non-financial statements such as records, documentation and other matters;

b) Additional information that the auditor may request from management for the relevant purpose; and

c) Unrestricted access to persons within the company from whom the auditor determines it necessary to obtain audit evidence.

Limitation on scope prior to Engagement Acceptance:

If management or appointing authority impose a limitation on the scope of the auditor's work in the terms of a proposed audit engagement such that the auditor believes the limitation will result in the auditor disclaiming an opinion on the Secretarial records/non-financial statements, the auditor shall not accept such a limited engagement as an audit engagement, unless required by law or regulation to do so.

Other factors affecting Engagement Acceptance:

If the preconditions for an audit/professional assignment are not present, the auditor should discuss the matter with management. Unless required by law or regulation to do so, the auditor should not accept the proposed audit engagement:

(a) If the auditor assesses that the reporting framework to be applied in the preparation of the secretarial records/ non-financial statements is unacceptable, or

(b) If the agreement has not been concluded.

Answer 6A(ii)

Theories & Principles of Ethical Practices--

Least Harm: This theory deals with situations in which no choice appears beneficial. In such cases, decision makers seek to choose to do the least harm possible and to do harm to the fewest people. This principle is mainly associated with the utilitarian ethical theory discussed below.

Utilitarian: This is a normative ethical theory that places the locus of right and wrong solely on the outcome or consequences of choosing one action/policy over other. As such, it moves beyond the scope of one's own interest and takes into account the interest of others.

Beneficence: The principle of beneficence guides the decision maker to do what is right and good. This priority makes an ethical perspective and possible solution to a dilemma acceptable and resolvable. This is also related to the principle of utility, which states that one should attempt to generate the largest ratio of good over evil possibility. This principle stipulates those ethical theories should strive to achieve greatest amount of good because people benefit from the most good.

Autonomy: This principle states that decision making should focus on allowing people to be autonomous; that is, to be able to make decisions that apply to their own workplace or lives. In other words, people should have control over their own selves as much as possible because they are the only people who completely understand their chosen type of work/life style. Each individual deserves respect because only he/she has had those exact life experiences and understands own emotions, motivations, and physical capabilities in an intimate manner. In essence, this ethical principle is an extension of the ethical principle of beneficence because a person who is independent usually prefers to have control over his own experiences in order to secure the lifestyle that he/she enjoys.

Justice: The justice ethical principle states that decision makers should focus on actions that are fair to all those involved. This means that ethical decisions should be consistent with the ethical theory unless extenuating circumstances that can be justified and exist in the case. This also means that cases with extenuating circumstances must contain a significant and vital difference from other similar cases that justify the inconsistent decision.

The principles of integrity in business are guided by a set of core ethics that influence their decisions and behavior which includes: Accountability, Commitment to Excellence, Concern for Others, Fairness, Honesty, Integrity, Abiding Law, Leadership, Loyalty Morale, Keeping Promises, Reputation, Respect for others, Trustworthiness etc.

Answer 6A(iii)

Process of compounding application:

The Reserve Bank makes a scrutiny of the application to verify whether the required details and documents furnished by the applicant are prima-facie in order. Applications with incomplete details or where the contravention is not admitted will be returned to the applicant. On the admission of applications, the Reserve Bank will examine and decide if the contravention is technical, material or sensitive in nature. If technical, the applicant will be issued a cautionary advice. If the imposing an amount after giving an opportunity to the contravener to appear before the compounding authority for a personal hearing. If the contravention is sensitive in nature requiring further investigations, the same would be referred to the Directorate of Enforcement (DoE) for further investigation/ action. It may be noted that the Cases of contravention, such as, those having serious contravention suspected of money laundering, terror financing or affecting sovereignty and integrity of the nation are sensitive contraventions.

Personal Hearing

It is not mandatory to attend the personal hearing. In case a person opts not to attend the personal hearing he may indicate his preference in writing. The application would be disposed of on the basis of documents submitted to the Compounding Authority. It may be noted that appearing for or opting out of the personal hearing does not have any bearing whatsoever on the amount imposed in the compounding order.

The Compounding Authority passes an order indicating details of the contravention and the Provisions of FEMA, 1999 that have been contravened. The sum payable for compounding the contravention is indicated in the compounding order. The contravention is compounded by payment of the amount imposed.

On realization of the sum for which contravention is compounded, a certificate shall be issued by the Reserve Bank indicating that the applicant has complied with the order passed by the Compounding Authority. In case of non-payment of the amount indicated in the compounding order within 15 days of the order, it will be treated as if the applicant has not made any compounding application to the Reserve Bank and the other provisions of FEMA, 1999 regarding contraventions will apply. Such cases will be referred to the DoE for necessary action.

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CORPORATE RESTRUCTURING, INSOLVENCY LIQUIDATION & WINDING-UP

MODULE 2 PAPER 5

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

NOTE : *Answer All Questions.*

PART-I

Question 1

(a) The essence of amalgamation is to make an arrangement thereby uniting the undertakings of two or more companies so that they become vested in, or under the control of one company which may or may not be the original of the two or more of such uniting companies. Comment and explain the reasons for Amalgamation.

(5 marks)

(b) According to Section 68(I) of the Companies Act, 20l3, a company whether public or private, may purchase its own shares or other specified securities. Explain the following under the provisions of Rule 17 of the Companies (Share Capital and Debentures) Rules, 2014 :

(i) Filing Declaration of Solvency with SEBI/ROC.

(ii) Dispatch of letter of Offer.

(5 marks)

(c) Where a foreign company holds some shares in an Indian company and transfers the same, in case of a demerger, to another resulting foreign company, such transaction will be regarded as transfer for the purpose of capital gain under section 45 of the Income Tax Act, 196l ? Explain.

(5 marks)

(d) What constitutes transactions defrauding creditors as per provision of section 49 of IBC 2016?

(5 marks)

Answer 1(a)

Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or amalgamated company. In other words, property, assets, liabilities of one or more companies are taken over by another or are absorbed by and transferred to an existing company or a new company.

Therefore, the essence of amalgamation is to make an arrangement thereby uniting the undertakings of two or more companies so that they become vested in, or under the control of one company which may or may not be the original of the two or more of such uniting companies.

The word "amalgamation" is not defined under the Companies Act 2013 whereas section 2(1B) of Income Tax Act,1961 defines Amalgamation as:

"amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that –

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;

(iii) shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation.

Otherwise, then as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company.

Reasons for Amalgamation:

(a) To acquire cash resources

(b) To eliminate competition

(c) Tax savings/advantages

(d) Economies of large-scale operations

(e) To Increase shareholders value

(f) To reduce the degree of risk by diversification

(g) Managerial effectiveness

(h) To achieve growth and financial gain

(i) Revival of weak or sick or insolvent/bankrupt company

(j) Survival

(k) Sustaining growth

Answer 1(b)

(i) Filing Declaration of Solvency with SEBI/ROC (Rule 17(3) of the Companies (Share Capital and Debentures) Rules, 2014)

When a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution or board resolution as the case may be, it shall, before making such buy- back, file with the Registrar along with the letter of offer and the Securities and Exchange Board (in case of listed companies), a declaration of solvency in Form No. SH-9 signed by at least two directors of the company, one of whom shall be the managing director, if any, in such form as may be prescribed and verified by an affidavit as specified in said form.

(ii) Dispatch of letter of Offer (Rule 17(4) of the Companies (Share Capital and Debentures) Rules, 2014)

The letter of offer shall be dispatched to the shareholders or security holders immediately after filing the same with the Registrar of Companies but not later than 21 days from its filing with the Registrar of Companies.

Answer 1(c)

Section 47(vic) of the Income Tax Act, 1961 deals with Tax concession to a foreign demerged company. It provides that:

Where a foreign company holds any shares in an Indian company and transfers the same, in case of a demerger, to another resulting foreign company, such transaction will not be regarded as transfer for the purpose of capital gain under section 45 of the Act if the following conditions are satisfied:

(a) the shareholders holding not less than three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and

(b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated:

Sections 230 to 232 of Companies Act, 2013) shall not apply in case of demergers referred to in this clause.

Answer 1(d)

As per Section 49 of the IBC, 2016, a transaction shall be considered as defrauding creditors where transaction was deliberately entered into by such corporate debtor -

(a) for keeping assets of the corporate debtor beyond the reach of any person who is entitled to make a claim against the corporate debtor; or

(b) in order to adversely affect the interests of such a person in relation to the claim.

Section 49 strikes at transactions entered into with the intention of prejudicing the interests of a person who has made or may make a claim against the corporate debtor. According to section 49, where the corporate debtor has entered into an undervalued transaction as referred to in sub-section (2) of section 45, the Adjudicating Authority shall make an order-

(i) restoring the position as it existed before such transaction as if the transaction had not been entered into; and

(ii) protecting the interests of persons who are victims of such transactions.

The proviso appended to section 49 makes it clear that an order under section 49 -

(a) shall not affect any interest in property which was acquired from a person other than the corporate debtor and was acquired in good faith, for value and without notice of the relevant circumstances, or affect any interest deriving from such an interest, and

(b) shall not require a person who received a benefit from the transaction in good faith, for value and without notice of the relevant circumstances to pay any sum unless he was a party to the transaction.

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

Question 2

(a) Briefly explain the "Merger or Amalgamation of a Foreign Company with Company and vice versa".

(5 marks)

(b) Discuss the tax aspects on :

(i) Slump Sale

(ii) Demerger.

(5 marks)

(c) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 have provided multiple ways of discharging the consideration. Comment.

(5 marks)

Answer 2(a)

Rule 25A of Companies (Compromise, Arrangement and Amalgamation) Rules, 2016 mentioned states merger or amalgamation of a foreign company with a Company and vice versa. It provides that:

(1) A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.

(2) (a) A company may merge with a foreign company incorporated in any of the jurisdictions specified in Annexure B after obtaining prior approval of the Reserve Bank of India and after complying with provisions of sections 230 to 232 of the Act and these rules.

(b) The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. A declaration to this effect shall be attached with the application made to Reserve Bank of India for obtaining its approval under clause (a) of this sub-rule.

(3) The concerned company shall file an application before the Tribunal as per provisions of section 230 to section 232 of the Act and these rules after obtaining approvals specified in sub-rule (1) and sub-rule (2), as the case may be.

(4) Notwithstanding anything contained in sub-rule (3), in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under section 230 of the Act.

(5) 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.

Answer 2(b)

(i) Tax Aspects on Slump Sale

As per section 2(42C) of Income-tax Act, 1961, slump sale is defined as transfer of one or more undertakings (on a going concern basis or during winding-up) as a result of sale for a lump-sum consideration without values being assigned to individual assets and liabilities.

As per section 50B (1) of the Income Tax Act, 1961:-

- any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains from the transfer of long-term capital asset and shall be deemed to be the income of the previous year in which the transfer took place:
- Provided that any profits or gains arising from the transfer under the slump sale of any capital asset being one or more undertakings owned and held by an assesee for not more than thirty-six months immediately preceding the date of transfer shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

However, even in case of long-term capital asset, no indexation benefit is available for slump sale transaction, which increases the tax liability.

Capital gains arising on slump sale are calculated as the difference between sale consideration and the net worth of the undertaking.

(ii) Tax Aspects on Demerger

Demerger is a corporate partition of a company into two or more undertakings, thereby retaining one undertaking with it and transfer- ring the other undertaking to the Resulting Company.

Section 2(19AA) of the Income-tax Act, 1961 defines demerger and provides tax benefits, subject to fulfilment of certain conditions namely:

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

(ii) The resulting company is an Indian company.

As per section 47 of the Income-tax Act, 1961, following transfers will not be regarded as a transfer for the purpose of capital gains and hence not subject to income tax: where there is a transfer of any capital asset in a demerger by Demerged Company to Resulting, Company provided the Resulting Company is an Indian company

- Any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if— (a) the shareholders holding not less than three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and (b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated : Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause;

- any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in the Explanation 5 to clause (i) of sub-section (1) of section 9, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, if— (a) the shareholders, holding not less than three-fourths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and (b) such transfer does not attract tax on capital gains in the country in which the demerged foreign company is incorporated: Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 (1 of 1956) shall not apply in case of demergers referred to in this clause;
- any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking;

Additional income tax benefits available in a scheme of demerger include:

- Expenditure for obtaining licence to operate telecommunication services [Section 35ABB]
- Expenditure for obtaining Spectrum to operate telecommunication services [Section 35ABA]
- Amortisation of certain preliminary expenses [Section 35D]
- Treatment of expenditure on prospecting, etc. of certain minerals [Section 35E(7A)]
- Treatment of bad debts [Section 36(1)(vii)]
- Amortisation of expenditure in case of amalgamation or demerger [Section 35DD]
- Carry forward and set off of business losses and unabsorbed depreciation of the demerged company [Section 72A (4)&(5)]
- Deduction available under section 80-1A(12) or 80-1B(12)
- Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings

Answer 2(c)

As per the SEBI (SAST) Regulations, 2011, where an Acquirer along with person acting in concert, crosses the threshold limits prescribed the Takeover Regulations, it makes Public Announcement for the purpose of Open Offer to the shareholders of the Target Company.

* The acquirer shall complete payment of consideration to the shareholders who have accepted the offer, within a period of 10 working days from the expiry of the tendering period.

- As per Regulation 9 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, The offer price may be paid, –

  (a) in cash;

  (b) by issue, exchange or transfer of listed shares in the equity share capital of the acquirer or of any person acting in concert;

  (c) by issue, exchange or transfer of listed secured debt instruments issued by the acquirer or any person acting in concert with a rating not inferior to investment grade as rated by a credit rating agency registered with the Board;

  (d) by issue, exchange or transfer of convertible debt securities entitling the holder thereof to acquire listed shares in the equity share capital of the acquirer or of any person acting in concert; or

(e) a combination of the mode of payment of consideration stated in clause (a), clause (b), clause (c) and clause (d):

Provided that where any shares have been acquired or agreed to be acquired by the acquirer and persons acting in concert with him during the fifty-two weeks immediately preceding the date of public announcement constitute more than ten per cent of the voting rights in the target company and has been paid for in cash, the open offer shall entail an option to the shareholders to require payment of the offer price in cash, and a shareholder who has not exercised an option in his acceptance shall be deemed to have opted for receiving the offer price in cash:

Provided further that in case of revision in offer price the mode of payment of consideration may be altered subject to the condition that the component of the offer price to be paid in cash prior to such revision is not reduced.

The payment of cash consideration shall be made through the escrow account opened prior to the open offer. Any unclaimed balances in the escrow account shall be transferred to the IEPF at the end of 7 years.

(5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

(i) "Slump sale is one of the methods that are widely used in India for corporate restructuring where the company sells its undertaking."

Explain the term "Slump Sale" as per section 2(42C) of the Income Tax Act, 1961.

What are the main reasons of slump sale ?

Does an individual asset or liability be included in the term 'Undertaking ?'

(5 marks)

(ii) "Companies can also restructure their capital through derivatives and options as the means of raising funds".

Explain the term "option".

What are the different types of options ?

Define the term "derivative" as provided under section 2(ac) in Securities Contracts (Regulation) Act, 1956.

(5 marks)

(iii) Enumerate the provisions of Buy-back of physical shares or other specified securities as per regulation l9 of the SEBI (Buy-Back of Securities) Regulations, 2018.

(5 marks)

Answer 2(A)(i)

As per section 2(42C) of Income -tax Act 1961, 'slump sale' means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales.

The main reasons of slump sale are generally undertaken in India due to following reasons: -

- It helps the business to improve its poor performance.

- It helps to strengthen financial position of the company.
- It eliminates the negative synergy and facilitates strategic investment.
- It helps to seek tax and regulatory advantage associated with it.

Undertaking' has the same meaning as in Explanation 1 to section 2(19AA) defining 'demerger'. As per Explanation 1 to section 2(19AA) 'Undertaking' shall include any part of an undertaking or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Explanation 2 to section 2(42C) clarifies that the determination of value of an asset or liability for the payment of stamp duty, registration fees, similar taxes, etc. shall not be regarded as assignment of values to individual assets and liabilities. Thus, if value is assigned to land for stamp duty purposes, the transaction will be a qualifying slump sale under section 2(42C).

Answer 2(A)(ii)

Option is a derivative contract. An option gives the holder the right but not the obligation to buy or sell something in the future.

There are two types of Options:-

1. *Put option* - is one which gives holder the right to sell particular number of shares (or any other commodity) at a given price and typically one buys put options, if the price of the stock is expected to decline.
2. *Call option* - gives the holder the right to buy the shares at a predetermined period of time and at a predetermined price. Typically, one buys call options if the price of the underlying stock is expected to rise.

The term derivative has been defined under section 2(ac) in Securities Contracts (Regulation) Act, 1956 as follows:

(A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(B) a contract which derives its value from the prices, or index of prices, of underlying securities.

(C) commodity derivatives; and

(D) such other instruments as may be declared by the Central Government to be derivatives;

Answer 2(A)(iii)

Regulation 19 of the SEBI (Buy-Back of Securities) regulations, 2018 deals with Buy–back of physical shares or other specified securities

A company may buy-back its shares or other specified securities in physical form through open market method as provided hereunder:

(a) a separate window shall be created by the stock exchange, which shall remain open during the buyback period, for buy-back of shares or other specified securities in physical form.

(b) the company shall buy-back shares or other specified securities from eligible shareholders holding physical shares through the separate windows specified in clause (a), only after verification of the identity proof and address proof by the broker.

(c) the price at which the shares or other specified securities are bought back shall be the volume weighted average price of the shares or other specified securities bought-back,

other than in the physical form, during the calendar week in which such shares or other specified securities were received by the broker:

Provided that the price of shares or other specified securities tendered during the first calendar week of the buyback shall be the volume weighted average market price of the shares or other specified securities of the company during the preceding calendar week.

Explanation: In case no shares or other specified securities were bought back in the normal market during calendar week, the preceding week when the company has last bought back the shares or other specified securities may be considered.

Question 3

(a) "In case of Demerger, the resulting company shall be eligible for tax concessions only if two conditions are satisfied". What are the two conditions ?

What are provisions relating to tax concession in case of demerger in the following circumstances :

(i) Expenditure for obtaining licence to operate telecommunication services [Section 35ABB]

(ii) Expenditure for obtaining Spectrum to operate telecommunication services [Section 35ABA].

(3 marks)

(b) Merger or Amalgamation is undertaken for acquiring cash resources, eliminating competition, saving on taxes or influencing the economies of large-scale operations.

List out some of the factors, which require consideration before initiating a merger or amalgamation exercise from the economic, commercial and legal perspective.

(3 marks)

(c) What is a "Takeover bid" in term of The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011. When a takeover bid is required to be made by way of a public announcement issued to the stock exchanges, followed by a Detailed Public Statement in the newspapers ?

(3 marks)

(d) The Competition (Criteria of Combination) Rules, 2024 vide MCA Notification no. G.S.R. 548 (E) dated 9th September, 2024 provides criteria for entities involved in combinations (such as mergers or acquisitions) to file notices under Section 6(4) of the Act. Comment on the statement.

(3 marks)

(e) From the following information, calculate the value of goodwill of a firm assuming that goodwill is to be taken at 5 years' purchase of super profit :

(i) Average Capital Employed in the business ₹ 10,00,000

(ii) Net profit for the past four years : ₹ 1,19,500; ₹ l,17,000; ₹ 1,22,000 & ₹ 1,23,500

(iii) Fair annual remuneration of partner ₹ 8,000

(iv) Expected rate of return 10%

(3 marks)

Answer 3(a)

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

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

(ii) The resulting company is an Indian company.

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

(i) Expenditure for obtaining licence to operate telecommunication services [Section 35ABB]

The provisions of the section 35ABB of the Income Tax Act, 1961 relating to deduction of expenditure, incurred for obtaining licence to operate communication services shall, as far as may be, apply to the resulting company as they would have applied to the demerged company, if the latter had not transferred the licence and the amalgamated company or the resulting company is an Indian company.

(ii) Expenditure for obtaining Spectrum to operate telecommunication services [Section 35ABA]

The provisions of the section 35ABA of the Income Tax Act, 1961 relating to deduction of expenditure, incurred for obtaining spectrum to operate communication services shall, as far as may be, apply to the resulting company as they would have applied to the demerged company if the latter had not transferred the spectrum and the amalgamated company or the resulting company is an Indian company.

Answer 3(b)

Merger or amalgamation is undertaken for acquiring cash resources, eliminating competition, saving on taxes or influencing the economies of large-scale operations. Therefore, there are host of factors, which require consideration before initiating a merger or amalgamation exercise. Some of the factors requiring consideration before initiating a merger or amalgamation from the economic, commercial and legal perspective is explained as follows:

(i) Identification of Parties

Will one or more businesses be transferred to an existing firm or a newly formed entity? Consider drafting heads of terms, do you require a confidentiality agreement? Do you require an exclusivity agreement? Review financial liability of the parties - undertake appropriate searches.

(ii) Due Diligence

Carry out legal, commercial, tax and financial due diligence on the parties entering into the transaction. This will help in identifying risk areas along with any necessary consent you will need to obtain.

(iii) Any third-party consents required

Ascertain if any third-party consents would be required such as from banks, business contracts, partner /shareholder consents. These should emerge from due diligence. Consider also regulatory consents / licences that may be required.

(iv) Taxation

It will be necessary to ascertain the most suitable tax structure for the transaction and, in particular, the way in which the consideration should be structured, at an early stage, therefore consider consulting tax advisors.

(v) Risk

Sharing of risk – What kind of indemnities / warranties be considered? Should there be a cap on such indemnities and warranties?

(vi) Will the transaction impact on existing loan/finance arrangements?

Check loan documents and constitution documents to see whether any proposed borrowing would be a breach of any existing funding. What will happen in relation to third party funding of the seller business? Confirm that there are no restrictions on the disposal of the target business or any of its assets. How will the merged business be funded?

(vii) Existing Charges / Modifications over the assets to be acquired

Are there any mortgages, charges or debentures over any of the business assets? If yes, obtain copies and consider how they are to be discharged. If there are floating charges, obtain certificates of non-crystallisation / release. Obtain a Search Report from a Practicing Company Secretary.

(viii) Guarantees and indemnities (bank or other)

Has the Seller given or received any guarantees or indemnities in relation to the business? If yes, then obtain copies (including details of arrangements) and consider in particular, how to ensure the business continues to have the benefit of relevant guarantees.

(ix) Licences

Will the Buyer have all other licences which it needs to operate the business?

(x) Supply contracts

Will supply contracts be transferred or need to be terminated? How will this be done?

(xi) What IP is used in the business?

Obtain a full list of trademarks, service marks, patents, designs, domain names, copyright and other registered and unregistered intellectual property used in the business. Carry out trade mark and patent searches as may be appropriate through an IPR Attorney.

Answer 3(c)

"Takeover bid" is an offer to the shareholders of a company, who are not the promoters of the company or the sellers of the shares under an agreement, to buy their shares in the company at the offered price within the stipulated period of time. It is addressed to the shareholders with a view to acquiring sufficient number of shares to give the Offer or Company, voting control of the target company.

A takeover bid is a technique, which is adopted by a company for taking over control of the management and affairs of another company by acquiring its controlling shares.

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 require acquirers to make bids for acquisition of certain level of holdings subject to certain conditions. A takeover bid is required to be made by way of a public announcement issued to the stock exchanges, followed by a Detailed Public Statement in the newspapers.

Such requirements arise in the following cases: -

(a) for acquisition of 25% or more of the shares or voting rights;

(b) for acquiring additional shares or voting rights to the extent of 5% of the voting rights in any financial year beginning April 01, if such person already holds not less than 25% but not more than 75% or 90% of the shares or voting rights in a company as the case may be;

(c) for acquiring control over a company.

Answer 3(d)

Criteria of Combination:

The Competition (Criteria of Combination) Rules, 2024 vides MCA Notification no. G.S.R. 548 (E) dated 9th September, 2024 provides for entities involved in combinations (such as mergers or acquisitions) to file notices under Section 6(4) of the Competition Act.

(1) For the purposes of 6 (4) of the Competition Act, the parties to a combination, their respective group entities and their affiliates who fulfils the following criteria, may give notice for such combination under that sub-section, namely:

(a) they do not produce or provide similar or identical or substitutable product or service;

(b) they are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product or provision of service, –

(i) which are at different stage or level of production; or

(ii) which are complementary to each other.

Answer 3(e)

Capital Employed = Rs. 10,00,000

Expected Profit = Capital Employed × Expected Rate of Return

= ₹ 10,00,000 × 10%

= ₹ 1,00,000

Here, total profit of last four years: 1,19,500 + 1,17,000 + 1,22,000 + 1,23,500

=₹ 4,82,000.

So, Average Profit = ₹4,82,000/ 4 = ₹1,20,500

Future Maintainable Profit = Average Profit – Fair remuneration of partner

= ₹ 1,20,500 – ₹ 8,000

= ₹ 1,12,500

Super Profit = Future Maintainable Profit – Expected Profit

= ₹ 1,12,500 – ₹ 1,00,000

= ₹ 12,500

Goodwill = Super Profit × No. of purchasing years'

= ₹12,500 × 5

= ₹ 62,500

PART-II

Question 4

(a) The following information is available of a concern. Calculate Economic Value Added (EVA).

10% Debt ₹ 2,000 crores

Equity capital ₹ 500 crores

Reserves and Surplus ₹ 7,500 crores

Risk-free rate 6%

Beta factor 1.05

Market rate of return 16%

Equity (market) risk premium 10%

Operating profit after tax ₹ 1,800 crores.

Tax rate = 30%.

(5 marks)

(b) An order of a Court, sanctioning a scheme of amalgamation or demerger is a "conveyance" and liable to be levied stamp duty. Give your opinion citing relevant case laws.

(5 marks)

(c) A corporate debtor in respect of whom a liquidation order has been made is ineligible to initiate a corporate insolvency resolution process. Do you agree ?

List out the persons who are not eligible to make an application for insolvency resolution process under the Insolvency and Bankruptcy Code.

(5 marks)

(d) Explain the provisions relating to Directions for compliances of restrictions as per provisions of section 90 of the IBC. When a Resolution Professional may submit an application to the adjudicating authority seeking revocation of its order made under Section 84 ?

(5 marks)

Answer 4(a)

Particulars Cost of Debt (K_d) = Interest × (1-tax rate) = 10% × (1-0.3) =7.00%

Cost of Equity (K_e) = Risk free rate + (Beta × Market Risk Premium) = 6% +1.05(16%-6%) =16.5%

Debt equity ratio (as given in the question) = 2000: (500+7500) = 20% & 80%

WACC= [(K_d) × Debt% + (K_e) × Equity %] = (7.00 × 20%) + (16.5 × 80%) = 14.60%

Operating Profit after tax = Rs. 1,800 crores

EVA = NOPAT – Cost of Capital Employed

= [(Rs. 1,800 cr.) – (14.60%) × Rs.10, 000 cr.]

= Rs.1, 800 cr. – Rs.1460 cr.

= Rs.340 cr.

Answer 4(b)

When transfer takes place by virtue of a court order to a scheme of amalgamation, stamp duty is leviable. By virtue of Section 2(g) the Bombay Stamp Act, 1958, the order of the Court ordering the transfer of assets and liabilities of the transferor company to the transferee company is deemed to be a conveyance. The definition of conveyance is given below:

As per Section 2(g) of the Bombay Stamp Act, 1958, "Conveyance" includes–

(i) a conveyance on sale,

(ii) every instrument,

(iii) every decree or final order of any Civil Court,

(iv) every order made by the High Court under Section 394 of the Companies Act, 1956 in respect of amalgamation of companies;

The landmark decision of Bombay High Court in *Li Taka Pharmaceuticals v. State of Maharashtra* (1996) 8 SC 102 (Bom.) has serious implications for mergers covered not just by the Bombay Stamp Act, 1958 but also mergers covered by Acts of other States. The following are the major conclusions of the Court:

1. An amalgamation under an order of Court under Section 394 of the Companies Act, 1956 is an instrument under the Bombay Stamp Act, 1958.
2. States are well within their jurisdiction when they levy stamp duty on instrument of amalgamation.
3. Stamp duty would be levied not on the gross assets transferred but on the "undertaking", when the transfer is on a going concern basis, i.e., on the assets less liabilities. The value for this purpose would thus be the value of shares allotted. This decision has been accepted in the Act and now stamp duty is leviable on the value of shares allotted plus other consideration paid.

The Calcutta High Court in the case of *Emami Biotech Ltd.* (2012) held that a Court order sanctioning a scheme of amalgamation or demerger under section 391 to 394 of the Companies Act, 1956 is an instrument and conveyance within the meaning of the Stamp Act applicable to the State of West Bengal and is accordingly, subject to stamp duty.

Answer 4(c)

Yes. A corporate debtor in respect of whom a liquidation order has been made is ineligible to initiate a corporate insolvency resolution process

Section 11 of the Insolvency & Bankruptcy Code lists out the persons who are not eligible to make an application to initiate the Corporate Insolvency resolution process. The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter II of Part II, namely:

(a) a corporate debtor undergoing a corporate insolvency resolution process or a pre-packaged insolvency resolution process; or

(aa) a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or

(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or

(ba) a corporate debtor in respect of whom a resolution plan has been approved under Chapter III-A, twelve months preceding the date of making of the application; or

(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or

(d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation [I]. - For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Explanation II.- For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor.

Answer 4(d)

Directions for compliances of restrictions

Section 90 of the Insolvency and Bankruptcy Code, 2016 provides that resolution Professional may apply to the adjudicating authority for any of the following directions, namely:

(a) Compliance of any restrictions referred to in sub-section (3) of Section 85 in case of non-compliance by the debtor; or

(b) Compliance of the duties of the debtor referred to in section 88, in case on noncompliance by the debtor.

The Resolution Professional may apply to the adjudicating authority for directions in relation to any other matter under these provisions for which no specific provisions have been made.

Section 91 of the Insolvency and Bankruptcy Code, 2016 provides that the Resolution Professional may submit an application to the adjudicating authority seeking revocation of its order made under Section 84 on the following grounds, namely:

(a) if due to any change in the financial circumstances of the debtor, the debtor is ineligible for a fresh start process; or

(b) non-compliance by the debtor of the restrictions imposed under sub-section (3) of section 85; or

(c) if the debtor has acted in a mala fide manner and has willfully failed to comply with the provisions of this Chapter.

The adjudicating authority shall within fourteen days of the receipt of the application, may by order admit or reject the application. On passing of the order admitting the application, the moratorium and the fresh start process shall cease to have effect. A copy of the order passed by the Adjudicating Authority under this Section shall be provided to the Board for the purpose of recording an entry in the register referred to in Section 196.

Question 5

(a) Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 mandates constitution of Stakeholders' Consultation Committee by the Liquidator, comprising of all creditors of the corporate debtor. List the matters it advices.

(3 marks)

(b) "Recovery Officer acts in an arbitrary manner. Analyze the statement in the light of the provisions of Recovery of Debts and Bankruptcy Act, 1993 citing judicial pronouncements, if any.

(3 marks)

(c) Explain the provisions relating to Ex-parte Hearing and disposal under rule 49 of the National Company Law Tribunal Rules, 2016.

(3 marks)

(d) Explain the right of borrower to rcceive compensation and costs as per provision of the section I9 of Securitisation and Reconstruction of Financial Assets and Reinforcement of Security Interest (SARFAESI) Act., 2002.

(3 marks)

(e) "Section 38 of the IBC 2016 prescribes a time period for the collection of claims by the

liquidator. It also specifies the methods by which different categories of creditors can submit and prove their claims." Elucidate.

(3 marks)

Answer 5(a)

Regulation 31A of the IBBI (Liquidation Process) Regulations, 2016 mandates constitution of Stakeholders' Consultation Committee by the Liquidator, comprising of all creditors of the corporate debtor, within sixty days from the liquidation commencement date, based on the list of stakeholders prepared under regulation 31, to advise him on matters

(a) remuneration of professionals appointed under regulation 7;

(b) sale under regulation 32, including manner of sale, pre-bid qualifications, reserve price, marketing strategy and auction process.;

(c) fees of the liquidator;

(d) valuation under sub- regulation (2) of regulation 35;

(e) the manner in which proceedings in respect of preferential transactions, undervalued transaction, extortionate credit transaction or fraudulent or wrongful trading, if any, shall be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from these proceedings shall be distributed;

(f) review of marketing strategy in case of failure of sale of corporate debtor as a going concern;

(g) continuation or institution of any suits or legal proceedings by or against the corporate debtor;

(h) extension of payment of balance sale consideration as provided in clause (12) of Para 1 of Schedule I, beyond ninety days, to be disclosed in the auction notice.

Answer 5(b)

- The Recovery of Debts & Bankruptcy Act, 1993 was enacted to provide for speedy adjudication of matters relating to recovery of debts due to banks and financial institutions.
- The Act provides for setting up separate tribunals to hear such matters and these are termed as Debt Recovery Tribunals (DRT). A DRT shall consist of one person, known as the Presiding Officer, along with one or more Recovery Officers who shall operate under superintendence of the Presiding Officer.
- On receipt of the decree from the Presiding Officer, the Recovery Officer is duty bound to make recovery in the manner provided under the Act.
- In the case of *UOI vs. Delhi High Court Bar Association*, it was held that realization of dues by Recovery Officers shall be made in accordance with the Income-tax Rules, 1962. A detailed procedure for recovery is contained in these Rules, including provisions relating to arrest and detention of the defaulter.
- Further, as per Section 30, any person aggrieved by the order of the Recovery Office has the right to appeal to the Tribunal. Thus, there is an appellate forum available against any order of the Recovery Officer.
- Hence, sufficient safeguard has been provided in the event of the Recovery Officer acting in an arbitrary or an unreasonable manner.
- Thus, it cannot be said that the Recovery Officer acts in an arbitrary manner.

Answer 5(c)

Rule 49 of the National Company Law Tribunal Rules, 2016 deals with Ex-parte Hearing and disposal. It provides that:

(1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application *ex-parte*.

(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit.

Provided that where the *ex-parte* hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only it may be set aside as against all or any of the other respondents also.

Answer 5(d)

Section 19 of the SARFAESI Act, 2002 deals with Right of borrower to receive compensation and costs in certain cases. It states that:

Section 19 provides that if the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made there under and directs the secured creditors to return such secured assets to the concerned borrowers or any other aggrieved person, who has filed the application under section 17 or section 17A or appeal under section 18 or section 18A, as the case may be, the borrower or such other person shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B.

Answer 5(e)

Section 38 of the IBC, 2016 prescribes a time period for the collection of claims by the liquidator. It also specifies the methods by which different categories of creditors can submit and prove their claims.

Receipt or collection of claims- Section 38(1) provides that the liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

Submission of claim by financial creditor- According to section 38(2), a financial creditor may submit a claim to the liquidator by providing are cord of such claim with an information utility.

In cases where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor under sub-section (3).

Submission of claim by operational creditor- An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board. [Section 38(3)].

Claims by creditor who is partly a financial and partly an operational creditor- A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub- section (3). [Section 38(4)]

Withdrawal or variation of claims- A creditor may withdraw or vary his claim under section 38 with in fourteen days of its submission. [Section 38(5)]

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

Question 6

(a) "Any modification suggested by creditors need consent of the debtor in respect of Repayment plan in case of individual or firm solvency. ' Comment briefly on the statement narrating the provisions in respect of conducting meetings and rights of secured creditors to attend.

(5 marks)

(b) "The Ministry of Corporate Affairs has constituted the Insolvency Law Committee (ILC) to recommend amendments to the Insolvency and Bankruptcy Code of India, 2016." Discuss the importance of such committee & its recommendation.

(5 marks)

(c) Explain the provision on actions to avoid acts detrimental to creditors as per provision of the Article 23 of the UNCITRAL Model Law.

(5 marks)

Answer 6(a)

Section 108 of the Insolvency & Bankruptcy Code lays down provisions for conduct of meeting of creditors as follows-

(1) The meeting of the creditors shall be conducted in accordance with the provisions of this section and sections 109,110 and 111.

(2) In the meeting of the creditors, the creditors may decide to approve, modify or reject the repayment plan.

(3) The resolution professional shall ensure that if modifications are suggested by the creditors, consent of the debtor shall be obtained for each modification.

(4) The resolution professional may for a sufficient cause adjourn the meeting of the creditors for a period of not more than seven days at a time.

Pursuant to provisions of section 108(3), the statement that modifications suggested by creditors need consent of the debtor, holds true.

Section 110 of the Code stipulates the rights of secured creditors in relation to repayment plan as follows –

(1) Secured creditors shall be entitled to participate and vote in the meetings of the creditors.

(2) A secured creditor participating in the meetings of the creditors and voting in relation to the repayment plan shall forfeit his right to enforce the security during the period of the repayment plan in accordance with the terms of the repayment plan.

(3) Where a secured creditor does not forfeit his right to enforce security, he shall submit an

affidavit to the resolution professional at the meeting of the creditors stating - (a) that the right to vote exercised by the secured creditor is only in respect of the unsecured part of the debt; and (b) the estimated value of the unsecured part of the debt.

(4) In case a secured creditor participates in the voting on the repayment plan by submitting an affidavit under sub-section (3), the secured and unsecured parts of the debt shall be treated as separate debts.

(5) The concurrence of the secured creditor shall be obtained if he does not participate in the voting on repayment plan but provision of the repayment plan affects his right to enforce security.

Explanation. – For the purposes of this section, "period of the repayment plan" means the period from the date of the order passed under section 114 till the date on which the notice is given by the resolution professional under section 117 or report submitted by the resolution professional under section 118, as the case may be.

Answer 6(b)

The Ministry of Corporate Affairs has constituted the Insolvency Law Committee (ILC) to recommend amendments to the Insolvency and Bankruptcy Code of India, 2016. The Committee has submitted its 2nd report to the Government on 16 October 2018 recommending amendments in the insolvency and Bankruptcy Code, 2016 with respect to cross-border insolvency.

The necessity of having Cross Border insolvency Framework under the insolvency and Bankruptcy Code arises from the fact that many Indian companies have a global presence and many foreign companies have presence in India. Inclusion of comprehensive legal framework dealing with cross border insolvency will be a major step forward and will bring Indian insolvency law on a par with that of matured jurisdictions.

The ILC has recommended the adoption of the UNCITRAL Model law of Cross Border insolvency, 1997, as it provides for a comprehensive framework to deal with cross-border insolvency issues.

The Model law deals with four major principles of cross-border insolvency, namely direct access to foreign insolvency professionals and foreign creditors to participate in or commence domestic insolvency proceedings against a defaulting debtor; recognition of foreign proceedings & provision of remedies; cooperation between domestic and foreign courts & domestic and foreign insolvency practitioners; and coordination between two or more concurrent insolvency proceedings in different countries. The main proceeding is determined by the Concept of Centre of Main Interest (COMI).

The necessity of having Cross Border insolvency Framework under the insolvency and Bankruptcy Code arises from the fact that many Indian companies have a global footprint and many foreign companies have presence in multiple countries including India, although the proposed Framework for Cross Border insolvency will enable us to deal with Indian companies having foreign assets and vice versa, it still does not provide for a framework for dealing with enterprise groups, which is still work in progress with UNCITRAL and other international bodies. The inclusion of the Cross Border insolvency Chapter in the Insolvency and Bankruptcy Code of India, 2016, will be a major step forward and will bring Indian insolvency law at par with that of matured jurisdictions.

Applicability: the Committee recommended that at present, draft Part Z should be extended to corporate debtors only.

1. *Duplicity of regimes:* the Committee noted that currently the Companies act, 2013 contains provisions to deal with insolvency of foreign companies. It observed that once Part Z is enacted, it will result in a dual regime to handle insolvency of foreign companies. It recommended

that the Ministry of Corporate Affairs undertake a study of such provisions in the Companies act, 2013 to assess whether to retain them.

2. *Reciprocity:* the Committee recommended that the Model law may be adopted initially on a reciprocity basis. This may be diluted subsequently upon re-examination. Reciprocity indicates that a domestic court will recognise and enforce a foreign court's judgment only if the foreign country has adopted similar legislation to the domestic country.
3. *Access to Foreign representatives:* the Model law allows foreign insolvency professionals and foreign creditors access to domestic courts to seek remedies directly. Direct access with regards to foreign creditors is envisaged under the Code even presently. With respect to access by foreign insolvency professionals to Indian courts, the Committee recommended that the Central Government be empowered to devise a mechanism that is practicable in the current Indian legal framework.
4. *Centre of Main interests (COMI):* the Model law allows recognition of foreign proceedings and provides relief based on this recognition. Relief may be provided if the foreign proceeding is a main proceeding or non-main proceeding. If the domestic courts determine that the debtor has its COMI in a foreign country, such foreign proceedings will be recognised as the main proceedings. This recognition will result in certain automatic relief, such as allowing foreign representatives greater powers in handling the debtor's estate.

   For non-main proceedings, such relief is at the discretion of the domestic court. the Committee recommended that a list of indicative factors comprising COMI may be inserted through rule-making powers. Such factors may include location of the debtor's books and records, and location of financing.

5. *Cooperation*: The Model law lays down the basic framework for cooperation between domestic and foreign courts, and domestic and foreign insolvency professionals. Given that the infrastructure of adjudicating authorities under the Code is still evolving, the cooperation between adjudicating authorities and foreign courts is proposed to be subject to guidelines to be notified by the Central Government.
6. *Concurrent Proceedings*: The Model law provides a framework for commencement of domestic insolvency proceedings, when a foreign insolvency proceeding has already commenced or vice versa. It also provides for coordination of two or more concurrent insolvency proceedings in diff countries by encouraging cooperation between courts. The Committee recommended adopting provisions in relation to these in draft Part Z.
7. *Public policy considerations*: Part Z provides that the adjudicating authority may refuse to take action under the Code if it is contrary to public policy. The Committee recommended that in proceedings where the authority is of the opinion that a violation of public policy may be involved, a notice must be issued to the Central Government. If the authority does not issue notice, the Central Government may be empowered to apply to it directly.

Answer 6(c)

Actions to avoid acts detrimental to creditors (Article 23 of UNCITRAL Model Law)

Under many national laws both individual creditors and insolvency administrators have a right to bring actions to avoid or otherwise render ineffective acts detrimental to creditors. Such a right, insofar as it pertains to individual creditors, is often not governed by insolvency law but by general provisions of law (such as the civil code); the right is not necessarily tied to the existence of an insolvency proceeding against the debtor so that the action may be instituted prior to the commencement of such a proceeding. The person having such a right is typically only an affected creditor and not another person such as the insolvency administrator. Furthermore, the conditions for these individual-creditor actions are different from the conditions applicable to similar actions that might be initiated by an insolvency administrator.

The procedural standing conferred by Article 23 extends only to actions that are available to the local insolvency administrator in the context of an insolvency proceeding, and the Article does not equate the foreign representative with individual creditors who may have similar rights under a different set of conditions. Such actions of individual creditors fall outside the scope of Article 23.

The Model Law expressly provides that a foreign representative has "standing" to initiate actions to avoid or otherwise render ineffective legal acts detrimental to creditors. The provision is drafted narrowly in that it does not create any substantive right regarding such actions and also does not provide any solution involving conflict of laws. The effect of the provision is that a foreign representative is not prevented from initiating such actions by the sole fact that the foreign representative is not the insolvency administrator appointed in the enacting State.

OR (Alternative question to Q. No. 6)

Question 6A

(i) A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets. Explain.

(5 marks)

(ii) Comment on Professional Assistance to Company Liquidator as per provision of section 291 of the Companies Act, 2013. A creditor wants to inspect books, through an agent. Advice as per provision of section 293 of the Act.

(5 marks)

(iii) Mr. P is unable to pay his debt and wants to apply under the Insolvency and Bankruptcy Code 2016 for a fresh start process. Advise him about his eligibility to apply for the fresh start the process in respect of his qualifying debt.

(5 marks)

Answer 6A(i)

According to Regulation 37 of CIRP Regulations, 2016, a resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets including but not limited to the following:

(a) transfer of all or part of the assets of the corporate debtor to one or more persons;

(b) sale of all or part of the assets whether subject to any security interest or not;

(ba) restructuring of the corporate debtor, by way of merger, amalgamation and demerger;

(c) the substantial acquisition of shares of the corporate debtor, or the merger or consolidation of the corporate debtor with one or more persons

(ca) cancellation or delisting of any shares of the corporate debtor, if applicable;

(d) satisfaction or modification of any security interest

(e) curing or waiving of any breach of the terms of any debt due from the corporate debtor;

(f) reduction in the amount payable to the creditors;

(g) extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor

(h) amendment of the constitutional documents of the corporate debtor;

(i) issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;

(j) change in portfolio of goods or services produced or rendered by the corporate debtor;

(k) change in technology used by the corporate debtor; and

(l) obtaining necessary approvals from the Central and State Governments and other authorities."

(m) sale of one or more assets of corporate debtor to one or more successful resolution applicants submitting resolution plans for such assets; and manner of dealing with remaining assets."

Answer 6A(ii)

Section 291 of the Companies Act, 2013 deals with Professional Assistance to Company Liquidator. It states that:

(1) The Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act.

(2) Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

Section 293 of the Companies Act, 2013 deals with Books to be kept by Company Liquidator. It states that:

(1) The Company Liquidator shall keep proper books in such manner, as may be prescribed, in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(2) Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

Answer 6A(iii)

The Insolvency and Bankruptcy Code, 2016 has provided separate insolvency resolution process for individuals and partnership firms. Part III provides for Insolvency Resolution Process for individuals and partnership firms.

As per Section 80 of CHAPTER II Part III provides for Insolvency Resolution Process):

(1) A debtor, who is unable to pay his debt and fulfils the conditions specified in subsection (2), shall be entitled to make an application for a fresh start for discharge of his qualifying debt under this Chapter.

(2) A debtor may apply, either personally or through a Resolution Professional, for a fresh start, in respect of his qualifying debts to the Adjudicating Authority if –

(a) the gross annual income of the debtor does not exceed sixty thousand rupee,

(b) the aggregate value of the assets of the debtor does not exceed twenty thousand rupees;

(c) the aggregate value of the qualifying debts does not exceed thirty -five thousand rupees;

(d) he is not an undischarged bankrupt;

(e) he does not own a dwelling unit; irrespective of whether it is encumbered or not;

(f) a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; and

(g) no previous fresh start order under this Chapter has been made in relation to him in the preceding twelve months of the date of the application for fresh start.

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RESOLUTION OF CORPORATE DISPUTES, NON-COMPLIANCES & REMEDIES

MODULE 2 PAPER 6

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

NOTE : *Answer All Questions.*

Question 1

(a) WE India Private Ltd, a well-known seller of Android-based car head units, found itself at the centre of a competition law dispute. A consumer rights group, XYZ (the Informant), filed a complaint against the company before the Competition Commission of India (CCI), alleging unfair and anti-competitive practices. XYZ argued that WE India was importing Chinese Android head units but was deliberately concealing the Country of Origin (COO) from its product descriptions on e-commerce platforms. This lack of transparency misled consumers, who were unable to make informed purchasing decisions.

Furthermore, XYZ accused WE of using misleading marketing tactics. The company promoted its products using the tagline ''India Ka Apna Brand'' on its website, YouTube channel, and other marketing materials, creating a false impression that the products were manufactured in India. Additionally, the company made exaggerated claims such as being ''India's No. I Android Car Stereo'', which could mislead consumers and distort fair competition.

XYZ contended that such deceptive practices not only harmed consumers but also disrupted fair market competition by unfairly disadvantaging competitors who were transparent about product origins.

Does the concealment of the country of origin and the use of misleading branding by WE India constitutes an unfair or anti-competitive practice under the Competition Act, 2002? Can such conduct warrant an investigation by the Competition Commission of India (CCI) under Section 4 for abuse of dominance ? Explain with reference to relevant judicial pronouncements.

(5 marks)

(b) ABC Pvt. Ltd. is a family-owned company where two brothers, Rajesh and Sanjay, are the key shareholders.

- Rajesh (along with his HUF) owns 17.58% of the company.
- Sanjay (along with his family branch) owns 82.42% of the company.

Due to internal disputes, the company held an Extraordinary General Meeting (EOGM) on March 15, 2020, to remove Rajesh from the Board of Directors. Before the meeting, Rajesh approached the National Company Law Tribunal (NCLT), which allowed the EOGM but stated that the resolution passed must be permitted by the Tribunal before taking effect (ex parte interim order on March 14, 2020).

The Issue :

- More than two years have passed, but the case was not decided by the NCLT.
- Rajesh, using this delay and the interim order, continued acting as a director and took steps against the company's and shareholders' interests.

- Due to his interference, Sanjay and other shareholders were unable to start a new project.
- Sanjay and his group moved an application before the NCLT, requesting to hold an EOGM under an independent chairman (appointed by the Tribunal).
- The NCLT allowed this request.

Rajesh, unhappy with this decision, filed an appeal against the NCLT's order. Based on judicial pronouncements, analyse and decide should the appeal filed by Rajesh against thc NCLT's order be allowed or dismissed ?

(5 marks)

(c) A group of MSME traders engaged in the sale of smartphones and related accessories have approached the Competition Commission of India (CCI), raising concerns about unfair trade practices on online marketplaces.

- DownBasket and PapaGone are major online platforms that allow third-party sellers to list and sell their products.
- The traders allege that these platforms have entered into vertical agreements with their preferred sellers, leading to market foreclosure for other sellers.
- Specifically, it is alleged that :
  (1) DownBasket has exclusive dealings with certain preferred sellers.
  (2) PapaGone has similar exclusive arrangements with its own preferred sellers.
- Many of these preferred sellers are allegedly controlled or affiliated with DownBasket and PapaGone themselves, either directly or indirectly.

The traders claim that such anti-competitive agreements prevent independent MSME sellers from competing fairly, thereby distorting the market. They have requested CCI to direct an investigation into the matter.

Based on judicial pronouncements, should the Director General of the Competition Commission of India (CCI) order an investigation into the alleged anti-competitive practices of DownBasket and PapaGone ?

(5 marks)

(d) Mr. A, a resident of Kolkata was found to be involved in Hawala transactions and received notices in this regard from concerned Authorities. He approaches Mr. B, a Practising Company Secretary and seeks advice on the procedure to survey contravention under Foreign Exchange Management Act (FEMA), 1999.

Prepare a brief note on provisions of power of survey as provided in section 16 of the Act.

(5 marks)

Answer 1(a)

The given situation is based on the recent decision in the matter of *XYZ v. Woodman Electronics India Pvt Ltd* decided by Competition Commission of India, where similar charges were made on Woodman Electronics. XYZ is an informant and Woodman Electronics is an opposite party.

At the outset, the Commission noted that the Informant has alleged contravention of provisions of Section 4, Section 36A, Section 2(47) of the Competition Act, 2002(the Act) and Section 21(2) of the Consumer Protection Act, 2019, through indulging in anticompetitive practice unfair trade practice

by not disclosing the country of origin, claiming the product to be indigenous in advertisements, on its websites, YouTube channel etc.

In this regard, the Competition Commission observed that Section 2(47) and Section 36A of the Competition Act, 2002 are incorrectly mentioned by the Informant and no such sections exist in the Competition Act. Moreover, enforcement against false and misleading advertisement under Section 21(2) of the Consumer Protection Act, 2019 is entrusted to the Central Authority constituted under the Consumer Protection Act, 2019. Accordingly, the Commission proceeded to examiner the alleged abusive conduct within the contours of Section 4 of the Act.

As per publicly available information, the car audio market is a growing market globally as well as in Asia Pacific region, including India. The growing automotive industry, technological advancements, ease of availability and affordability are stated to be major growth drivers. There has been a rise in demand for car audio system in the secondary market given the rise in small and mid-range cars as the consumers have wider choice in the after market to look for options according to their budget and requirements. The car audio market appears to be competitive with the presence of established global players such as Sony, Panasonic, Blaupunkt, JVC, Kenwood, Harman, Bose etc. as well as various unorganized players.

As per agreed details available in public domain, the Opposite party started selling its products online in 2015 through e-commerce platforms. In 2019, it set up its own website and started selling directly to its customers through its own website. The Opposite party reportedly earned revenue of Rs 7.5 Crores in the year 2022.

In view of the foregoing, the Commission notes that the car stereo market is very competitive with presence of organized players as well as unorganized players. Sony, Panasonic, Pioneer, Blaupunkt, JBL, JVC, Kenwood etc. are reputed global players and the Opposite party appears to be a relatively new as well as small player. Moreover, the alleged conduct of suppressing the details of country of origin and misleading advertisement appears to be a consumer issue for which remedy lies elsewhere.

In the facts and circumstances of the present case, the Commission finds that no prima facie case of contravention of the provisions of Section 4 of the Act is made out against the Opposite party.

Accordingly, the information is ordered to be closed herewith.

Applying the above reasons, we can conclude that:

- Concealment of the country of origin and the use of misleading branding by WE India does not constitute an unfair or anti-competitive practice under the Competition Act, 2002. These are a consumer issue for which remedy lies under the Consumer Protection Act.
- Such conduct does not warrant an investigation by the Competition Commission of India (CCI) under Section 4 for abuse of dominance.

Answer 1(b)

The facts of the given situation are similar to the case of *Amit Kumar Gupta V. LGW Ltd. & Ors (NCLAT)*.

In this case, NCLT said that after hearing both parties, it cannot be argued that impugned order is detrimental and prejudicial to the interest of the Company. While passing the impugned order, the NCLT found that:

"Parties have given their respective versions of the story and levelled allegations and counter allegations but, one thing common in their argument is that neither of the parties has any objection if an EOGM is allowed to be held by Board of Directors under the Chairmanship of

Special Officer to be appointed by this Tribunal. What is challenged on the side of the respondent / petitioner in the petition is that no resolution is to be passed removing the director/ petitioner. That objection is devoid of any merit in view of power of the Company under section 169 of the Companies Act, 2013."

The NCLAT further observed: With the above finding of NCLT, it is apparent that both the parties agreed to hold EOGM by the Board of Directors under the Chairmanship of Special Officer to be appointed by the Tribunal. Hence the impugned order is well reasoned order. We find no illegality or irregularity in the impugned order. Hence, appeal is dismissed.

Applying same decision to the given situation, it may be said that appeal by Rajesh should be dismissed.

Answer 1(c)

The facts of the given situation is similar to a decided case between *Delhi Vyapar Mahasangh v. Flipkart & Ors*. decided by Competition Commission wherein Director General of Competition Commission of India (CCI) directed to carry out investigation based on the allegations levelled by the Delhi Vyapar Mahasangh.

On careful perusal of allegations levelled by the Informant and the documents provided, the Commission notes that there are four alleged practices on the marketplaces, namely, exclusive launch of mobile phones, preferred sellers on the marketplaces, deep discounting and preferential listing / promotion of private labels. Commission also noted several reports in the media as well as advertisements by e-commerce portals regarding exclusive launches.

Based on the evidence adduced by the informants and information available in the public domain, it can be *prima facie* inferred that there appears to be exclusive partnership between smartphone manufacturers and e-commerce platforms for exclusive launch of smartphone brands. Thus, exclusive launch coupled with preferential treatment to a few sellers and the discounting practices create an ecosystem that may lead to an appreciable adverse effect on competition. Issue of deep discounting needs to be assessed in the context of exclusive agreement.

Therefore, it needs to be investigated whether the alleged exclusive arrangements, deep discounting and preferential listing are being used as an exclusionary tactic to foreclose competition and are resulting in an appreciable adverse effect on competition contravening the provisions of Competition Act, 2002. In this case, the Commission, accordingly opined that there exists a *prima facie* case which requires an investigation by the Director General ('DG'), to determine whether the conduct of the Opposite Parties (Ops) have resulted in contravention of the provisions of Section 3(1) of the Act read with Section 3(4) thereof.

In view of this case, it may be said that there are possibilities of existence of a *prima facie* case which requires an investigation by the Director General (DG) and accordingly, the Commission may direct Director General to cause an investigation to be made into the alleged anti-competitive practices of DownBasket and PapaGone.

Answer 1(d)

Notes of power of survey

Power of survey (Section 16 of Prevention of Money Laundering Act, 2002)

(1) Notwithstanding anything contained in any other provisions of this Act, where an authority, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an offence under section 3 has been committed, he may enter any place–

(i) within the limits of the area assigned to him; or

(ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,–

(i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;

(ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and

(iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation–For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

(2) The authority referred to in sub-section (1) shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed.

(3) An authority acting under this section may–

(i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies there from,

(ii) make an inventory of any property checked or verified by him, and

(iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.

Alternate Answer

Note on Power of Survey

Hawala transaction, being a transaction involving cross border movement of money through any informal method of transferring money is in violation of Section 3(a) of Foreign Exchange Management Act, 1999 ("FEMA") which primarily prescribes the provisions for the dealing in or transfer any foreign exchange or foreign security to any person not being an authorised person, with an intent to ensure that all currency movement across the Indian border is routed only through formal Banking channels,

Section 13(1) of the FEMA provides that contravention of any provision of this Act, rules, regulations, notifications, directions etc. shall, upon adjudication, be liable to a penalty up to thrice the sum involved in such contravention where such amount is quantifiable, or up to Rs. 2.00 Lakhs where the amount is not quantifiable, and where such contravention is a continuing one, further penalty which may extend to Rs. 5,000/- for every day after the first day during which the contravention continues. Further, as per Sec 13(2) Any Adjudicating Authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which

the contravention has taken place shall be confiscated to the Central Government and further direct that the foreign exchange holdings, if any, of the persons committing the contraventions or any part thereof, shall be brought back into India or shall be retained outside India in accordance with the directions made in this behalf. Section 16 of FEMA, 1999 provides for the appointment of the Adjucating Authority for section 13 of the said Act.

Section 16 of FEMA provides that the Central Government may, by an order, published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry, against whom a complaint has been made. The Central Government is also to prescribe the jurisdiction for the Adjudicating Authorities.

According to section 16(1), for the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (3) (hereinafter in this section referred to as the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty:

Provided that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount and subject to such conditions as it may deem fit.

According to section 16(3), no Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

Further, according to section 16(5), every Adjudicating Authority shall have the same powers of a civil court which are conferred on the Appellate Tribunal under sub-section (2) of section 28 and–

(a) all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code;

(b) shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973).

According to section 28(2) of FEMA, the Appellate Tribunal and the Special Director (Appeals) shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation of default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

According to section 16(5), these powers are also available to Adjudicating Officer and may include the power of survey.

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

Question 2

(a) A company engaged in the real estate business planned to raise funds through an Initial Public Offer (IPO) and filed a prospectus with SEBI for approval. The prospectus claimed that the company had a land bank in Chandigarh and Dehradun and that the IPO proceeds would be used for constructing residential flats at these locations. Attracted by this investment opportunity, Ashwin invested in the IPO and received an allotment of shares. However, it was later discovered that the company did not actually own any land bank in Chandigarh and Dehradun. Instead, the company had merely entered into an agreement with the landowner for redevelopment and construction on a leasehold basis. Unfortunately, due to disputes, the landowner refused to allow the company to proceed with its project.

What legal recourse is available to Ashwin, who invested in the IPO based on the misleading information provided in the prospectus ?

(4 marks)

(b) According to the provisions of the Bharatiya Nyaya Sanhita, 2023 for an act to constitute cheating, there must be a clear intention to deceive from the very beginning. It is not enough for the accused to have been merely negligent; rather, there must be fraudulent or dishonest intent that causes wrongful gain to one party and wrongful loss to another. The law distinguishes between mere negligence and cheating, emphasizing that a deliberate intention to mislead or cause harm is a necessary ingredient. Various judicial pronouncements have upheld this distinction, ensuring that only those with a clear mens rea (guilty mind) face legal consequences under cheating provisions.

What are the essential ingredients of the offence of ''cheating'' under the Bharatiya Nyaya Sanhita, 2023 ? Explain with relevant case laws and judicial pronouncements.

(4 marks)

(c) ABC Jantrantik Party, a political party is suspected to have been involved in money laundering in contravention of Foreign Contribution (Regulation) Act, 2010. Mr. Ravi, a qualified company secretary was holding the position of Gazetted Officer and is authorized by the Central Government for inspection in the matter.

State the provisions relating to inspection of accounts and records of ABC Jantrantik Party by Mr. Ravi as a Gazetted Officer according to Section 23 of the Act.

(4 marks)

(d) What are the key amendments to Section 450 of the Companies (Amendment) Act, 2020, and how do they impact the penalties for default where no specific penalty is provided ? How does this amendment enhance corporate compliance and governance ?

(4 marks)

Answer 2(a)

Since, Ashwin is the original allottee and he had applied on the information given in the prospectus and invested in the Initial Public Offer (IPO), he may initiate legal action against the company and its directors.

Section 37 of the Companies Act, 2013 provides that a suit may be filed or any other action may be taken under:

- Section 34 of the said Act (Criminal Liability for Mis-statements in Prospectus) or
- Section 35 of the said Act (Civil Liability for Mis-statements in Prospectus) or
- Section 36 of the said Act (Punishment for Fraudulently Inducing Persons to Invest Money)

by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

Section 34 of the Companies Act, 2013 provides for criminal liability for mis-statement in prospectus. According to this section, where a prospectus issued, circulated or distributed under chapter III of said Act, includes any statement which is untrue or misleading in from or context in which it is included or where any inclusion or omission or any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable for punishment for fraud under section 447 of the said Act.

Section 35 of Companies Act, 2013 provides civil liability for mis-statements in a prospectus. According to this section, where a person has subscribed for securities of a company action on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person who-

a. Is a director of the company at the time of the issue of the prospectus;

b. Has authorized himself to be named and is named in the prospectus as a director of the company, or has agree to become such director, either immediately or after an interval of time;

c. Is a promoter of the company;

d. Has authorized the issue of the prospectus; and

e. Is an expert referred to in sub-section (5) of section 26

Shall, without prejudice to any punishment to which any person may be liable under section 36 of the said Act, be liable to pay compensation to every person who has sustained such loss or damages.

Section 36 of Companies Act, 2013 provides for the punishment for fraudulently inducing persons to invest money. According to said section, any person who either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading or deliberately conceals any material facts to induce another person to enter into or to offer to enter into-

a. Any agreement for or with a view to acquiring disposing of subscribing for or underwriting securities; or

b. Any agreement, the purpose of the pretended purpose of which is to secure a profit to any of the parties from the yield or securities or by reference to fluctuation in the value of securities; or

c. Any agreement for or with a view to obtain credit facilities from any or financial institutions

Shall be liable for action under section 447 (Punishment for Fraud) of the said Act.

In view of the above discussion, Ashwin may initiate legal action against the company and its directors.

Answer 2(b)

Section 318 and 319 of Bharatiya Nyaya Sanhita, 2023 deal with the offence of cheating.

Section 318 (1) says whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation – A dishonest concealment of facts is a deception within the meaning of this section.

The main ingredient of cheating are as under:

1. Deception of any person
2. a. Fraudulently or dishonestly inducing that person
    i. to deliver any property to any person or
    ii. to consent that any person shall retain any property

    b. Intentionally inducing that person to do or omit to do anything which he would not do or omit if her were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Cases under *erstwhile* Law *i.e.* Indian Penal Code, 1860

The Supreme Court in the case of *Iridium India Telecom Ltd. v. Motorolla Incorporated and Ors* has held that deception is necessary ingredient under both parts of section. Complainant must prove that inducement has been caused by deception exercised by the accused. It was held that non-disclosure of relevant information would also be treated a misrepresentation of facts leading to deception.

The Supreme Court in *M.N. Ojha and others v. Alok Kumar Srivastav and anr* has held that where the intention on the part of the accused is to retain wrongfully the excuse duty which the State is empowered under law to recover from another person who has removed non-duty paid tobacco from one bonded warehouse to another, they are held guilty of cheating.

In *T.R. Arya v. State of Punjab*, it was held that negligence in duty without any dishonest intention cannot amount to cheating. A bank employee when on comparison of signature of drawer passes a cheque there may be negligence resulting in loss to bank, but it cannot be held to be cheating.

Answer 2(c)

The provisions relating to "inspection of accounts & records" are provided under section 23 of the Foreign Contribution (Regulation) Act, 2010.

Inspection of Accounts or records: According to Section 23, if the Central Government has, for any reason, to be recorded in writing, any ground to suspect that any provision of this Act has been or is being, contravened by

(a) any political party; or

(b) any person; or

(c) any organization; or

(d) any association,

it may, by general or special order, authorize such Gazetted Officer, holding a Group A post under the Central Government or such other officer or authority or organization, as it may think fit

(hereinafter referred to as the inspecting officer), to inspect any account or record maintained by such political party, person, organization or association, as the case may be, and thereupon every such inspecting officer shall have the right to enter in or upon any premises at any reasonable hour, before sunset and after sunrise, for the purpose of inspecting the said account or record.

Seizure of accounts or records: According to Section 24, if, after inspection of an account or record referred to in section 23, the inspecting officer has any reasonable cause to believe that any provision of this Act or of any other law relating to foreign exchange has been, or is being, contravened, he may seize such account or record and produce the same before the Court, authority or Tribunal in which any proceeding is brought for such contravention. The authorized officer shall return such account or record to the person from whom it was seized if no proceeding is brought within six months from the date of such seizure for the contravention disclosed by such account or record. Section 24 provides that if, after inspection of an account or record.

Answer 2(d)

Understanding Section 450 of the Companies Act, 2013

Section 450 of the Companies Act, 2013 (the Act) deals with penalties for "default where no specific penalty or punishment is provided". It ensures that any contravention of the Act that does not have a defined punishment still attracts legal consequences.

Before the Companies (Amendment) Act, 2020, the fine was:

- **For companies**: ₹10,000 + ₹1,000 per day for continuing default.
- **For officers in default**: ₹10,000 + ₹1,000 per day for continuing default.

Amendment to Section 450 in Companies (Amendment) Act, 2020:

The Companies (Amendment) Act, 2020 revised Section 450, in line with the government's "Ease of Doing Business" reforms by rationalizing the mechanism for levy of financial penalties on defaulting companies which can have positive impact of enhanced corporate compliance and governance as well as reduce the work load over appropriate courts. Prior to this amendment in 2020, Section 450 provided for levy of fine, which could have been only be levied only by the appropriate courts after prosecuting and convicting the defaulting company and officers. The amendment in 2020, basically replaced the word "fine" with "penalty" and thus changed the implementation mechanism under Section 450 from prosecution before Court to adjudication by appropriate Adjudicating Authority under section 454 and 454A of the Companies Act, 2013". This amendment did not amend prescribed financial penalties under 450.

OR (Alternate question to Q. No. 2)

Question 2A

(i) Aryan Industries Ltd. failed to file the return of allotment for l6 lakh shares allotted on April 20, 2022, and subsequently obtained an order for compounding of the offence on June 10, 2024, However, the company again failed to file the return of allotment for 11 lakh shares allotted on March 4, 2025.

Considering the previous compounding of the same offence, what legal options are available to the company in respect of this second default ?

(4 marks)

(ii) An offence under Companies Act, 2013 was compounded by Aarav Foods Ltd and compounding order was issued by the compounding authority specially for offences by the Company and the Directors of the Company as officer in default. Company has paid

the compounding fee. After the payment, compounding authority came across certain facts about the offence. If those facts would have been surfaced at the time of deciding compounding fee, compounding authority would have levied higher fee. Since suppression of fact was higher, compounding authority open the matter and revised the compounding fee and asked Company to pay the differentials. Evaluate tenability of action of the compounding authority in light of judicial pronouncement.

(4 marks)

(iii) What is disgorgement, and under which legal provisions can it be enforced and by whom ?

(4 marks)

(iv) Mega Resources Ltd., an investment company, was implicated alongside Mr. Arun Kumar Bajoria and others for allegedly acquiring a significant stake in Bombay Dyeing & Manufacturing Company Ltd. without adhering to mandatory disclosure norms.

SEBI contended that the parties failed to comply with the disclosure requirements stipulated under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Specifically, they were accused of not informing the company and the stock exchanges upon crossing the prescribed shareholding thresholds.

On August 29, 2001, SEBI barred Mr. Bajoria, Mega Resources Ltd., and associated entities from accessing the capital market and dealing in securities, directly or indirectly, for one year. Additionally, SEBI appointed an adjudicating officer to investigate potential violations of Section 15A(b) of the SEBI Act, l992, pertaining to the failure in meeting disclosure obligations.

It was admitted by Mega Resources Ltd & Others that the non-compliance with disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the company was due to lack of awareness of the erstwhile regulations and without any mala fide intentions. Hence, based on this ground they appeal to take a lenient view while imposing penalty.

Can ignorance of regulatory provisions, as argued by Mega Resources Ltd., be considered a valid defense against non-compliance with SEBI's disclosure requirements ? Analyze with reference to legal principles and past rulings.

(4 marks)

Answer 2A(i)

Section 441(2) of the Companies Act, 2013(the Act) provides that if any offence which was committed by company or the officers was compounded under section 441 of the Act, and an offence similar to what was compounded earlier is committed again by a company or its officers within a period of three years from the date on which the earlier offence was compounded, then the provisions of section 441 will not be applicable and the company and the officers concerned will not be eligible for compounding again for non-filing of return of allotment.

Hence, in the given case, the company cannot go for compounding of the second default dated March 04, 2025 which is within 3 years of the first compounding order dated June 10, 2024.

However, there is no such restriction imposed under section 454 on adjudicating a penalty by the adjudicating officer, in which case, it shall be liable to a penalty under 454A, for an amount equal to twice the amount of penalty provided for such default. The adjudicating officer may, by an order –

a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

Further, according to Section 460(b) of the Companies Act, 2013, where any document required to be filed with the Registrar of Companies (RoC) under any provision of the Companies Act, 2013 is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

So, the option of adjudication of penalty and condonation of delay is available to Aryan Industries Ltd.

Alternate Answer

Filing of return of allotment under Companies Act, 2013 (the Act) is prescribed under Section 39(4) as well as Section 42(8) and in case of default of either of these provisions, the Act prescribes that the defaulting company and/ or the officer shall be liable to a penalty prescribed under the said Section 39(5) or Section 42(9), as the case may be, leviable in accordance with the Adjudication process prescribed under Section 454 read with Sec 454A of the Act.

Further, as per Section 441 of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded under the Act.

Accordingly, given the fact that failure to file the return of allotment is liable to a penalty under Section 39(4) or Section 42(8) and not punishable with a fine, the said offence has to be adjudicated. Therefore, the Company has received an Adjudication order under section 454 on 10-Jun-24 against the first default.

Based on this above discussion, the 2nd default dated 04-Mar-25 by Aryan Industries Ltd, being a default within 3 years from the date of the 1st adjudication order dated 10-Jun-24 on similar offence, shall be is liable to a penalty under 454A, for an amount equal to twice the amount of penalty provided for such default under Section 39(4) or 42(8) as the case may be.

According to Section 460(b) of the Companies Act, 2013, where any document required to be filed with the Registrar of Companies (RoC) under any provision of the Companies Act, 2013 is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

So, the option of adjudication and condonation of delay is available to Aryan Industries Ltd.

Answer 2A(ii)

It is well settled principle that once an offence is compounded, penalty or prosecution proceeding cannot be taken for same offence. (*PP Varkey V. STO)*

In *S Vishwanathan v. State of Kerala,* it was held that once the matter is compounded, neither department nor assesse can challenge the compounding order. Department cannot reopen the matter on the reason that actual suppression was much higher.

In the given case, the action of Compounding Authority is not tenable *w.r.t.* offence already compounded, as the order is passed and compounding fees has been paid by Aarav Foods Ltd. Compounding Authority has no authority to undo the whole process of compounding even if they come to know that suppression of fact was higher while deciding compounding fee, unless the additional facts revealed at the later stage indicates occurrence of some offence other than the once already compounded.

Answer 2A(iii)

Disgorgement

According to Section 212(14A) and Section 224(5) of the Companies Act, 2013, in case of a fraud, where any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before National Company Law Tribunal (NCLT) for appropriate orders with regard to disgorgement of such assets, property, or cash, as the case may be, and also for holding directors, key managerial personnel, officers or other person personally liable without any limitation of liability. Section 212 deals with investigation into affairs of the company by Serious Fraud Investigation Office (SFIO) and Section 224 is related to the action to be taken in pursuance of Inspector's report.

Disgorgement is the act of enforcing a repayment or giving up of something such as the profits obtained by illegal or unethical acts on demand or by legal compulsion. Court can order wrongdoers to pay back to prevent unjust enrichment. Disgorgement is a civil remedy and not a punishment or punitive civil action. The purpose of such a remedy, as in securities cases, is to deprive the wrongdoer of his or her ill-gotten gains and to deter violations of the law.

NCLT may make order of disgorgement in the circumstances mentioned under above mentioned provisions.

Answer 2A(iv)

No, **ignorance of regulatory provisions is not a valid defense** against non-compliance with Securities and Exchange Board of India (SEBI's) disclosure requirements.

1. **Legal Principle: "*Ignorantia Juris Non Excusat*"**

   The fundamental legal doctrine "Ignorantia juris non excusat" (Ignorance of the law is no excuse) applies in this case. It means that a person or entity cannot claim exemption from liability on the grounds of being unaware of the law.

2. **SEBI's Strict Compliance Framework**

   SEBI follows a strict compliance-based approach in regulating market activities. Under Section 15A(b) of the SEBI Act, 1992, failure to comply with disclosure norms, regardless of intent or awareness, attracts penalties.

   - The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 are well-publicized and binding on all market participants.
   - It is the responsibility of investors and acquirers to be aware of and comply with these regulations.

3. **Judicial Precedents Rejecting Ignorance as a Defense**

   - **SEBI vs. Cabot International Capital Corporation (2004)**
     - The Securities Appellate Tribunal (SAT) ruled that compliance with disclosure laws is mandatory, and ignorance cannot be an excuse to escape liability.
     - The judgment emphasized that investors, particularly large acquirers, must conduct due diligence before engaging in market transactions.
   - **Rakesh Agrawal vs. SEBI (2004)**
     - The SAT rejected the argument that the acquirer was unaware of insider trading laws, stating that market participants are expected to know and adhere to SEBI regulations.

- **Mega Resources Ltd. Case (2001)**
  - In this case, SEBI rejected Mega Resources Ltd.'s argument that they were unaware of disclosure provisions.
  - SEBI held that ignorance of the takeover code does not exempt an acquirer from its obligations, and penalties were imposed for the non-disclosure of share acquisitions.

4. **Market Integrity & Investor Protection**
   - If SEBI allows ignorance as a defense, it would **set a dangerous precedent**, allowing companies to evade regulations.
   - Strict enforcement **ensures transparency and investor confidence**, preventing manipulative practices.

Conclusion

Since the **Takeover Code is a well-established legal framework,** Mega Resources Ltd. **cannot escape liability** by claiming ignorance. SEBI's enforcement actions in this case reaffirm that **compliance is a duty, not a choice.**

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

Question 3

(a) In recent years, Corporate India has increasingly recognized the importance of Enterprise Risk Management (ERM) and has become more engaged in its implementation. However, Indian boards face several significant challenges in designing and executing an effective ERM system. What are the key obstacles that hinder the successful adoption of ERM in Indian organizations ?

(4 marks)

(b) Pragya Education Ltd. failed to hold annual general meeting within the due date and they failed to place audited financials at the meeting for shareholder's approval. Since financials were not approved at AGM, Directors of the company further failed to file financials and annual returns with Registrar of Companies. Company being a listed company was holding public funds is liable to account for those funds to the shareholders. Series of above defaults attracted offences committed by company and its directors. Directors of the company pleaded that since these offences are connected to one series of acts, they may be charged with and tried at one trial, for every office.

Is the plea valid ? Evaluate in the context of a judicial pronouncement.

(4 marks)

(c) Y Ltd. has appointed Mr. J in the designation of Director in the Board Meeting held on 09.03.2019 through filing of e-Form DIR-I2 dated 11.03.2019. However, the Company has not disclosed the date of Board Meeting held on 09.03.2019 in the Directors Report for F.Y. 2018-19 under Section 134(3)(b) of Companies Act 2013. Advice the company on the grounds to be indicated in show cause notice/adjudicating orders.

(4 marks)

(d) PQR Ltd. failed to appoint a whole time CS as required under Section 203 of Companies Act 20l3. Advice the company on the grounds to be indicated in show cause notice/ adjudicating orders.

(4 marks)

Answer 3(a)

Indian organisations and Boards face significant challenges in designing and implementing an effective ERM system, including:

Effectively linking risk and strategy: Integrating risk management into the overall corporate strategy is a challenge for many India firms. The challenge is to have ERM system that encompasses a process capable of being applied in strategy setting across the enterprise. "Effective risk management is not about eliminating risk taking, which is a fundamental driving force in business and entrepreneurship." In other words, taking appropriate risk needs to be at the heart of corporate strategy. For this to happen, the board must understand and guide the company's appetite and ability to take risk and communicate the same to the company's risk management team. ERM programs must be developed with input from various functions in the organization, such as finance, legal, sales etc.

Implementing cost-effective risk management for small and medium sized enterprises: While the costs of risk management failures can be high, designing and implementing efficient ERM can also be quite costly, especially for small and medium-sized firms. For example, hiring consultants or the necessary staff to develop stress-testing and early warning systems to alert the board regarding significant risks can be difficult to do in smaller companies. In addition, while larger firms can establish a 'chief risk officer' functions with direct report to the board, doing so is much harder for smaller companies.

Addressing all major areas of risk: ERM requires a firm to take portfolio view of risk, board must consider how various risks inter-relate, rather than treating each business and risk individually. This is a significant challenge for many boards.

Mitigating new risks: In India, many complex areas of risk have emerged in the last decade or so, which has made risk management particularly challenging. For example, some traditional areas of risk, such as political instability and strikes and unrest, appear to have subsided while others such as information and cyber security as well as terrorism and insurgency have increased in prominence. Companies in wider variety industries have experienced the theft of data and sensitive information. For companies in major cities, the threat of terror attacks has become a growing cause for concerns, which can be hard to manage by the company itself. According to 2015 survey, the top five for Indian firms include:

- Corruption, bribery and corporate fraud
- Information and cyber security
- Terrorism and insurgency
- Business espionage and
- Crime

Answer 3(b)

According to Section 243 of Bharatiya Nagarik Suraksha Sanhita, 2023 if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. This could be used when different offences committed by a single person or same persons and the trial could be a combined and held as a single trial.

Case Law under erstwhile Criminal Procedure Code, 1973

The Calcutta High Court in *Madan Gopal Dey and Anor. V. State and Anor.* held that if several offences are committed in the course of the same transaction, CrPC would authorize their joinder for the purpose of a single trial. The term 'same transaction' suggests a continuity of action and

purpose and it has been held that the real and substantive test for determining whether several offences are so connected together as to form one transaction depends upon whether they are related together in point of purpose or as cause and effect or as principal and subsidiary acts so as to constitute one continuous action. If a continuous tread runs through the acts complained of, charges arising out of those acts would be liable to be joined together. Continuity of action, therefore, seems to be a very important test in the matter.

In the given case, substance of the charges framed against the petitioners is that they had failed to hold the AGM and that they had failed to place the balance sheet and profit and loss account at the meeting and they had further failed to file with the Registrar the annual return and copies of the balance sheet and profit and loss account within the specified period following AGM. Applying above provision, Directors as well as Company are thus liable to be jointly tried. Hence, plea of the Director is valid.

Answer 3(c)

The grounds that may be indicated in the show cause notice/adjudicating orders are discussed below:

As per the provisions of Companies Act, 2013 a company is not required to disclose the dates of board meetings in its Board Report. According to section 134(3)(b) of the Companies Act, 2013, it only needs to mention the number of meetings held during the year. Even though not legally required, some companies voluntarily include the dates of board meetings as a matter of good corporate governance.

In the given case, it has been specified that the Company has not disclosed a specific board meeting held during the year in the Board report for the said year.

The Company and its Directors are officers in default, as per section 2(60), of the Companies Act, 2013. And are thus liable for penal provisions.

Since, a violation of section 134(3)(b) has taken place, a penalty under section 134(8) may be levied in accordance with the following provision:

If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Answer 3(d)

The grounds that may be indicated in the show cause notice/adjudicating orders are discussed below:

As per section 203(1) of the Companies Act, 2013 (the Act), every company belonging to such class or classes of companies as may be prescribed shall have whole-time key managerial personnel and as per Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, *w.e.f.* 09.06.2014, every company other than a company covered under rule 8 which has a paid up share capital of Rs. 5 crore or more shall have a whole-time company secretary and this threshold was further increased to Rs. 10 crore or more applicable in respect of financial years commencing on or after 01.04.2020.

As per section 203(4) of the Act, if the office of any whole time key managerial personnel is vacated, resulting vacancy shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

The Company and its Directors are officers in default, as per section 2(60), of the Companies Act, 2013. And are thus liable for penal provisions.

As per section 203(5) of the Act, if any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

OR (Alternate question to Q. No. 3)

Question 3A

(i) Explain the provisions of Forgery and its punishment under Bharatiya Nyaya Sanhita, 2023.

(ii) Comment on Value Creation and Value Destruction by Enterprise Risk Management.

(iii) What are the Ethics to be followed by Mediator or Conciliator ?

(iv) Explain the provision of Class Action Suits under various laws.

(4 marks each)

Answer 3A(i)

Forgery and its punishment under Bharatiya Nyaya Sanhita, 2023 (BNS)

Section 336 of BNS, 2023 provides the punishment of Forgery.

According to Section 336(1), whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Section 336(2): Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 336(3): Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Section 336(4): Whoever commits forgery, intending that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Answer 3A(ii)

Value creation and value destruction by Enterprise Risk Management: The significance of Enterprise Risk Management (ERM) can be seen in the value it creates when effectively implemented and the value it destroys when there are shortcomings in leadership and implementation.

Value creation: ERM is a critical component of value creation. To create value successfully, ERM must play a central role in every substantive business decision. Effective ERM can enable a company to manage potential future events that create uncertainty and respond to uncertainty in a manner that reduces the likelihood of downside surprises. ERM can also help a company improve the quality of risk taking and thereby, give the company a competitive advantage.

Avoiding value destruction: A company cannot preserve its value if its ERM is below standard. This role of preserving corporate value is far more visible when ERM fails than when it succeeds. Failures in risk management have contributed to some of the most significant scandals and losses suffered by companies. Recent significant failures include environmental disasters (e.g., BP), financial fraud

(e.g., Enron, WorldCom, Satyam), foreign bribery (e.g., Siemens) and massive trading losses (e.g., JP Morgan). According to the OECD, these risk management failures were often "facilitated by corporate governance failures, where boards did not fully appreciate the risks that the companies were taking (if they were not engaging in reckless risk-taking themselves), and /or deficient risk management systems.

Answer 3A(iii)

Rule 28 of the Companies (Mediation and Conciliation) Rules, 2016 provides the provisions relating to Ethics to be followed by Mediator or Conciliator. It states:

The mediator or conciliator shall-

(a) follow and observe the rules strictly and with due diligence ;

(b) not carry on any activity or conduct which shall reasonably be considered as conduct unbecoming of a mediator or conciliator ;

(c) uphold the integrity and fairness of the mediation or conciliation process;

(d) ensure that the parties involved in the mediation or conciliation are fairly informed and have an adequate understanding of the procedural aspects of the process ;

(e) satisfy himself or herself that he or she is qualified to undertake and complete the assignment in a professional manner ;

(f) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias ;

(g) avoid, while communicating with the parties, any impropriety or appearance of impropriety;

(h) be faithful to the relationship of trust and confidentiality imposed in the office of mediator or conciliator ;

(i) conduct all proceedings related to the resolutions of a dispute, in accordance with the relevant applicable law ;

(j) recognise that the mediation or conciliation is based on principles of self-determination by the parties and that the mediation or conciliation process relies upon the ability of parties to reach a voluntary, undisclosed agreement ; and

(k) maintain the reasonable expectations of the parties as to confidentiality and refrain from promises or guarantees of results.

Answer 3A(iv)

Class Action suits under various laws

Law	Subject matter	Class	Example
Code of Civil Procedure, 1908	There are no limits on the subject matter except for actions that cannot be filed in the civil courts at all, such as mismanagement suits.	Person having "same interest in thew suit"	Excess demand by Housing Board
Companies Act, 2013	A suit can only be brought for operations and management of the company but does not include a banking Company.	Shareholders and depositors in the company	Depriving shareholders of their right to dividends

Competition Act, 2002	A class may dispute an agreement which causes an appreciable adverse effect on competition within India or abuse of dominant position by an enterprise.	Any person, consumer, or their association	Price-fixing, output limitation, market sharing and bid-rigging
Consumer Protection Act, 2019	The suit is restricted to goods and services sold / provided or delivered or aggrieved to be sold/ provided or delivered.	Consumer of the goods or services	Mis-selling of products by a banking or insurance company

Question 4

(a) In exercise of powers, the Central Government directed investigation into the affairs of Bhawna-Nikita Joint Enterprises Ltd. by officers of Serious Fraud Investigation as nominated by Directors, SFIO. Accused were accordingly arrested and Judicial Magistrate granted remand and directed that he be produced before Special Court. Thereafter, the Accused were produced before Special Court with a fresh application for remand. The prayer for extension of custody was opposed by the Accused inter alia on the grounds that the period of completion of investigation as stipulated in the order being mandatory in nature has expired and as such all further proceedings were illegal and without any authority of law. Evaluate in the context of a judicial pronouncement whether extension of custody is justified or not.

(4 marks)

(b) Nexon Aerospace Ltd. made a payment for importing raw materials intended for manufacturing finished products. During this time, a new Managing Director assumed charge. Although the raw materials arrived in India, the company failed to submit the bill of entry, resulting in the goods being held in a bonded warehouse despite the foreign exchange being remitted. The Adjudicating Authority imposed a penalty on both the company and the Managing Director under the FEMA Act, 1999. Can this transaction be considered a violation of FEMA provisions, and is the Managing Director liable for the penalty, or can he escape it ?

(4 marks)

(c) Jinzo Games Pvt. Ltd, a real-money gaming platform, filed a lawsuit against Poogle LLC and its subsidiaries after Poogle allegedly discriminated against certain gaming apps, including Jinzo, by restricting their listing on the Play Store. Poogle introduced a policy allowing only certain types of real-money gaming apps (like fantasy sports and rummy) but excluded others, including Jinzo's games. Key legal issues which were raised was :

(i) **Discriminatory Policies :** Jinzo argued that Poogle's selective policy was unfair and amounted to anti-competitive behavior.

(ii) **Freedom to Conduct Business :** Jinzo claimed that Poogle's restrictions harmed its ability to operate freely in the market.

(iii) **Competition Law Violation :** The case involved whether Poogle abused its dominant position under India's competition laws.

Jinzo highlighted that on one hand, Poogle does not allow its app to be listed on Poogle Play Store and on the other, it displays malware warnings when a user attempts to download its app from the website.

Basically, Jinzo contends that Poogle's policy creates a biased marketplace by granting preferential treatment to certain app categories, thereby disadvantaging other developers. This selective approach, according to Jinzo, restricts market access and stifles competition.

In light of relevant judicial pronouncements, critically analyze whether the Competition Commission of India (CCI) should order an investigation in this case.

(4 marks)

(d) What are the factors to be considered while considering compounding application ?

(4 marks)

Answer 4(a)

The facts of the given situation are similar to the case of *Serious Fraud Investigation Office and Ors. V. Rahul Modi and Ors*.

In this case, the Supreme Court held that, it could not be said that the prescription of period within which a report was to be submitted by SFIO under sub-section (3) of Section 212 was for completion of period of investigation and on the expiry of that period the mandate in favour of SFIO must come to an end. If it were come to an end, the legislation would have contemplated certain results including re-transfer of investigation back to the original Investigating Agencies which were directed to transfer the entire record under sub-section (2) of Section 212. In the absence of any clear stipulation, an interpretation that with the expiry of the period, the mandate in favour of SFIO must come to an end, would cause great violence to the scheme of legislation.

If such interpretation was accepted, with the transfer of investigation in terms of Sub-section (2) of Section 212, the original Investigating Agencies would be denuded of power to investigate and with the expiry of mandate SFIO would also be powerless which would lead to an incongruous situation that serious frauds would remain beyond investigation. That could never have been the idea. The only construction which was, possible therefore, was that the prescription of period within which a report had to be submitted to the Central Government under sub-section (3) of Section 212 was purely directory.

It cannot therefore be said that in the instant case, the mandate comes to an end and the arrest effected under the orders passed by Director, SFIO is illegal or unauthorized by law. Hence, extension of custody can be said to be justified.

Answer 4(b)

Contravention of Section 10(6) of the Foreign Exchange Management Act, 1999(FEMA) is a continuing actionable offence. The facts of the given situation is very similar to the case of *Suborno Bose (Appellant) v. Enforcement Directorate and Anr. (Respondents)* decided by Supreme Court.

In this case, it was held that the Company and the persons managing the affairs of the Company remain liable to take corrective measures in right earnest. Considering the admitted fact that the MD took over the management of the Company and was fully alive to the default committed by the Company, yet failed to take corrective steps in right earnest. MD now cannot be heard to contend that no liability could be fastened on him individually. Indeed, FEMA regulations provides for the period within which the foreign exchange ought to be surrendered if the Company was not wanting to take delivery of the goods imported. That does not mean that the contravention ceased to exist beyond the specified period. On the other hand, after the specified period had expired, it would be a case of deemed contravention until rectified.

Applying the above decision, it can be concluded that transaction under question is a deemed contravention and MD cannot escape penalty as imposed the adjudicating authority.

Answer 4(c)

The facts referred to in the question are similar to the facts of the case *Winzo Games Pvt. Ltd. vs. Google LLC & Ors.* before the Competition Commission of India.

This case and decision is based on allegations that Google's policies regarding real-money gaming apps on its Play Store are discriminatory and anti-competitive. Yes, the Competition Commission of India (CCI) has ordered an investigation into the case of Winzo Games Pvt. Ltd. vs. Google LLC & Ors.

Justification from the CCI's Order:

a. **Selective Onboarding and Market Access:**

The CCI observed that Google's policy permits only certain categories of real-money games, specifically Daily Fantasy Sports (DFS) and Rummy, on its Play Store. Other real-money games, like those offered by Winzo, are excluded. This selective inclusion denies market access to developers of excluded games, distorts competition, and imposes unfair conditions. Such practices are seen as violations of Sections 4(2)(a)(i), 4(2)(b), and 4(2)(c) of the Competition Act, 2002 (the Act).

b. **Advertising Restrictions:**

Google's advertising policies allow promotions for DFS and Rummy apps but restrict other real-money gaming apps from accessing Google Ads services. The CCI noted that this conduct is discriminatory and deprives other real-money gaming developers of crucial advertising opportunities, further violating Sections 4(2)(a)(i) and 4(2)(c) of the Act.

Based on these observations, the CCI has directed a detailed investigation under Section 26(1) of the Competition Act, 2002 to examine the alleged anti-competitive conduct by Google. This investigation aims to ensure a fair and non-discriminatory digital ecosystem for all developers.

Applying above decision to the given case which is quite similar, Competition Commission of India (CCI) should order an investigation based on the basis of lawsuit filed by Jinzo Games Pvt Ltd.

Answer 4(d)

FACTORS TO BE CONSIDERED WHILE CONSIDERING COMPOUNDING APPLICATION

The following indicative factors, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded:

- the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention;
- the amount of loss caused to any authority/ agency/ exchequer as a result of the contravention;
- economic benefits accruing to the contravener from delayed compliance or compliance avoided;
- the repetitive nature of the contravention, the track record and/or history of non-compliance of the contravener;
- contravener's conduct in undertaking the transaction and in disclosure of full facts in the application and submissions made during the personal hearing; and any other factor as considered relevant and appropriate.

Question 5

(a) The demand for Directors & Officers (D&O) Insurance in India has been rising, as directors are increasingly being held accountable for their management decisions. While a company's liability is limited by shares or guarantee, a director's personal liability remains unlimited, putting their personal assets at risk in case of claims or allegations. In this context, what are the eight key aspects that directors should be aware of regarding their D&O policy ?

(8 marks)

(b) Compounding signifies an admission of guilt, whether voluntarily, upon receiving a notice of default, or after the initiation of prosecution. It is essentially a compromise or settlement between the regulatory authority and the individual committing the offense. In this context, explain the necessity of compounding and highlight its key benefits.

(8 marks)

Answer 5(a)

Things a Directors should be conversant about his / her Director & Officer (D&O) Policy: An Universal Approach

1. **How much Insurance do we have? How much do one need?**

   There is no exact science to determining the limits of D&O insurance a particular company should maintain. However, reputable commercial insurance brokers and other vendors have developed benchmarking data based on market caps, annual revenues, industry etc. that provide insight regarding how your company's limits stack up against similar / peer companies. You should ask the individual responsible for placing your D&O insurance for this data and review it to determine where your limits are at versus your peer companies. Ask questions if there are deviations in your limits versus those of your peers.

2. **Who shares the Insurance Policies?**

   D&O insurance often covers all directors, officers and employees, as well as the company. This means that significant claims against the company and employees may deplete the limits available for individual officers and directors. You should determine if there are certain limits available only to directors and officers and whether your coverage contains a "priority of payments" clause that provides that in the event of claims against both the directors / officers and the companies, losses attributable to the directors /officers are entitled to payment before losses of the company.

3. **When is coverage triggered?**

   D&O insurance coverage triggers have become much broader in recent years. In addition to coverage for lawsuits by shareholders, policies often now cover individual directors and officers for investigations by regulatory bodies, upon receipt of a summons etc. Therefore, one should inquire, particularly with respect to regulatory body investigations and summons, at what point coverage is triggered.

4. **What is covered under the D&O Policy?**

   In addition to defence costs and the costs of settlements/ judgements arising from shareholder actions, many policies now cover attorneys' fees and other expenses related to responding to both formal and informal investigations and summons. Again, one should inquire at what point one coverage is triggered and what costs associated with such events are covered under one policy.

5. **Who are Insurers?**

   One has to look their claims paying ability ratings issued by reputable independent ratings services. The individual responsible for procuring one coverage need to be consulted if they have had a conversion with your insurance broker regarding the claims payment philosophy of the insurers, and what those insurers' reputations are in the marketplace when it comes to claims handling procedures.

6. **How do other Insurers impact coverage?**

   Take concern what happens to the coverage if another insured engages in fraud or criminal activity, but one is still named as a defendant in a lawsuit. Make sure that the bad acts of a 'black hat' don't negate one coverage. Also, ask what happens to your coverage if someone else makes a misrepresentation in the application for the D&O policy. Try to ensure that someone else's misstatements don't lead to your loss of coverage.

7. **What is not covered?**

   Make sure you understand significant exclusions in your policy (exclusions for major shareholders, M&A activity, etc., are becoming more common). Have your policy reviewed by an outside professional to determine the scope of items that may not be covered under the policy.

8. **How to protect in a Crisis?**

   Understand the claim notice requirements under the policy. One of the worst things that can occur is a loss of coverage due to inadequate or untimely notice.

9. **What is Side A Insurance and why is it needed?**

   Side A coverage is effectively the last line of defence against a director or officer having to pay their own costs related to a claim. It kicks in when the company is unable to provide indemnification (usually due to bankruptcy or a statutory prohibition on indemnification). Therefore, it is one of the most important coverages for individual directors and officers, as it directly protects against loss of personal assets as a result of claims.

10. **What is Independent Director insurance?**

    Independent Director insurance has been around for some time and provides a separate set of coverage limits dedicated solely to independent / outside directors of a company. To date, it has been purchased by very few companies. Generally, if adequate Side A coverage is already in place, this coverage should not be necessary.

Answer 5(b)

Compounding – A Necessity

Compounding of an offence is an opportunity given in the Corporate laws, to the Companies to make good the non-compliance committed by them. The legislative construct is expected to provide for the guiding legal provisions and also allow a scope to rectify mistakes if any, committed inadvertently. Accordingly, it was considered necessary (also by the Rajinder Sachar Committee) that there is greater need of flexibility in the administration of the Corporate Laws, particularly its penal provisions not only because large number of defaults are of technical nature but also because they arise out of ignorance of the lengthy and bewildering complexity of the legal provisions. Therefore, the concept of compounding of offences was incorporated as a measure to avoid the long drawn process of prosecution, which would save both cost and time in exchange of payment of penalty.

What is Compounding?

Compounding is not defined in Companies Act or FEMA or SEBI Laws. On perusal of various legal provisions relating compounding, it can be noted that compounding is an admission of guilt either voluntarily or on receipt of notice of default or initiation of prosecution. The defaulters agree to pay penalty which may be ordered by the Compounding Authority to be paid. As per the Black's Law Dictionary, to "Compound" mean "to settle a matter by a money payment, in lieu of other liability." As per this definition, Compounding is akin to a Settlement Mechanism, a settlement by paying the penalty in lieu of facing the prosecution for the offence committed.

Compounding is essentially a compromise or arrangement between administrator or the enactment and person committing an offence.

Benefits of Compounding:

- Buy peace of mind.
- Generally, compounding amount is not to be treated as fine.
- Speedy disposal of offences and justice
- Judiciary can devote more time and concentrate on serious cases
- No need to appear before prosecution authorities. It provides comfort to individuals and corporates and persons connected with it.
- Amount paid as compounding fee under law for can be claimed as a tax deduction under the Income Tax Act while a penalty paid for contravention is not eligible for deduction.

Question 6

(a) State the punishment prescribed under Companies Act, 2013 for the following :

(i) Punishment where no specific penalty is provided

(ii) Repeated default within 3 years

(iii) Punishment for wrongful withholding of property

(iv) Improper use of words "Limited" or "Private Limited''.

(b) Amit Sinha, commonly known as Sethji, has been accused of certain offenses under the SEBI Act, 1992. SEBI directed him to refund the money he unlawfully gained from the stock market and imposed a penalty. However, Amit has neither refunded the amount nor paid the penalty. He has informed SEBI that he has ceased all business activities and is no longer involved in the stock market. What are the possible measures SEBI can take to recover the outstanding amount, whether as a refund or a penalty ?

(c) Mr. P who was a Managing Director of XYZ Ltd, was terminated from the position of Managing Director by virtue of an order passed by National Company Law Tribunal (NCLT) under Sec. 242(2)(e) of Companies Act, 2013. Discuss the consequences of termination as stated under Companies Act, 2013.

(d) Differentiate between Punishment for False Statement and Punishment for False Evidence under the Companies Act, 2013.

(4 marks each)

Answer 6(a)

Section of the Companies Act, 2013	Nature of offence	Fine / Imprisonment
450	Punishment where no specific penalty is provided	If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person
451 & 454A	Repeated default within 3 years	Sec 451: Offence punishable either with fine or with imprisonment: If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence. Sec 454A : Other offences liable to a Penalty under the Act: Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.
452	Punishment for wrongful withholding of property	(1) If any officer or employee of a company– (a) wrongfully obtains possession of any property, including cash of the company; or (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

		he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. (2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years. Provided that the imprisonment of such officer or employee, as the case may be, shall not be ordered for wrongful possession or withholding of a dwelling unit, if the court is satisfied that the company has not paid to that officer or employee, as the case may be, any amount relating to- (a) provident fund, pension fund, gratuity fund or any other fund for the welfare of its officers or employees, maintained by the company; (b) compensation or liability for compensation under the Workmen's Compensation Act, 1923 in respect of death or disablement.
453	Improper use of words "Limited" or Private Limited"	If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.

Answer 6(b)

Recovery of amounts (Section 28A of SEBI Act, 1992)

Section 28A(1) states that if a person fails to pay the penalty imposed under SEBI Act, 1992 or fails to comply with any direction of the SEBI for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the SEBI, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the certificates by one or more of the following modes, namely:

a. attachment and sale of the person's movable property;
b. attachment of the person's bank accounts;
c. attachment and sale of the person's immovable property;
d. arrest of the person and his detention in prison
e. appointing a receiver for the management of the person's movable and immovable properties

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Further the Explanations to Sec 28A(1) provides:

1. For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.
2. Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.
3. Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.
4. The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.

Further as per Sec 28A(2) the Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

Sec 28A (3) provides that notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

Accordingly, SEBI can undertake above measures to recover outstanding amount, whether as a refund or a penalty, from Amit Sinha, commonly known as Sethji.

Answer 6(c)

Consequence of Termination or Modification of Certain Agreements

Section 243(1) of the Companies Act, 2013, states that where an order made under section 242, terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section, -

(a) such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise.

(b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company:

Section 243 (1A) provides that the person who is not fit and proper person pursuant to section 242(4A)

shall not hold office of directors or any other office connected with the conduct of management of affairs of company for a period of 5 years from the date of the said decision.

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the said period of five years.

According to Section 243(1B), notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force or any contract, memorandum or article, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

Further, Section 243(2) provides that any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1), or sub-section (1A) and every other director of the company who is knowingly a party to such contravention, shall be punishable with fine which may extend to five lakh rupees.

Answer 6(d)

Section 448 of the Companies Act, 2013: Punishment for False Statement

If in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement. -

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material,

He shall be liable under Section 447.

Section 447: Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both.

Section 449 of the Companies Act, 2013: Punishment for False Evidence

Save as otherwise provided in this Act, if any person intentionally gives false evidence–

(a) upon any examination on oath or solemn affirmation, authorized under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

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