

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

(New Syllabus)

DECEMBER 2019

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

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EXECUTIVE PROGRAMME EXAMINATION

DECEMBER 2019

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : *Answer ALL Questions.*

Question 1

- (a) *Discuss the "Doctrine of Stare Decisis", under the sources of law.*
- (b) *Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the ground that it deals with a matter which falls in entry 81 of List-I under the Constitution of India which reads :*
- "Post and telegraphs, telephones, wireless broadcasting and other like forms of communication" and therefore, the State Legislature was not competent to pass it. Examine the proposition in the light of "Pith and Substance Rule" referring the case law on this point.*
- (c) *Describe "Arbitration Agreement" specified under Section 7 of the Arbitration and Conciliation Act, 1996.*
- (d) *Describe the "Rule of Reasonable Construction" under the Interpretation of Statutes. (5 marks each)*

Answer 1(a)

The doctrine of stare decisis means adherence to the past decision and do not unsettle things which are established. It is a useful doctrine intended to bring about certainty and uniformity in the law. Under the stare decisis doctrine, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. In simple words, the principle means that like cases should be decided alike. This doctrine is based on public policy. Although doctrine should be strictly adhered to by the Courts, it is not universally applicable. The doctrine should not be regarded as a rigid and inevitable doctrine which must be applied at the cost of justice.

Answer 1(b)

The Rule of Pith and Substance means that where a law in reality and substance falls within an item on which the legislature which enacted that law is competent to legislate, then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature.

Acting on Entry 6 of List II of the Constitution of India which reads — Public Health and Sanitation, Rajasthan Legislature passed a law restricting the use of sound amplifiers. The law was challenged on the Schedule VII, entry 31 of List I of the Constitution of India deals with "Post and telegraphs, telephones, wireless broadcasting and other like forms of communication, and, therefore, the State Legislature was not

competent to pass it. The Supreme Court rejected this argument on the ground that the object of the law was to prohibit unnecessary noise affecting the health of public and not to make a law on broadcasting, etc. Therefore, the pith and substance of the law was – public health and not – broadcasting (*G. Chawla v. State of Rajasthan, AIR 1959 SC 544*).

Answer 1(c)

According to Section 2(1) (b) of the Arbitration and Conciliation Act, 1996, arbitration agreement means an agreement referred to in Section 7 of the Act. Under Section 7, the Arbitration agreement has been defined to mean an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

- An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- An arbitration agreement shall be in writing.
- An arbitration agreement is in writing if it is contained in-
 - a document signed by the parties;
 - an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
 - an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Answer 1(d)

According to Rule of Reasonable Construction the words of a statute must be construed *ut res magis valeat quam pereat*, so as to give a sensible meaning to them. A provision of law cannot be so interpreted as to divorce it entirely from common sense; every word or expression used in an Act should receive a natural and fair meaning.

It is the duty of a Court in constructing a statute to give effect to the intention of the legislature. If, therefore, giving of literal meaning to a word used by the draftsman particularly in penal statute would defeat the object of the legislature, which is to suppress a mischief, the Court can depart from the dictionary meaning which will advance the remedy and suppress the mischief.

It is only when the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence (*Tirath Singh v. Bachittar Singh, A.I.R. 1955 S.C. 830*).

Courts can depart from dictionary meaning of a word and give it a meaning which will

advance the remedy and suppress the mischief provided the Court does not have to conjecture or surmise. A construction will be adopted in accordance with the policy and object of the statute (*Kanwar Singh v. Delhi Administration*, AIR 1965 S.C. 871).

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

Question 2

- (a) Explain the role of 'Preamble' as internal aid in interpretation of statute. Though the preamble cannot be used to defect the enacting clause of a statute, it has been treated to be a key for the interpretation of the statute. Examine.
- (b) Enumerate any four categories of cases in which a police officer may arrest a person without an order from magistrate and without a warrant under section 41 of Cr.P.C., 1973.
- (c) Allegation against the accused was that he furnished a certificate to get employment as ETT Teacher which was found to be bogus and forged in as much as school was not recognized for period given in the certificate. However, the certificate did not anywhere say that school was recognized. Whether the accused is guilty of any offence ? Explain with the help of decided judicial precedent.
- (d) Explain the rights of a party to appear before the National Company Law Tribunal.
(4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Briefly explain the 'Purposive Rule of Interpretation' under the General Clauses Act, 1987. (4 marks)
- (ii) Enumerate in short the exceptional circumstances of the application of natural justice under Administrative Law. (4 marks)
- (iii) Discuss the provisions relating to persons under legal disability under the Limitation Act, 1963. (4 marks)
- (iv) Describe kinds of offences under which capital punishment may be awarded by Court under Indian Penal Code. (4 marks)

Answer 2(a)

The true place of a preamble in a statute was at one time, the subject of conflicting decisions. In *Mills v. Wilkins*, (1794) 6 Mad. 62, Lord Hold said: "the preamble of a statute is not part thereof, but contains generally the motives or inducement thereof". On the other hand, it was said that "the preamble is to be considered, for it is the key to open the meaning of the makers of the Act, and the mischief it was intended to remedy".

The modern rule lies between these two extremes and is that where the enacting part is explicit and unambiguous the preamble cannot be resorted to, control, qualify or restrict it, but where the enacting part is ambiguous, the preamble can be referred to explain and elucidate it [*Raj Mal v. Harnam Singh*, (1928) 9 Lah. 260].

In *Powell v. Kempton Park Race Course Co.*, (1899) AC 143, 157, Lord Halsbury said: “Two propositions are quite clear — One that a preamble may afford useful light as to what a statute intends to reach and another that, if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment”. Allahabad High Court has held in *Kashi Prasad v. State*, AIR 1967 All. 173, that even though the preamble cannot be used to defeat the enacting clauses of a statute, it has been treated to be a key for the interpretation of the statute.

Supreme Court in *Kamalpara Kochunniv. State of Madras*, AIR 1960 SC 1080, pointed out that the preamble may be legitimately consulted in case any ambiguity arises in the construction of an Act and it may be useful to fix the meaning of words used so as to keep the effect of the statute within its real scope.

Answer 2(b)

Section 41 of Criminal Procedure Code, 1973 provides that any police officer may without an order from a Magistrate and without a warrant, arrest any person:

- (a) Who commits, in the presence of a police officer, a cognizable offence
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely :-
 - (i) the police has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
 - (ii) the police officer is satisfied that such arrest is necessary -
 - (a) to prevent such person from committing any further offence; or
 - (b) for proper investigation of the offence; or
 - (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
 - (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
 - (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured and the police officer shall record while making such arrest, his reason in writing;
- (ba) against whom credible information has been received that he has committed a cognisable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;
- (c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

- (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- (g) who has been concerned in, or against whom reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- (h) who, being a released convict, commits a breach of any rule, made under (section 356(5)); or
- (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Answer 2(c)

The Supreme Court in the case of *Ramchandran v. State*, AIR 2010 SC 1922, has held that to constitute an offence of forgery document must be made with dishonest or fraudulent intention. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. The Supreme Court in the case of *Parminder Kaur v. State of UP*, has held that mere alteration of document does not make it a forged document. Alteration must be made for some gain or for some objective.

Similarly, in the case of *Balbir Kaur v. State of Punjab*, 2011 CrLJ 1546 (P&H), the allegation against the accused was that she furnished a certificate to get employment as ETT teacher which was found to be bogus and forged in as much as school was not recognized for period given in certificate. However the certificate did not anywhere say that school was recognized. It was held that merely indicating teaching experience of the accused, per-se, cannot be said to indicate wrong facts. So the direction which was issued for prosecution is liable to be quashed.

In view of the above, the accused is not guilty of any offence.

Answer 2(d)

Rights of a party to appear before the National Company Law Tribunal are as under:

- (1) Every party may appear before a Tribunal in person or through an authorised representative, duly authorised in writing in this behalf.
- (2) The authorised representative shall make an appearance through the filing of

Vakalatnama or Memorandum of Appearance in specified Form representing the respective parties to the proceedings.

- (3) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate to represent in the proceedings before the Tribunal.
- (4) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.

Answer 2A(i)

In Halsbury's Laws of England, it is stated : "Parliament intends that an enactment shall remedy a particular mischief and it is therefore presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment corresponds to its legal meaning, should find a construction which applies the remedy provided by it in such a way as to suppress that mischief."

The doctrine originates in Heydon's case where the Barons of the Exchequer resolved that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:

- what was the common law before the making of the Act;
- what was the mischief and defect for which the common law did not provide;
- what remedy Parliament has resolved and appointed to cure the disease of the commonwealth; and
- the true reason of the remedy and the office of all the judges is always to make such construction as shall –
 - suppress the mischief and advance the remedy; and – suppress subtle inventions and evasions for the continuance of the mischief pro private-commode (for private benefit); and
 - add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico (for the public good).

Answer 2A(ii)

Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, that requirement may be excluded under certain exceptional circumstances as mentioned below:

1. *Statutory Exclusion* : The principle of natural justice may be excluded by the statutory provision. Where the statute expressly provides for the observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Where the statute is silent as to the observance of the principle of natural justice, such silence is taken to imply the observance thereto.
2. *Emergency* : In exceptional cases of urgency or emergency where prompt and

preventive action is required the principles of natural justice need not be observed. However, the determination of the situation requiring the exclusion of the rules of natural justice by the administrative authorities is not final and the court may review such determination.

3. *Interim disciplinary action* : The rules of natural justice are not attracted in the case of interim disciplinary action.
4. *Academic evaluation* : Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded.
5. *Impracticability* : Where the authority deals with a large number of person it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice.

Answer 2A(iii)

Section 6 of the Limitation Act, 1963 provides that where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the prescribed period is to be reckoned, a minor or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time specified there for in the Schedule of the Act.

Where such person is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified.

Where the disability continues up to the death of that person, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been allowed from the time so specified.

Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died.

Section 6 of the Act is an enabling section to enable persons under disability to exercise their legal rights within a certain time. Section 7 which deals with disability of one of several persons supplements Section 6, Section 8 deals with special exception controls sections 6 and 7 , which serves as an exception to Sections 6 and 7. The combined effect of Sections 6 and 8 is that where the prescribed period of limitation expires before the cessation of disability, for instance, before the attainment of majority, the minor will no doubt be entitled to a fresh period of limitation from the attainment of his majority subject to the condition that in no case the period extended by Section 6 shall by virtue of Section 8 exceeds three years from cessation of disability, i.e. attainment of majority.

Answer 2A(iv)

A death sentence is the harshest of punishments provided in the Indian Penal Code (IPC), which involves the judicial killing or taking the life of the accused as a form of punishment. The Supreme Court has ruled that death sentence ought to be imposed only in the "rarest of rare cases". The IPC provides for capital punishment for the following offences:

- (a) Murder
- (b) Dacoity with Murder.
- (c) Waging War against the Government of India.
- (d) Abetting mutiny actually committed.
- (e) Giving or fabricating false evidence upon which an innocent person suffers death
- (f) Abetment of a suicide by a minor or insane person;
- (g) Attempted murder by a life convict.

The capital punishment is awarded only in two categories of offences, namely treason and murder. In either of the cases, when the court decides that death penalty is the appropriate sentence to be imposed in the light of the gravity of matter and consequences of the offence committed and the absence of mitigating factors, then the court under the provisions of section 354(3) of Criminal Procedure Code (CrPC) has to give special reasons as to why the court came to this conclusion.

Question 3

- (a) *What do you understand by 'set off' and 'counter-claim' under the Civil Procedure Code, 1908 ? What is the effect of set-off ?*
- (b) *Describe in brief the cases in which a Search Warrant can be issued under Section 93 in the Criminal Procedure Code, 1973.*
- (c) *What is the extent of liability of instruments to stamp duty where several instruments are executed in a single transaction ? Explain with any one illustration.*
- (d) *Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Comment. (4 marks each)*

Answer 3(a)**Set-off**

Order VIII, Rule 6 of Civil Procedure Code, 1908 deals with set-off which is a reciprocal acquittal of debts between the plaintiff and defendant. It has the effect of extinguishing the plaintiff's claim to the extent of the amount claimed by the defendant as a counter claim.

Under Order VIII , Rule 6 of Civil Procedure Code, 1908 where in a suit for the recovery of money the defendant claims to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff not exceeding the

pecuniary jurisdiction of the Court and where both parties fill the same character as in the plaintiff is suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

Counter-claim

A defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up by way of counterclaim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counterclaim is in the nature of claim for damages or not. Such counter-claim must be within the pecuniary jurisdiction of the Court. (Order VIII, Rule 6A).

Effect of Set-off

The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgement in respect both of the original claim and of the set-off, but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Answer 3(b)

According to Section 93 of the Criminal Procedure Code, 1973, a search warrant can be issued only in the following cases:

- (i) Where the Court has reason to believe that a person summoned to produce any document or other thing, will not produce it
- (ii) Where such document or other thing is not known to the Court to be in the possession of any person
- (iii) Where a general inspection or search is necessary. However, a search warrant may be general or restricted in its scope as to any place or part thereof.

Answer 3(c)

Section 4 of Indian Stamp Act, 1899 provides that, where in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction–

- (i) Only the principal amount shall be chargeable with the duty prescribed for the conveyance, mortgage or settlement
- (ii) Each of the other instrument shall be chargeable with a duty of one rupee (instead of the duty if any prescribed for the other instruments)

Illustrations

- (i) A executed a conveyance of immovable property. On the same deed his nephew (undivided in status) endorsed his consent to the sale, as such consent was considered to be necessary. It was held that the conveyance was the principal instrument. The consent was chargeable with only one rupee (ILR 13 Bom 281).
- (ii) Subsequent to a sale of immovable property, two declarations were executed

reciting that the sale was subject to an equitable mortgage created by the vendor. These declarations were held to be chargeable, together with the sale deed, as having completed the conveyance (*Somaiya Organics Ltd. v. Chief Controlling Revenue Authority*, AIR 1972 All 252).

- (iii) Brother A executed in favour of brother B a gift of all his property. By another deed, brother B made provision for the living expenses of brother A and hypothecating in favour of brother A a part of the property included in the above mentioned gift deed, in order to secure the payment of the living expenses. It was held that the two documents were part of the same transaction. They amounted to a settlement and Section 4 applied (*Maharaj Someshar Dutt*, ILR 37 All 264).
- (iv) B conveyed the whole of his property to three persons who undertook to provide for him and to perform his obsequies. By another document, the three donees agreed to provide for B. This was mentioned in the deed executed by A also. It was held that the two documents had to be construed as part of the same act; the first was liable to duty as a conveyance while the second was liable to a duty of Rupee 1 only (*Dadoba v. Krishna*, ILR 7 Bom. 34).
- (v) A company executed, first a deed of trust and mortgage stating that the company was to issue notes for raising loans secured by the sale deed. It was held as under:
 - (1) The deed was principal or primary security (and not a collateral security). It was chargeable as mortgage under Article 14.
 - (2) The notes issued subsequently were debentures and not principal instruments (*Madras Refinery Ltd. v. Chief Controlling Revenue Authority*, Madras, AIR 1977 SC 500).

Answer 3(d)

The biggest check over administrative action is the power of judicial review. Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agency within that jurisdiction.

The power of judicial review controls not only the legislative but also the executive or administrative act. The Court scrutinizes the executive act for determining the issue as to whether it is within the scope of authority or power conferred on the authority exercising the power. Where the act of executive or administration is found ultra-virus the Constitution or the relevant Act, it is declared as such and, therefore, void. The Courts attitude appears to be stiffer in respect of discretionary powers of the executive or administrative authorities. The Court is not against the vesting of discretionary power in the executive, but it expects that there would be proper guidelines for the exercise of power. The Court interferes when the uncontrolled and unguided discretion is vested in the executive or administrative authorities or the repository of the power abuses its discretion.

Question 4

- (a) Discuss briefly “Malicious Prosecution” and its essential elements under the law relating to Torts.

- (b) *Explain the special provisions as to Evidence relating to Electronic Record under the provisions of the Indian Evidence Act, 1872.*
- (c) *State at least four instruments which are exempted from the provisions of Section 17(1) of the Registration Act, 1908.*
- (d) *Explain any four categories of 'information' which have been exempted from disclosure under the Right to Information Act, 2005. (4 marks each)*

Answer 4(a)

Malicious prosecution consists in instigating judicial proceedings (usually criminal) against another, maliciously and without reasonable and probable cause, which terminate in favour of that other and which results in damage to his reputation, personal freedom or property.

The following are the essential elements of this tort:

- (i) There must have been a prosecution of the plaintiff by the defendant.
- (ii) There must have been want of reasonable and probable cause for that prosecution.
- (iii) The defendant must have acted maliciously (i.e. with an improper motive and not to further the end of justice).
- (iv) The plaintiff must have suffered damages as a result of the prosecution.
- (v) The prosecution must have terminated in favour of the plaintiff.

Answer 4(b)

Section 65A of the Indian Evidence Act, 1872 provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B.

As per Section 65B(1) of the Indian Evidence Act, 1872, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this Section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. The conditions in respect of a computer output related above, have been stipulated under Section 65B (2) of the Evidence Act.

Answer 4(c)

The registration of the non-testamentary documents mentioned under Section 17(1)(b) and (c) of the Registration Act, 1908 is subject to the exceptions provided in of Section 17(2). These are as follows:

1. any composition deed, i.e., every deed the essence of which is composition; or
2. any instrument relating to shares in Joint Stock Company; or
3. any debentures issued by any such Company; or
4. any endorsement upon or transfer of any debenture; or

5. any document other than the documents specified under Section 17(IA) of the Act creating merely a right to obtain another document which will, when executed create, declare, assign, limit or extinguish any such right, title or interest; or
6. any decree or order of a court; or
7. any grant of immovable property by the Government; or
8. any instrument of partition made by Revenue-officer; or
9. any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
10. any order granting loan made under the Agriculturists Loans Act, 1884 or instrument for securing the repayment of a loan made under that Act; or
11. any order made under the Charitable Endowments Act, 1890 vesting any property in a treasurer of a charitable endowment or divesting any such Treasurer of any property; or
12. any endorsement on a mortgage deed acknowledging the payment of the whole or any part of the mortgage money, and any other receipt for payment of money, due under a mortgage when the receipt does not purport to extinguish the mortgage; or
13. any certificate of sale granted to the purchaser of any property sold by public auction by Civil or Revenue Officer.

Answer 4(d)

Categories of information which have been exempted from disclosure under the Right to Information Act, 2005. These are:

1. Where disclosure prejudicially affects the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
2. Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court;
3. Where disclosure would cause a breach of privilege of Parliament or the State Legislature;
4. Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants;
5. Information received in confidence from a foreign government;
6. Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance;
7. Information that would impede the process of investigation or apprehension or prosecution of offenders;
8. Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers.

Question 5

- (a) *Discuss the provisions relating to information to the police and their power to investigate in cognizable and non-cognizable cases under the Criminal Procedure Code 1973.*
- (b) *The Indian Penal Code, 1860 provides for general exceptions for a person accused of committing any offence under the code to plead in his defence. Explain any eight exceptions. (8 marks each)*

Answer 5(a)

Information in cognizable cases and investigation of such cases.

According to Section 154 of the Criminal Procedure Code 1973, every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant. Every such information shall be signed by the person giving it and the substance thereof shall be entered in a book kept by such officer in such form as may be prescribed by the State Government in this behalf.

The above information given to a police officer and reduced to writing is known as First Information Report (FIR). The investigation of the case proceeds on this information only. Thus, the principal object of this Section is to set the criminal law in motion and to obtain information about the alleged criminal activities so as to punish the guilty.

For the purpose of enabling the police to start investigation, it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code.

Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information may send the substance of such information in writing and by post to the Superintendent of Police concerned who if satisfied that such information discloses the commission of a cognizable offence shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

Information as to non-cognizable cases and investigation of such cases

As per Section 155 of the Criminal Procedure Code 1973, when information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf and refer the informant to the Magistrate. The police officer is not authorised to investigate a non-cognizable case without the order of Magistrate having power to try such cases, and on receiving the order, the police officer may exercise the same powers in respect of investigation as he may exercise in a cognizable case.

Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

In case of a cognizable offence the police officer may conduct investigations without the order of a Magistrate. Investigation includes all proceedings under the Code for the collection of evidence by the police officer or by any person who is authorised by the Magistrate in this behalf.

Answer 5(b)

The Indian Penal Code, 1860 (IPC) provides for general exceptions for a person accused of committing any offence under the Code to plead in his defense. General defences or exceptions are contained in sections 76 to 106 of the IPC. In general exceptions to criminal liability there will be absence of *mens rea* (guilty mind) on the part of the wrong-doer. If there is any general defense of the accused in a criminal case, the burden of proving lies on him under section 105 of the Indian Evidence Act, 1872. The exceptions are:

1. Mistake of Fact bound by law
2. Act of Judge when acting judicially
3. Act done pursuant to the judgment or order of Court
4. Mistake of Fact-justified by law
5. Accident in doing a lawful act
6. Act likely to cause harm, but done without criminal intent, and to prevent other harm
7. Act of a child under seven years of age
8. Act of a child above seven and under twelve of immature understanding
9. Act of a person of unsound mind
10. Act of a person incapable of judgment by reason of intoxication caused against his will
11. Offence requiring a particular intent or knowledge committed by one who is intoxicated
12. Act not intended and not known to be likely to cause death or grievous hurt, done by consent
13. Act not intended to cause death, done by consent in good faith for person's benefit
14. On consent of guardian if any act is done in good faith to it
15. Consent
16. Exclusion of acts which are offences independently of harm caused
17. Act done in good faith for benefit of a person without consent
18. Communication made in good faith
19. Act to which a person is compelled by threats
20. Act causing slight harm.

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

- (a) Describe the documents or transactions to which the Information Technology Act, 2000 shall not apply.
- (b) Under the circumstances and arbitral award may be set aside by the Court under the provisions of Arbitration and Conciliation Act, Explain any four.
- (c) Name of the officers of the Company who can be held liable in case the Company has issued share warrant without proper stamp duty. What shall be the penalty as prescribed under Sec. 62(2) of the Stamp Act.
- (d) Where any central legislation or any regulation enacted after the commencement of the General Clauses Act, 1897 repeals any Act, what shall not be affected by such repeal ? (4 marks each)

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

- (i) Anil and Amit are two partners of a firm. Anil, while ordinarily dealing with another firm, bribed that firm's clerk to divulge secret relating to the other firm where that clerk was working. In this case, who shall be liable—whether both the Partners i.e. Anil and Amit or only Anil ? Explain. (4 marks)
- (ii) Under what circumstances the decision exercised by administrative authorities are treated as abuse of discretion ? Explain any four. (4 marks)
- (iii) Describe the constitution of Special Court established under Section 435 of the Companies Act, 2013. (4 marks)
- (iv) Write a short note on writ of 'Quo Warranto'. (4 marks)

Answer 6(a)

Following documents or transactions to which the Information Technology Act, 2002 shall not apply:

1. A negotiable instrument (other than a Cheque) as defined in section 13 of the Negotiable Instruments Act, 1881.
2. A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882.
3. A trust as defined in section 3 of the Indian Trust Act, 1882.
4. A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.
5. Any contract for the sale or conveyance of immovable property or any interest in such property.

Answer 6(b)

According to Section 34(2) of the Arbitration and Conciliation Act, 1996, an arbitral

award may be set aside by the Court only if the party making the application furnishes proof that-

1. a party was under some incapacity, or
2. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
3. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
4. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
5. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

Further, the Court finds that the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or the Court finds that the arbitral award is in conflict with the public policy of India.

Answer 6(c)

As per Section 62(2) of the Indian Stamp Act, 1899, if a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall be punishable with fine which may extend to five hundred rupees.

Answer 6(d)

Where any Central legislation or any regulation enacted after the commencement of this Act repeals any General Clauses Act 1897 made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or

- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility and any such inquiry, litigation or remedy may be initiated, continued or initiated and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Answer 6A(i)

Tort committed by a partner in the ordinary course of the business of the firm, all the other partners are liable therefore to the same extent as the guilty partner. The liability of the partners is joint and several.

In the case of *Hamlyn vs. Houston & Co.* (1903) 1 K.B. 81, one of the two partners bribed the plaintiff's clerk and induced him to divulge secrets relating to his employer's business. It was held that both the partners were liable for the tort committed by only one of them.

Answer 6A(ii)

The decision exercised by administrative authorities are treated as abuse of discretion in the following circumstances:

1. *Mala fides* : If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the court. Malafide exercise of discretionary power is always bad and taken as abuse of discretion.
2. *Irrelevant considerations* : If a statute confers power for one purpose, its use for a different purpose is not regarded as a valid exercise of power and is likely to be quashed by the courts. If the administrative authority takes into account factors, circumstances or events wholly irrelevant or extraneous to the purpose mentioned in the statute, then the administrative action is vitiated.
3. *Leaving out relevant considerations* : The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out relevant consideration, its action will be invalid.
4. *Arbitrary orders* : The order made should be based on facts and cogent reasoning and not on the whims and fancies of the adjudicatory authority.
5. *Improper purpose* : The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose it will amount to abuse of power.
6. *Colourable exercise of power* : Where the discretionary power is exercised by the authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as colourable exercise of the discretionary power and it is declared invalid.
7. *Non-compliance with procedural requirements and principles of natural justice* : If the procedural requirement laid down in the statute is mandatory and it is not complied, the exercise of power will be bad. Whether the procedural requirement is mandatory or directory is decided by the court. Principles of natural justice are also required to be observed.
8. *Exceeding jurisdiction* : The authority is required to exercise the power within

the limits of the statute. Consequently, if the authority exceeds this limit, its action will be held to be ultra vires and, therefore, void.

Answer 6A(iii)

The Central Government may, for the purpose of providing speedy trial of offences under Section 435 of the Companies Act, 2013 by notification, establish or designate as many Special Courts as may be necessary.

A Special Court shall consist of—

- (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and
- (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences, who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

Answer 6A (iv)

The writ of Quo Warranto enables enquiry into the legality of the claim which a person asserts, to an office or franchise and to oust him from such position if he is a usurper. The holder of the office has to show to the court under what authority he holds the office. It is issued when:

- (i) the office is public and of a substantive nature,
- (ii) created by statute or by the Constitution itself, and
- (iii) the respondent has asserted his claim to the office. It can be issued even though he has not assumed the charge of the office.

The fundamental basis of the proceeding of Quo Warranto is that the public has an interest to see that an unlawful claimant does not usurp a public office. It is a discretionary remedy which the court may grant or refuse.

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer **ALL** Questions.

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

PART I

Question 1

Comment on the following :

- (a) *The Companies Act, 2013 does not provide statutory recognition to the doctrine of lifting of corporate veil. Only judicial interpretations disregard the concept of separate personality.*
- (b) *The provisions of the Companies Act, 2013 relating to compromises and arrangements are uniformly applicable to all companies.*
- (c) *An unregistered charge shall be void against the liquidator and other creditors of the company.*
- (d) *Certain members of a company are allowed to offer for sale their shareholding in the company to the public, such offer document is deemed to be a prospectus issued by the company.* (5 marks each)

Answer 1(a)

It is not correct to state that the Companies Act, 2013 does not provide statutory recognition to the doctrine of lifting of corporate veil and only judicial interpretation disregard the concept of separate personality.

The Companies Act, 2013 itself contains some provisions in Sections 7(7), 251(1) and 339 which lift the corporate veil to reach the real forces of action. Section 7(7) of Companies Act, 2013 deals with punishment for incorporation of company by furnishing false information; Section 251(1) of Companies Act, 2013 deals with liability for making fraudulent application for removal of name of company from the register of companies and Section 339 of Companies Act, 2013 deals with liability for fraudulent conduct of business during the course of winding up.

Ever since the decision in *Salomon v. Salomon & Co. Ltd.*, normally Courts are reluctant or at least very cautious to lift the veil of corporate personality to see the real persons behind it. Nevertheless, Courts have found it necessary to disregard the separate personality of a company in the following situations:

- (1) Where the corporate veil has been used for commission of fraud or improper conduct. In such a situation, Courts have lifted the veil and looked at the realities of the situation. (Case Law : *Jones vs. Lipman*)

- (2) Where a corporate facade is really only an agency instrumentality. (Case Law: *R.G. Films Ltd*)
- (3) Where the conduct conflicts with public policy, courts lifted the corporate veil for protecting the public policy. (Case Law: *Connors Bros. v. Connors*)
- (4) A company will be regarded as having enemy character, if the persons having de facto control of its affairs are resident in an enemy country or, wherever they may be, are acting under instructions from or on behalf of the enemy. (Case Law: *Daimler Co. Ltd. v. Continental Tyre & Rubber Co.*)
- (5) Where it was found that the sole purpose for which the company was formed was to evade taxes the Court will ignore the concept of separate entity and make the individuals concerned liable to pay the taxes which they would have paid but for the formation of the company. (Case Law : *Sir Dinshaw Maneckjee Petit, Vodafone case*)
- (6) Avoidance of welfare legislation is as common as avoidance of taxation and the approach in considering problems arising out of such avoidance has necessarily to be the same and, therefore, where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction. (Case Law: *The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar v. The Associated Rubber Industries Ltd., Bhavnagar and another*)
- (7) Another instance of corporate veil arrived at by the Court arose in *Kapila Hingorani v. State of Bihar*.
- (8) Where it is found that a company has abused its corporate personality for an unjust and inequitable purpose, the court would not hesitate to lift the corporate veil. Further, the corporate veil could be lifted when acts of a corporation are allegedly opposed to justice, convenience and interests of revenue or workmen or are against public interest.

Answer 1(b)

Section 230 to 240 covered under Chapter XV of the Companies Act, 2013 provides for the Compromise, Arrangements and Amalgamation of Companies. The said provisions are uniformly applicable to all companies except Section 233 which prescribes simplified procedure for merger or amalgamation of -

- two or more small companies, or
- between a holding company and its wholly-owned subsidiary company, or
- such other class or classes of companies as may be prescribed.

Accordingly, sub-section (1) of Section 233 of Companies Act, 2013 states that notwithstanding the provisions of section 230 and section 232 of Companies Act, 2013, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or

such other class or classes of companies as may be prescribed, subject to the following, namely:-

- (a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;
- (b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent of the total number of shares;
- (c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
- (d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

Answer 1(c)

According to Section 77 of the Companies Act, 2013, all types of charges created by a company are to be registered with the Registrar of Companies (ROC). Where they are non-compliant and are not filed with the Registrar of Companies for registration, the charge shall be void as against the liquidator and any other creditor of the company. In the case of *ONGC Ltd v. Official Liquidators of Ambica Mills Co Ltd (2006)*, the ONGC had not been able to point out whether the so called charge, on the basis of which it was claiming preference as a secured creditor, was registered or not. It was held that in the light of this failure, ONGC could not be treated as a secured creditor in view of specific provisions of section 125 of Companies Act, 1956 and the statutory requirement under the said section. This does not, however, mean that the charge is altogether void and the debt is not recoverable. So long as the company does not go into liquidation, the charge is good and may be enforced.

Void against the liquidator means that the liquidator, on winding up of the company, can ignore the charge for the purpose of ascertaining the priority of payment and can treat the concerned creditor as an unsecured creditor. The property will be treated as free of charge i.e. the creditor cannot sell the property to recover its dues.

Void against any other creditors of the company means that if any subsequent charge is created on the same property and the earlier charge is not registered, the earlier charge would have no consequence and the latter charge if registered would enjoy priority over the earlier charge. In other words, the latter charge holder can have the property sold in order to recover its money.

Thus, non-filing of particulars of a charge as required under Section 77 of the Companies Act, 2013 does not invalidate the charge against the company as a going concern. It is void only against the liquidator and the creditors at the time of liquidation. The company itself cannot have a cause of action arising out of non-registration.

Answer 1(d)

Section 28 of the Companies Act, 2013 permits certain members of a company, in consultation with Board of directors, to offer the whole or a part of their holdings of shares to the public. The document by which the offer of sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company.

Since public offer is not same as offer for sale. Though many provisions relating to issue of prospectus does apply to such an offer, yet many provisions including requirement of minimum subscription does not apply to the same.

All laws and rules made hereunder as to the contents of the prospectus and as to liability in respect of misstatements in and omission from prospectus or otherwise relating to prospectus shall apply as if this offer document is a prospectus issued by the company.

The section provides that the members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorize the company, whose share were offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

Rule 8 of The Companies (Prospectus and Allotment of Securities) Rules, 2014 in this context provide that the provisions of Part I of Chapter III namely "Prospectus and Allotment of Securities" and rules made there under shall be applicable to an offer of sale referred to in section 28 of Companies Act, 2013 except for the following, namely:-

- (a) the provisions relating to minimum subscription;
- (b) the provisions for minimum application value;
- (c) the provisions requiring any statement to be made by the Board of directors in respect of the utilization of money; and
- (d) any other provision or information which cannot be compiled or gathered by the offer or, with detailed justifications for not being able to comply with such provisions.

Further the rules provide that such offer document or prospectus issued under the section shall disclose the name of the entity bearing the cost of making the offer for sale along with reasons.

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

- (a) *While adopting accounts for the year, the Board of directors of Prima Ltd. decided to consider the interim dividend @ 12% as final dividend and did not consider transfer of profit to reserves. Explain whether decisions of the Board were justified referring to relevant provisions. (3 marks)*
- (b) *What are the 'related party disclosures' required to be made by listed entities as per SEBI Regulations ? (3 marks)*
- (c) *Green Commercial Ltd., an unlisted company, has made a preferential offer of*

shares for consideration other than cash. A question has been raised by the accounts department as to the valuation of consideration at allotment and the manner of treatment of noncash consideration in books of account. As a practising company secretary advise the company with reference to the provisions of the Companies Act, 2013. (3 marks)

- (d) *What types of companies can be formed in Singapore as per the Singapore Companies Act ?* (3 marks)
- (e) *What are disqualifications for debenture trustees ?* (3 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Who is a 'Significant Beneficial Owner' under the Companies Act, 2013 ? Is Significant Beneficial Owner required to file BEN-1 to the reporting company ?*
- (ii) *Can a contributory file a petition for winding up of the company ? Discuss.*
- (iii) *IOL, a manufacturing company, issued partly convertible debentures with ₹ 6 crore few years back. The convertible option is only for 50% of the issue and debentures are redeemable in the current financial year. What is the quantum of Debenture Redemption Reserve (DDR) required to be created by the company now and how much should be deposited or invested by the company ?*
- (iv) *"The Companies Act, 2013 attempts to maintain a balance between the rights of majority and minority shareholders." Discuss.*
- (v) *Reels India Ltd. is a wholly owned subsidiary of Wheels India Ltd. The auditor of Wheels India Ltd. has intimated the Board of directors that the company will not be required to prepare consolidated financial statements if provisions of section 129, Companies Act, 2013 are complied with. As a company secretary give your comments in this regard.* (3 marks each)

Answer 2(a)

Section 123 of the Companies Act, 2013 provides for the provisions relating to declaration of dividends.

Since interim dividend is also a dividend, companies should provide for depreciation under section 123 of the Companies Act, 2013 before declaration of interim dividend. However, the first proviso to the section 123(1) of the Companies Act, 2013 provides that a company may, before declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it consider appropriate to the reserves of the company irrespective of the size of declared dividend i.e. company is not mandatorily required to transfer the profit to reserves, and it is only an option made available to the company to transfer such percentage of profit to reserves.

In the instant case, the Board has decided to pay interim dividend @ 12% of the paid up capital. Assuming the company has complied with the depreciation requirement and other applicable provisions, the interim or final dividend can be declared without transferring such percentage of its profits as it may consider appropriate to the reserve of the company.

Thus, from the facts and provisions, it may be concluded that Prima Ltd is under no violation of law by not transferring i.e. the company is free to transfer any amount of its profit to the reserves, without any compulsion or restriction before declaration of any dividend.

Section 123(3) of the Companies Act, 2013 provides that the Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. The amount of dividend including interim dividend should be deposited in a separate bank account within five days from declaration of such dividend for compliance of section 123(4) of the Companies Act, 2013.

Answer 2(b)

As per SEBI (LODR) Regulations, 2015, the Annual Report shall make certain Related Party Disclosures. Further as per Regulation 27(2) of SEBI (LODR) Regulations, 2015 details of all material transactions with related parties shall be disclosed along with the quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s) within fifteen days from close of the quarter.

- (1) The listed entity shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures".
- (2) The disclosure requirements shall be as follows:-

Disclosures of amounts at the year end and the maximum amount of loans/ advances/ investments outstanding during the year, in the books of accounts of:

- (i) Holding Company: -
 - (a) Loans and advances in the nature of loans to subsidiaries by name and amount.
 - (b) Loans and advances in the nature of loans to associates by name and amount.
 - (c) Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.
- (ii) Subsidiary : - Same disclosures as applicable to the parent company in the accounts of subsidiary company.
- (iii) Holding Company : - Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

For the purpose of above disclosures directors' interest shall have the same meaning as given in Section 184 of Companies Act, 2013.

Disclosures of transactions of the listed entity with any person or entity belonging to the promoter/promoter group which holds 10% or more shareholding in the listed entity,

in the format prescribed in the relevant accounting standards for annual results. (Notified on 9th May, 2018, applicable in respect of Annual reports filed for the year ended March 31, 2019 and thereafter.)

Answer 2(c)

Pursuant to Section 62 read with rule 13(2) of Companies (Share Capital and Debentures) Rules 2014, where shares or other securities are to be allotted for consideration other than cash, the valuation of such consideration shall be done by a registered valuer who shall submit a valuation report to the company for justification of valuation.

Where the preferential offer of shares is made for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company-

- (a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
- (b) where above clause is not applicable, it shall be expensed as provided in the accounting standards.

The Practising Company Secretary can advised the Green Commercial Ltd. accordingly.

Answer 2(d)

As per Singapore Companies Act, 1967 any person may, whether alone or together with another person, by subscribing his name or their names to a constitution and complying with the requirements as to registration, form an incorporated company.

A company may be –

- (a) a company limited by shares;
- (b) a company limited by guarantee; or
- (c) an unlimited company.

No company, association or partnership consisting of more than 20 persons can be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under the Singapore Companies Act, or is formed in pursuance of some other written law in Singapore or letters patent.

Answer 2(e)

The disqualifications for debenture trustees as referred in Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014, are as under:

- (i) beneficially holds shares in the company;
- (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;

- (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (iv) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (v) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
- (vi) has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (vii) is relative of any promoter or any person who is in the employment of the company, as a director, or as a key managerial personnel.

Answer 2A(i)

In terms of Section 90 of the Companies Act, 2013 every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India holds beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise or the actual exercise of significant influence or control as per as Section 2(27) of Companies Act, 2013, over the reporting company is a significant beneficial owner.

Such an individual being the Significant beneficial Owner holding such beneficial interest is required to make a declaration to the reporting company specifying the nature of his interest & other particulars as required.

From commencement of the Companies (SBO) Amendment Rules, 2019, every SBO in a reporting company, is required to give the requisite declaration of his beneficial ownership in Form No. BEN-1 to the reporting company within 90 days from such commencement

Answer 2A(ii)

Section 272(1) of the Companies Act, 2013 provides that subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by, *inter-alia*, any contributory or contributories.

As per Section 272(2) of Companies Act, 2013, a contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

Answer 2A(iii)

Section 71(4) of Companies Act, 2013, read with Rule 18(7) of the Companies (Share

Capital & Debentures) Rules, 2014 provides for creation of a Debenture Redemption Reserve (DRR) out of the profits of the company available for payment of dividend. The amount credited to such account shall not be utilised by the company except for the redemption of debentures.

The provisions for creation of DRR for manufacturing companies are 25% of the value of outstanding debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of outstanding debentures.

Every company required to create Debenture Redemption Reserve shall on or before the 30th day of April in each year, is required to invest or deposit a sum which shall not be less than 15% of the amount of debentures maturing during the current financial year ending 31st March of next year.

In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this rule.

Since, only 50% of the debentures are convertible, for the non-convertible part the DRR is required to be created. Hence, only for 3 crore worth of debentures DRR is required. Therefore, 25% of 3 crore is 75 lakhs to be created as DRR and 45 Lakhs (15%) deposited in the invested bank account or in securities, etc. during the current financial year.

Answer 2A(iv)

In India, the Companies Act, 2013 attempts to maintain a balance between the rights of majority and minority shareholders by admitting in, the rule of the majority but limiting it at the same time by a number of well-defined minority rights, and thus protecting the minority shareholders as well.

The rule of *Foss V. Harbottle* establishes the rule of majority but it is not absolute but subject to certain exceptions and the minority shareholders are protected by

- (a) the common law; and
- (b) the provisions of the Companies Act, 2013.

Section 241 to Section 245 of Chapter XVI of the Companies Act, 2013 deals with the provisions relating to prevention of oppression and mismanagement of a company. Oppression and mismanagement of a company mean that the affairs of the company are being conducted in a manner that is oppressive and biased against the minority shareholders or any member or members of the company. To prevent the same, there are provisions for the prevention and mismanagement of a company.

Answer 2A(v)

The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards:

Provided that in case of a company covered under sub-section (3) of section 129 of Companies Act, 2013 which is not required to prepare consolidated financial statements

under the Accounting Standards, it shall be sufficient if the company complies with provisions on consolidated financial statements provided in Schedule III of the Act.

The contention of the Auditor is justifiable as Section 129 (3) provides for not preparing the consolidated financial statement if conditions are fulfilled. Which according to second proviso to rule 6 are as under:

Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

- (i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;
- (ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and
- (iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.

Question 3

- (a) *The share capital of Raney Ltd. is ₹30 crore. 'Russel' is appointed as the managing director of the company, the company wants to compensate him by issue of shares for supplying technical know-how without any cost. In this context, answer the following :*
 - (i) *Whether the company is allowed to allot such shares ?*
 - (ii) *Is approval of shareholders required for issuing such shares ?*
 - (iii) *If found eligible to allot such shares, what will be the quantum (value) of shares that can be allotted ?*
 - (iv) *Can Russel sell such allotted shares in the market ?*
 - (v) *Will the amount that he receives on sale of his shares be considered a part of his remuneration ?* (1×5=5 marks each)
- (b) *Amitabh is a director in PQR Overseas Trading Ltd. The company's name has recently been struck off from the register of companies by the Registrar. He does not hold directorship in any other company. Therefore, Amitabh applied to the Registrar for cancellation of his DIN. However, the application was rejected by the Registrar. Is the rejection of application correct in your opinion ?* (5 marks)
- (c) *Ram Singh is a shareholder of Alexandra India Ltd. The Board of directors of the company are of the view that the conduct of Ram Singh has been detrimental to the interest of the company. Further, the Board also noted that Ram Singh is director in a company which is a competitor company of Alexandra India Ltd. The Articles of Association of Alexandra India Ltd. permit expulsion of members.*

The Board unanimously decided to expel Ram Singh from the company. Discuss the relevant provisions of Companies Act, 2013 in this regard. If Ram Singh files a case against the Board whether he will win the case ? (5 marks)

Answer 3(a)

- (i) Yes, Section 54 of Companies Act, 2013 permits issue of sweat equity shares to employees or directors in recognition of their contribution for providing know-how etc. as aforesaid. As the contribution made by employees/directors results in increased profits to the company for a number of years, sweat equity shares provide a new form of adequate return.
- (ii) Yes, Rule 8(1) of Companies (Share capital and Debentures) Rules, 2014 states the special resolution shall be passed authorizing the issue of sweat equity shares and shall be valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.
- (iii) Rule 8(4) of Companies (Share capital and Debentures) Rules, 2014 states that the company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year or shares of the issue value of rupees five crore, whichever is higher, The issuance of sweat equity shares in the company shall not exceed twenty five percent, of the paid up equity capital of the company at any time.

As the paid-up capital of the company is Rs.30 crore. Hence he can be allotted with 15% of existing equity i.e. (15% of 30 crore up to Rs. 4.5 Crore) value of shares or Rs. 5 crore whichever is higher.

- (iv) Rule 8(5) of Companies (Share capital and Debentures) Rules, 2014 says that the sweat equity shares issued to directors or employees shall be locked/non-transferrable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in and the period of expiry of lock-in shall be stamped in bold or mentioned in any other prominent manner on the share certificate. And hence the sweat equity shares allotted to Russel can be sold in the market only after the expiry of the lock-in period of three years from the date of allotment.
- (v) Yes, Rule 8(10) of Companies (Share capital and Debentures) Rules, 2014 states that the amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purposes of sections 197 and 198 of the Act, if the following conditions are fulfilled namely-
 - (a) the sweat equity shares are issued to any director or manager; and
 - (b) they are issued for consideration other than cash, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the applicable accounting standards.

Answer 3(b)

Rule 11 of Companies (Appointment and Qualification of Directors) Rules, 2014 allows cancellation or surrender or deactivation of DIN under the following cases-

- (a) If DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

- (b) If it is obtained in a wrongful manner or by fraudulent means
- (c) Death of the concerned individual
- (d) Concerned individual has been declared as a person of unsound mind by a competent court
- (e) Concerned individual has been adjudicated an insolvent
- (f) On application made in Form DIR-5 by the DIN holder to surrender DIN along with declaration that he has never been appointed as director in any company & said DIN has never been used for filing of any document with any authority.

The issue raised in question is not covered in any of the above conditions. As Amitabh was appointed as a director using his DIN (and presumably filed e-forms using the DIN), such DIN shall not be deactivated and DIR-5 cannot be filed even though the name of the company has been struck off and he does not hold directorship in any other Company. Hence, the action of the Registrar is correct.

Answer 3(c)

A controversy has arisen as to whether a public limited company had powers to insert an article in its Articles of Association relating to expulsion of a member by the Board of Directors of the company where the directors were of the view that the activities or conduct of such a member was detrimental to the interests of the company.

The Department of Company Affairs (now, Ministry of Corporate Affairs) clarified that an article for expulsion of a member is opposed to the fundamental principles of the Company Jurisprudence and is ultra vires the company, the reason being that such a provision will be against the provisions of the Companies Act relating to the rights of a member in a company, the powers of the Central Government as an appellate authority under Section 111 of the Act and the powers of the Court under Sections 107, 395 and 397 of the Companies Act, 1956.

These sections correspond to sections 38, 58, 48, 235 & 241 of the Companies Act, 2013 respectively having the same impact as earlier provisions.

Further, according to Section 6 of the Companies Act, 2013, the Act shall override the Memorandum and Articles of Association and any provisions contained in these documents repugnant to the provisions of the Companies Act, 2013 shall be void.

Therefore, any assumption of the powers by the Board of Directors to expel a member by alteration of Articles of Association shall be illegal and void.

The Supreme Court in the case of *Bajaj Auto Ltd. v. N.K. Firodia* [1971] 41 Com Cases 1 has laid down the law as to the conditions on the basis of which directors could refuse a person to be admitted as a member of the company. The principles laid down by the Supreme Court in this case, even though pertain to the refusal by a company to the admission of a person as a member of the company, are applicable even with greater force to a case of expulsion of an existing member. As, under Article 141 of the Constitution, the law declared by the Supreme Court is binding on all courts within the territory of India, any provision pertaining to the expulsion of a member by the management of a company which is against the law as laid down by the Supreme Court will be illegal

and ultra vires. In the light of the aforesaid position, it is clarified that assumption by the Board of directors of a company of any power to expel a member by amending its articles of association is illegal and void.

If Ram Singh files a suit against the company or the directors he will certainly win the case, as expulsion of a member is illegal and void as per the Companies Act 2013.

PART II

Question 4

(a) *Rajesh Gawda is a director of XYZ Pvt. Ltd. having a paid up share capital of ₹ 11 crore. The company has granted a loan of ₹ 2 crore to Rajesh Gawda. The company has a borrowing of ₹ 15 crore from HDFC Bank. The company secretary informs the company that the loan to the director is in violation of the provisions of the Companies Act, 2013. Justify the claim of the company secretary.*

(5 marks)

(b) *Last Annual General Meeting (AGM) of one of the top 100 listed companies was held on 25th May, 2018 pertaining to the FY 2017-18. The Board of directors of the company is planning to hold this year's AGM at a possible later date due to technical issues in finalisation of accounts. Give your suggestions about the date before which the AGM should be held in reference to relevant provisions of the Companies Act, 2013.*

(5 marks)

(c) *Moon Oil Exploration Ltd. (MOEL) was incorporated on 1st June 2007 and the company made a considerable amount of profit in the past years :*

<i>Financial Year</i>	<i>Net Profit ₹</i>
<i>2016-17</i>	<i>25 Crore</i>
<i>2017-18</i>	<i>10 Crore</i>
<i>2018-19</i>	<i>12 Crore</i>

(i) *In the current financial year 2019-20, the company wants to contribute to a political party. How much can it contribute ?*

(ii) *If MOEL had contributed to political parties earlier to the year 2017, how much could it have contributed at the maximum during those years ?*

(iii) *The Chairman of MOEL directed its account manager to pay a political party's office an amount of ₹50 Lakh by cheque as part payment to the party, can he do so ?*

(iv) *The Board of directors authorised a payment to the National Defence Fund too but wanted to not show it in profit and loss account. Is it possible to do so ?*

(v) *A sum of ₹2 lakh was spent by MOEL on an advertisement in a tract published by a political party ? How it is to be treated in the accounts of the company?*

(1×5=5 marks)

(d) *JKJ Ltd. has 10 directors on its Board. A Board meeting was convened on 19-10-2019 in which two of the directors participated in-person and one director*

through video conferencing. Two directors were interested in the agenda and hence, did not participate in the meeting. The auditor claimed that the quorum was not present for the meeting to be valid. Do you agree with the auditor? Justify your answer in reference to provisions of the Companies Act, 2013.

(5 marks)

Answer 4(a)

According to section 185(1) of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—

- (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
- (b) any firm in which any such director or relative is a partner.

Further, vide Exemption Notification dated 05th June, 2015, Section 185 of Companies Act, 2013 shall not apply to Private Company meeting the following conditions:

- (a) In whose share capital no other body corporate has invested any money;
- (b) If the borrowings of such company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty Crore rupees, whichever is lower; and
- (c) Such a company has not defaulted in repayment of such borrowings subsisting at the time of making transactions under this section.

Now, considering that the Paid up Capital of the Company is 11 Crores and borrowing from HDFC Bank is Rs. 15 Crore, it can be seen that the amount of borrowings by the company from Banks (Rs. 15 Crores) is less than twice the amount of paid up capital (i.e. $2 \times 11 \text{ Cr.} = 22 \text{ Crores}$). So as per exemptions conditions available to private company borrowing from the bank is less than 2 times of Paid up Capital of the Company.

To avail exemption, the company need to fulfill all conditions as provided in the Exemption Notification. Hence, if all the above conditions are fulfilled, the loan to Rajesh Gowda is exempted under section 185 and the company is not in violations of the provisions of the Companies Act, 2013 and the claim of CS is not justified.

Answer 4(b)

Section 96 of the Companies Act, 2013 provides that every company, other than a one person company is required to hold an annual general meeting every year.

Secretarial Standards on General Meetings (SS-2) provides that the Board shall, every year, convene or authorize convening of a meeting of its members called the Annual General Meeting to transact items of ordinary business specifically required to be transacted at an annual general meeting as well as special business, if any. If the Board fails to convene its Annual General Meeting in any year, any Member of the company may approach the prescribed authority, which may then direct the calling of the Annual General Meeting of the company.

Following are the key provisions regarding the holding of an Annual General Meeting:

1. Annual general meeting should be held once in each calendar year.
2. First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
3. Subsequent annual general meeting of the company should be held within 6 months from the date of closing of the relevant financial year.
4. The gap between two annual general meetings shall not exceed 15 months.

Additionally for listed entities SEBI vide recent notification provided that the top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year. The top 100 listed entities shall provide one-way live webcast of the proceedings of the annual general meetings.

Explanation : The top 100 entities shall be determined on the basis of market capitalization, as at the end of the immediate previous financial year. (Notified on 9th May, 2018 effective from April 1, 2019)

Hence for the financial year 2018-19, the meeting should/ought to have been held within earlier of the two dates given below i.e.:

Before 31.8.2019 - within 5 months from the close of financial year 2018-19, OR

Before 24.8.2019 - lapse of 15 months from date of last AGM

Hence, AGM ought to have been held before 24th August, 2019.

However, according to third proviso to section 96(1) of Companies Act, 2013, on an application from the company, the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period of not exceeding three months. The company may apply to the Registrar for extension for holding AGM, justifying it as a special reason based on the facts of the case.

Accordingly, the company will be advised to hold its meeting on or before 24.08.2019 or such extended period, as may be permitted by the Registrar on an application by the company.

Answer 4(c)

- (i) According to Section 182 of the Companies Act, 2013, a company, other than a government company and a Company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party.

The Finance Act, 2017 amended section 182 of the Companies Act, 2013, accordingly the limit on the maximum amount that can be contributed by a company to a political party has been removed. Hence a company now can contribute any percentage without any limit.

- (ii) Further, prior to the amendment to Section 182 by the Finance Act, 2017, the

limit of contribution to political parties was 7.5% of the average net profits during the three immediately preceding financial years.

Hence, earlier to 2017, it can have contributed only 7.5% of average net profits at the maximum.

- (iii) As per Section 182(1) of the Companies Act, 2013 the contribution must be authorised by board in its meeting by resolution and such resolution shall be deemed to be the justification in law for making of such contribution.

As per Section 182(3A) of the Companies Act, 2013, further, contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

Accordingly, the chairman cannot direct the payment to be made unless he is duly authorised by a Board resolution passed at a meeting and the payment is to be made through account payee cheque/Bank Draft or through electronic clearing system only.

- (iv) As per Section 183 of the Companies Act, 2013 the Board is authorised to contribute such amount as it thinks fit to the National Defence Fund or any other fund approved by the Government for the purpose of National Defence.

Further, the company is required to disclose in its profit and loss account the total amount or amounts contributed by it during the financial year.

Accordingly, it is not possible to avoid the disclosure in the Profit and loss account about the amount of the contribution made to the National Defence Fund.

- (v) If the expenditure incurred on advertisement in any publication souvenir, brochure, tract, pamphlet or the like is deemed as political contribution if such publication is by or on behalf of political party or if not, then for the advantage to such political party for a political purpose.

Hence, this amount to be treated as political contribution and shown in profit and loss account under the head political contribution.

Answer 4(d)

As per Section 174 of Companies Act, 2013 the quorum for Board Meeting Requirement is as under:

- Quorum for Board Meeting is 1/3rd of its Total strength or two directors, whichever is higher
- A Director participating through video conferencing/audio visual modes will also be counted for quorum
- Any fraction of a member will be rounded off as one
- "Total strength" shall not include directors whose places are vacant

In JKJ Board meeting held on 19.10.19, the quorum is:

Total Strength = $10 \times \frac{1}{3}$ is = 3.33 So, it is rounded of to 4 Directors. Hence, Directors required for Quorum is 4 Directors.

Since two directors attended in person and one director through video conferencing there was an absence of quorum. The claim of the Auditor is correct.

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

Question 5

- (a) Jackson is a prospective candidate for the post of Managing Director of Tirubuvani Sugars Ltd. Unfortunately, his proposed appointment could not satisfy the conditions of Schedule V of the Companies Act, 2013. Discuss if any other option is available with the company to appoint him as the Managing Director of the company. (4 marks)
- (b) A newly joined trainee of the secretarial department would like to know details of information to be entered in respect of resolution passed through postal ballot by the company. Advise him. (4 marks)
- (c) 'A', a shareholder, appointed 'X' as his proxy for the general meeting of a company. The proxy forms were lodged 50 hours before the meeting. The Chairman of the meeting refused to accept the proxy stating that the proxies should be lodged at least 70 hours before the beginning of the meeting as per articles of the company. However, despite Chairman's refusal proxy participated in the meeting. Meanwhile 'A' also rushed to attend the meeting and both 'A' and 'X' voted on a particular resolution of the meeting. On the basis of above facts, answer the following :
- (i) Can 'X' compel the Chairman to admit the proxy ?
- (ii) Since both 'A' and 'X' voted, the Chairman invalidated both the votes. Discuss whether the Chairman acted as per the provisions of the Companies Act, 2013. (2×2=4 marks)
- (d) ABC & Associates is an audit firm with partners A, B and C. The firm's tenure as statutory auditor in M Ltd. has expired under Companies Act, 2013. M Ltd. is a listed company. XY & Co. another audit firm is appointed as auditor of M Ltd. for the subsequent year. B joins XY & Co. as partner, 4 months after it was appointed as statutory auditor of M Ltd. Comment with reference to the provisions of the Companies Act, 2013. (4 marks)
- (e) A company passed a special resolution in its general meeting for grant of loan to another body corporate in excess of limits specified in section 186(2). However, one of the directors contended that prior approval of their financial institution is also required for such lending. Explain whether the contention of the director is acceptable. (4 marks)

OR (Alternate question to Q. No. 5)

Question 5A

- (i) Destinations Ltd. is a listed company with paid-up share capital of ₹ 40 crore, turnover ₹ 200 crore but having a loss of ₹ 10 crore for the year ended 31 March,

2018. The woman director in the Board of the company resigned on 1 October, 2018. The last Board meeting was held on 25th September, 2018. The Board is likely to meet next on 15th January, 2019. Lalita, aged 30 years, has conveyed her interest to be associated with the company as a woman director. Discuss if any woman director is required to fill the vacancy and if so, when the appointment should be made as per the provisions of the Companies Act, 2013 ? (4 marks)

- (ii) Warner Ltd. is an Indian company with a net profit of ₹ 4, 7, 6 and 7 crores respectively in the last four years. Net profit for each of last four years included a dividend of ₹ 1 crore received from WB Ltd. which is an Indian company. Discuss whether Warner Ltd. is required to spend on CSR activities ? If yes, how much it should spend ? If no, state the reasons for it. (4 marks)
- (iii) A group of shareholders holding 13% of the total paid-up share capital of Lala Investments Ltd. requested the Board of directors of the company to convene the Extraordinary General Meeting (EGM) by their letter dated 5th October, 2019, to discuss the matters set out in their requisition to the company. The Board of directors did not act on their request until end of October 2019. As a practicing Company Secretary what would you suggest as to the further course of action and the procedure to be followed in this regard ? (4 marks)
- (iv) You are a company secretary in a company. The Board of Directors want to know the details that should be entered in the Register of Renewed and Duplicate share certificates and the period for which such register should be maintained. Clarify the Board in this regard. (4 marks)
- (v) RPK Ltd. is an unlisted company having ₹ 9 crore as paid up capital and ₹ 52 crore as long term loan. The directors of the company would like to know from you the answers for the following questions :
- (1) Would the company be liable to constitute an audit committee ?
 - (2) If the company is listed after a fresh issue of shares to the tune of ₹ 50 crore, in such a situation, would the company be liable to constitute Audit Committee?
 - (3) What is the quorum for meetings and number of meetings to be held in a year by the audit committee ? (1+1+2=4 marks)

Answer 5(a)

In terms of Section 196 and 201 of the Companies Act, 2013 in case the provisions of Schedule V of the Companies Act, 2013 are not fulfilled by company, w.r.t. appointment of a Managing Director, the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government. Further an application seeking approval to the appointment of a managing director as aforesaid shall be made to the Central Government, in E-Form No. MR.2, within a period of ninety days from the date of such appointment.

As per Section 201 of Companies Act, 2013, before such application is made to the Central Government, there shall be issued by or on behalf of the company a general notice to the members indicating nature of application proposed to be made. The general

notice shall be published in at least once in a newspaper in the principal language of the district in which, registered office of the Company is situated and at least once in English in an English newspaper circulating in that district.

The copies of the notices, together with a certificate by the company as to the due publication therefore, shall be attached to the application.

Therefore, Tirubuvani Sugars Limited will file an application seeking approval to the appointment of Jackson as Managing Director to the Central Government in e-Form No. MR-2.

Answer 5(b)

As per Section 110 of Companies Act, 2013 and Rule 22(10) of the Companies (Management and Administration) Rules, 2014, every company which is required to or which proposes to get any resolution passed through postal ballot should maintain a separate register for each postal ballot to record the assent or dissent received through postal ballot.

The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

Entries in the register should be made immediately after the opening of postal ballots. Separate folios should be maintained for each resolution passed through postal ballot. The register should be kept at the registered office of the company after the Scrutinizer has submitted his report.

The register, postal ballot forms and all other related records are not available for inspection.

All postal ballot forms should be authenticated by the Scrutinizer. Entries in the register should be authenticated by the Scrutinizer.

The register, postal ballot forms and all other related records should be kept in the safe custody of the Scrutinizer till the Chairman signs the Minutes Book in which the result of the voting by postal ballot is recorded.

The secretary of the company, managing director or whole-time director or the director so authorised and the Scrutinizer should make adequate arrangements for safe custody of the register and proof of dispatch of Notices and all envelopes received by post or by hand, until the Scrutinizer submits his report to the Chairman.

The Scrutinizer should return the postal ballot forms and any related documents or records to the designated person of the company for safekeeping until the resolution has been implemented.

The Scrutinizer's report and office copies of the notices should be preserved in good order until the resolution has been implemented or for a period of 10 years, whichever is later.

Answer 5(c)

- (i) Section 105(4) of Companies Act, 2013 specifies the time limit for deposit of proxy forms. The instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

Para 6.6.1 of SS-2 provides that proxies shall be deposited with the company either in person or through post not later than forty-eight hours before the commencement of the Meeting in relation to which they are deposited and a Proxy shall be accepted even on a holiday if the last date by which it could be accepted is a holiday.

Articles of the company cannot prescribe a longer than 48 hours for lodging the proxy forms. And so the refusal of the chairman is void. X can compel the chairman to accept the Proxy.

- (ii) If after appointment of proxy, the member himself attends the meeting, it amounts to automatic revocation of proxy. But once the proxy has voted, it cannot be revoked.

Since Mr. A i.e. a member himself attended a meeting and voted on resolution, it will amount to revocation of proxy. Thus, any vote put by Mr. X i.e. proxy shall be invalid.

Chairman cannot invalidate both the votes. Vote of the shareholder has to be considered and of the proxy should be invalidated. Decision of the Chairman is void.

Answer 5(d)

Section 139(2) of the Companies Act, 2013 provides that as on date of appointment of Auditors, no audit firm having a common partner or partners to the other audit firm whose tenure has expired in a company immediately preceding the financial year shall be appointed as auditor of the same company for a period of five years.

Here M Ltd is a listed entity and thus rotational provisions are applicable. B is a partner in ABC & associates whose tenure as statutory auditor in M Ltd has expired. He joined XY & Co. as partner 4 months after XY & Co. was appointed as statutory auditor of M Ltd.

It may be noted that there should not be a common partner in firms as on date of appointment. In the given case, B has joined XY & Co. after 4 months of its appointment as statutory auditor of M Ltd. Thus, XY & Co. can continue as statutory auditor of M Ltd for the remaining term after B joined them as Partner.

Answer 5(e)

Section 186(5) of Companies Act, 2013 provides that no investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained.

However, the prior approval of Public Financial Institution (FI) shall not be required where the aggregate of loans and investments so far made, the amounts for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit of 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more and there is no default in repayment of loan installments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

In the given case the Company is passing the special resolution under Section 186(2) of Companies Act, 2013, indicating thereby that the proposed loan together with the loans already given is already in excess of the limits given under Section 186 (2) of Companies Act, 2013.

Hence the contention of the director is correct as the company aggregate of loans and investments so far made, exceed the limit under Section 186(2) of Companies Act, 2013.

However, if the aggregate loans/ investments are well within the limits approval and the company is passing the Special Resolution either in terms of its Article of Association or voluntarily only due to some other commercial requirement other than Section 186(2) of Companies Act, 2013, then the prior approval from Financial Institution will not be required.

Answer 5A(i)

Second Proviso to section 149 of Companies Act, 2013 provides that such class or classes of companies as may be prescribed in Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, provides that the following class of companies shall appoint at least one woman director-

- (i) every listed company;
- (ii) every other public company having:-
 - (a) paid-up share capital of one hundred Crore rupees or more; or
 - (b) turn over of three hundred Crore rupees or more.

However, any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

In the given case, as Destinations Ltd is a listed company hence, the company is required to appoint a woman director in its board irrespective of paid up capital, turnover and loss amounts.

The appointment of Ms. Lalita as woman director is to be made at the earliest but not later than immediate next board meeting i.e. 15th January, 2019 or 3 months from date of cause of vacancy i.e. 01st October, 2018; whichever is later, that means the appointment shall be made by 15th January, 2019.

Answer 5A(ii)

As per section 135 of the Companies Act 2013, the CSR provision is applicable to companies which fulfills any of the following criteria during the immediately preceding financial year:

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

Explanation to section 135 provides that for the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

The Section 198 of the Companies Act, 2013 read with CSR Rules have clarified the manner in which a company's net profit will be computed to determine if it fits into the 'spending' norm. In order to determine the 'net profit', dividend income received from another Indian company (which are duly covered under and complying with the provisions of Section 135 of the Companies Act, 2013) or profits made by the company from its overseas branches have been excluded. Moreover, the 2% CSR is computed as 2% of the average net profits made by the company during the preceding three financial years.

Here, assuming that WB Ltd is duly covered under Section 135 of Companies Act, 2013 and is also complying with the said provisions, the dividend received by Warner Ltd from WB Ltd shall be deducted from the Net Profit of Warner Ltd so as to compute "net profit" & "average net profit" for the purpose of Section 135 of Companies Act, 2013.

Hence, based on above assumption, Warner Ltd's net profit shall be considered as rupees 7 Crore minus 1 Crore (dividend from another Indian company) = rupees 6 Crore in the preceding financial year, thus making it liable to comply with Section 135. It will therefore be required to spend on CSR Activities

The CSR amount to be spent/created is 2% of Rupees 6 crores + 5 crores + 6 crores = $17/3$ = rupees 5.67 Crore (average profit of the preceding three years) i.e. 2% of Rs. 5.67 Crore being Rs. 11.33 Lakhs.

Answer 5A(iii)

Section 100(2)(a) of the Companies Act, 2013 provides that the Board shall, at the requisition made by in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting call an extraordinary general meeting of the company within twenty-one days from the date of receipt of a valid requisition.

The requisition made under section 100(2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition,

the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

The meeting by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board

Accordingly, the requisitionists members holding more than 10% of the paid-up share capital, may proceed to convene and hold the meeting themselves within 3 months from 5th October 2019, being the date of requisition.

Rule 17 of the Companies (Management and Administration) Rules, 2014 provides the following for Calling of Extraordinary general meeting by requisitionists:

- (1) The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty-one days prior to the proposed date of such extraordinary general meeting.
- (2) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.

Explanation.- For the purposes of this sub-rule, it is here by clarified that requisitionists should convene meeting at Registered office or in the same city or town where Registered office is situated and such meeting should be convened on any day except national holiday.

- (3) If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.
- (4) The notice shall be signed by all the requisitionists or by a requisitionists duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.
- (5) No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.
- (6) The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.
- (7) Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition.
- (8) The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-

receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

Answer 5A(iv)

As per Section 46 of the Companies Act, 2013 read with Rule 6 of Companies (Share Capital and Debentures) Rules, 2014, every company with a share capital should, from the date of its registration, maintain a register of renewed and duplicate certificates.

The word 'renewed' includes consolidation and sub-division of shares and issue of certificate in lieu thereof.

Particulars of every share certificate issued shall be recorded in a Register of Renewed and Duplicate Share Certificates. Such register shall be maintained in Form No. SH-2 indicating against the name(s) of the person(s) to whom the certificate is issued, the number and date of issue of the share certificate in lieu of which the new certificate is issued, and the necessary changes indicated in the Register of Members by suitable cross-references in the "Remarks" column. Such register shall be kept at the registered office of the company or at such other place where the Register of Members is kept.

The register shall be preserved permanently and shall be kept in the custody of the Company Secretary of the company or any other person authorized by the Board for the purpose. All entries made in the Register of Renewed and Duplicate Share Certificates shall be authenticated by the company secretary or such other person as may be authorized by the Board for purposes of sealing and signing the share certificate. The register is not open for inspection.

Answer 5A(v)

- (1) Section 177(1) of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014, provides that the Board of directors of following companies are required to constitute an Audit Committee of the Board-
 - (i) Every listed Public companies;
 - (ii) All public companies with a paid up capital of 10 Crore rupees or more;
 - (iii) All public companies having turnover of 100 Crore rupees or more;
 - (iv) All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 Crore rupees or more.

Accordingly RPK Ltd. is liable to constitute the audit committee as its long term loan is more than the prescribed limit of Rs. 50 Crore.

- (2) Yes, the company is liable to constitute an audit committee as it will then become a listed company.
- (3) Para 2.2 of the Secretarial Standard-1 provides that Committee shall meet as often as necessary subject to the minimum number and frequency prescribed by any law or any authority or as stipulated by the board.

Para 3.5 of the Secretarial Standard -1, unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for meeting of any Committee

constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum.

Accordingly, RPK Ltd. In case of unlisted public companies, minimum number of meetings and quorum may be decided by the Board of Directors.

PART III

Question 6

- (a) *CS Rohan, a company secretary in practice availed loan against his personal investments from a bank. He issued two cheques towards repayment of the said loan as per terms of sanction of loan. Both the cheques were returned by the bank with remarks 'returned due to insufficient funds'. Comment on the facts given with reference to provisions of the Company Secretaries Act, 1980.*
- (b) *A middle aged practicing company secretary (PCS) is considering to start a mega professional firm. Name the professional bodies with which the PCS can have partnership as per the Company Secretaries Regulations, 1982.*
- (5 marks each)

Answer 6(a)

A Company Secretary is expected to maintain highest standards of integrity even in his personal affairs and any deviation from these standards even in his non-professional work would expose him to disciplinary action.

A member of the Institute is subject to disciplinary action under section 21 of the Company Secretaries Act, 1980 if he is found guilty of any professional or other misconduct.

As per Clause 2 of Part IV of the First schedule to the Company Secretaries Act, 1980, a member of the Institute whether in practice or not shall be deemed to be guilty of other misconduct if in the opinion of the council brings disrepute to the profession or the Institute as a result of his action whether or not related to the professional work.

The question whether a particular act or omission constitutes other misconduct should be based on facts and circumstances of each case.

Further, Part III of the Second Schedule to the Company Secretaries Act, 1980 provides that, a member of the Institute whether in practice or not shall be deemed to be guilty of other misconduct if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment for a term exceeding six months.

Under Negotiable Instruments Act, 1881 where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid either for insufficiency of funds or the cheque amount exceeds the arrangements made by the drawer of the cheque the drawer of the cheque shall be deemed to have committed an offence.

In the given case the cheque was dishonored with the remark insufficient funds. Therefore, CS Rohan may be liable for misconduct under Clause 2 of Part IV of the First Schedule of the Company Secretaries Act, 1980, if the Council is of the opinion that the

offence under Negotiable Instruments Act, 1881 is due to negligence or willful act of CS Rohan.

Answer 6(b)

Mega Firm can be described as a Partnership firm with more than twenty-five partners. A firm which provides core professional service of a particular profession along with the allied and ancillary services with equal competence under one roof is a multidisciplinary firm. For example, company and corporate law is core for company secretaries, however, they can acquire expertise in any other area like direct-indirect taxation, labour laws, economic laws, finance, accounting, insurance, international business and IPRs and they may be in position to provide single window business solutions.

Regulation 168B of Company Secretaries Regulations, 1982, which has introduced the concept of multi-disciplinary firms or mega firms, determines the membership of professional body for partnership. Accordingly for the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule of the Company Secretaries Act, 1980, a person shall be a member of any of the following professional bodies, namely:-

- The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (No. 38 of 1949);
- The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959 (No.23 of 1959);
- Bar Council of India established under the Advocates Act, 1961 (No. 25 of 1961);
- The Institute of Engineers or Engineering from a University established by law or an institution recognized by law;
- The Indian Institute of Architects established under the Architects Act, 1972 (No. 20 of 1972);
- The Institute of Actuaries of India established, under the Actuaries Act, 2006 (No. 35 of 2006);
- Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under Sub-section (2) of Section 38 of the Act.

Therefore, the middle aged Practicing Company Secretary, who is considering to start a mega professional firm can enter into partnership with the member(s) of any of the above professional bodies which will help him to cater to the bigger assignments and meet the needs of clients and assure timely and quality services to them.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART A

Question 1

- (a) Bindu Mediatech Private Ltd. is having paid-up capital of ₹ 40 lakh, its Securities Premium Account is ₹ 30 lakh and its free reserves are ₹ 30 lakh. The company has accepted ₹95 lakh as loans from its members and term loan from a scheduled bank to the extent of ₹75 lakh. State whether the company can accept loans/deposits from its members. Is there any maximum limit upto which the company can accept as loan/deposit from its members ? Discuss the applicability of exemptions to the Private Ltd. Company from some of the provisions of Section 73 of the Companies Act, 2013. (Assume the Company has not made any defaults in loan repayments). (5 marks)
- (b) An unlisted Public Ltd. Company is having 220 members, 5 directors and is having public deposits of ₹ 5 crores and shareholders deposits of ₹ 3 crores (paid-up capital is ₹1 crore and free reserves ₹1 crore and Bank Loan ₹ 2 crores) is proposing to convert it into a Private Ltd. Company. Mention conditions to be satisfied before conversion of the Company into Private Ltd. Also list out important procedures to be complied for such conversion. (5 marks)
- (c) TP Private Ltd. Company registered under the Companies Act, 2013 with paid up capital of ₹35 lakh and turnover of ₹2.5 crore. Explain the meaning of 'Small Company' and examine the following in accordance with the provision of the Companies Act, 2013 :
- (i) Whether the TP Pvt. Limited can avail the status of 'Small Company' ?
- (ii) Will your answer be different if the turnover of the company is ₹1 crore ? (5 marks)
- (d) Axar is in plant research and he has invented a process for extracting bio-fuel from certain plants, now he is proposing to commercialize his invention by promoting a One Person Company (OPC). But he proposes his name and his wife name as directors of the Company. As a Company Secretary clarify Axar on number of shareholders and directors OPC can have. Also brief him the provisions on Board, Annual General Meeting, signing of Financial statements, Board's Report and Annual Return. (5 marks)

Answer 1(a)

The Company has accepted a term loan from a scheduled bank of Rs.75 lakhs.

However, under Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014, it is an exempted deposit.

MCA has provided certain exemptions to private limited companies for accepting loans/deposits from its members. Accordingly, clause (a) to (e) of Sub-section 2 of Section 73 of the Companies Act, 2013 shall not apply to the following private companies:

- (i) which accept money not exceeding 100 % of the paid-up capital and free reserves and securities premium.
- (ii) start-up company for 5 years from its incorporation.
- (iii) a private company which fulfils the following conditions:
 - (a) which is not an associate or a subsidiary of any other company,
 - (b) if the borrowings of such a company is less than twice of its paid-up share capital or rupees fifty crores, whichever is less; and
 - (c) such company has not defaulted in repayment of such borrowings subsisting at the time of accepting of deposits.

Provided that the company referred to in clause (i), (ii) or (iii) above shall file the details of monies accepted to the registrar in such manner as may be specified.

In this case, Bindu Mediatech Private Limited, is having a paid-up share capital of Rs.40 lakh, Free Reserves of Rs.30 lakh and share premium of Rs.30 lakh. Hence, the company can accept loans upto Rs.100 lakh. Since the company has already accepted Rs.95 lakh as loans from its members it can further accept Rs.5 lakh from its members as loan/deposits.

Answer 1(b)

Pre-conditions to be examined for conversion of a public company into a private company are as under:

- (i) members to be reduced below 200 (presently 220)
- (ii) public deposits to be repaid in full (presently 5 crores)
- (iii) shareholders deposits/loan should not exceed 100% of paid-up capital and free reserves and share premium (presently 3 crores) subject to fulfilment of all conditions provided in MCA notification dated 13th June, 2017.

In this case, the company has a paid up capital of Rs.1crore and free reserves of Rs.1 crore i.e total of Rs.2 crore which is the maximum limit of exempted deposit from shareholder for private limited company. Hence, Rs.1 crore needs to be repaid to shareholders before conversion.

According to section 13 and 14 of the Companies Act, 2013 read with rule 33 and rule 41 of the Companies (Incorporation) Rules, 2014, a public company can be converted into the private company only after obtaining its shareholders' approval by way of passing a special resolution in general meeting.

Apart from this, the other important procedures to be complied are:

- Calling of Board meeting

- General meeting
- Advertisement in newspaper
- Filing of copy of special resolution with the ROC
- Filing of application for conversion with RD
- Order of RD approving the conversion
- Filing of order of RD with ROC
- Certificate from ROC

Applicable provisions

1. Section 13: For alteration in Memorandum of Association of the Company
2. Section 14: For alteration in Article of Association of the Company.
3. Rule 41 of Companies (Incorporation) Rules, 2014 (inserted by Companies (Incorporation) Fourth Amendment, Rules 2018 on 18.12.2018): Approval of Regional Director for conversion of Public Companies into Private Companies.

Answer 1(c)

Section 2(85) of the Companies Act, 2013 defines a 'small company' as a company, other than a public company, –

- (i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to –

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any Special Act.

Hence, in order to avail the status of a 'small company', a company has to fulfill both conditions (i) and (ii) above.

- (i) In the given case, TP Pvt. Ltd. is a registered company under the Companies Act, 2013 with a paid-up capital of Rs.35 lakh and turnover of Rs.2.5 crore. As per the provision it only meets one criteria i.e. share capital does not exceed fifty lakh rupees and does not meet the second criteria. Hence, TP Pvt. Ltd. cannot avail the status of small company.
- (ii) If the turnover of the company is Rs.1 crore then TP Pvt. Ltd. can avail the status of small company as both the conditions will be fulfilled.

Answer 1(d)

According to Section 2(62) of the Companies Act, 2013, 'One Person Company'

means a company which has only one person as a member. A natural person who is an Indian citizen and resident in India shall be eligible to incorporate a One Person Company (OPC).

As per section 149(1) of the Companies Act, 2013, One Person Company may have more than one director on its Board. But an OPC should have only one member. Hence, Axar may incorporate an OPC and he and his wife may be the directors of the company.

As per section 173(5) of the Companies Act, 2013, it is required to hold at least one meeting of the Board of Directors in each half of a calendar year and the gap between the two meetings should not be less than ninety days. For an OPC having only one director, the provisions of section 173 (Meetings of the Board) and section 174 (Quorum for meeting of Board) of the Companies Act, 2013 will not apply.

As per section 96(1) of the Companies Act, 2013, OPC need not hold annual general meeting. As per section 92(1) of the Companies Act, 2013, the annual return shall be signed by the Company Secretary, or where there is no Company Secretary, by the director of company.

As per section 134(1) of the Companies Act, 2013, financial statement and Board's Report can be signed only by one director.

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

Question 2

- (a) *'Alteration of Capital Clause in Memorandum of Association is a precondition to restructuring the Capital structure of the Company' — Elaborate the statement mentioning relevant provisions of the Companies Act, 2013 on types of alterations of Capital Clause.* (4 marks)
- (b) *Aryan & Aarav, an LLP having turnover of ₹45 lakh and contribution of the partners exceeding ₹30 lakh in F.Y. 2018-19 is seeking your advice in the following matters :*
- (i) *Is dividend distribution tax applicable on LLP ?*
- (ii) *Is LLP subjected to audit ? State the reason.*
- (iii) *Is LLP eligible to raise loan from ABC Ltd., a foreign bank ?*
- (iv) *State Offences & Penalties for non-filing of financial statements under the LLP Act, 2008.* (4 marks)
- (c) *'Joint Ventures can be extremely valuable and chances of their failure can be reduced to a great extent, if strategically formed' — Comment on important strategies of joint venture.* (4 marks)
- (d) *'Asset Reconstruction Companies are created to manage and recover Non-Performing Assets' — Comment referring the functions and benefits of Asset Reconstruction Companies.* (4 marks)
- (e) *Pawan incorporated a Private Ltd. Company in the year 2016 for carrying on the business of supplying freshly chopped vegetables to various food chains in and*

around New Delhi NCR. He wants his entity to be recognised as a start-up. Advise the process to be followed by him for recognition of his company as a start-up. (4 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Prathik has studied about mass farming and is keen in uniting farmers in various states by forming a Multi State Co-operative Society. Brief Prathik on the documentary requirements for formation of Multi State Co-operative Society and the Authority with whom the application needs to be filed.
- (ii) “Concept of self help group” is the most exciting discovery in the context of Microfinance. Explain the terms and features of microfinance.
- (iii) Your Company proposes to enter into Joint Venture outside India and the Management of the Company wants to know from you various methods/modes available for funding the joint venture.
- (iv) Individual or minority members cannot bring a suit except when it is intended for enforcement of personal rights of members or to prevent the company from doing any ultravires or illegal act, fraud or oppression and mismanagement. Discuss with the help of decided case laws the distinction between ultravires or illegal acts and personal rights.
- (v) X, an employee of BG Ltd., is aggrieved by the decision of shifting of the registered office of the Company from the state of Uttar Pradesh to Haryana. He has filed a Public Interest Litigation (PIL) regarding the same, considering that the business of the company will be severely affected by the said decision of shifting of registered office. In the light of decided case laws, examine the strength of argument raised in the PIL. (4 marks each)

Answer 2(a)

Section 61(1) of the Companies Act, 2013 provides for, the types of alteration of capital clause in the general meeting of a company limited by shares through alteration of its memorandum in the following ways :

- (a) increase its authorised share capital by such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:
 Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- (c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share

shall be the same as it was in the case of the share from which the reduced share is derived;

- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

All the above alterations do not require the confirmation by the Tribunal except that alteration relating to consolidation and division which results in changes in the voting percentage of shareholders shall not take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

These alterations are, however, required to be notified and a copy of the resolution should be filed with the Registrar within 30 days of the passing of the resolution along with an altered memorandum. [Section 64(1)]

Hence, according to section 61(1) of the Companies Act, 2013, alteration of memorandum of association is a precursor to the change in capital structure of the company.

Answer 2(b)

- (i) For the purpose of income tax, LLP is treated at par with partnership. A LLP is not subject to Dividend Distribution Tax (DDT).
- (ii) The accounts of LLP shall be audited in accordance with Rule 24 of the Limited Liability Partnership Rules, 2009. The audit is required only in those cases where the turnover exceeds Rs.40 lakh and where the contribution exceeds Rs.25 lakh. Hence, in the given case since, both the criteria has been fulfilled, it requires to conduct audit.
- (iii) Limitation in External Commercial Borrowings (ECB): LLP's are not allowed to raise ECB. Hence, it cannot avail commercial loans from its foreign partners, FII's, foreign banks and any financial institution located outside India. Hence, Aryan & Aarav LLP cannot raise loan from ABC Ltd., a foreign bank.
- (iv) Offences and penalties : Limited Liability Partnership Act, 2008 provides that for non-compliance on procedural matters such as delay in filing e-forms, one has to pay default fees for every day for which the default continuous. Such default fees would be payable at the rate of rupee one hundred per day after the expiry of the date of filing up to a period of three hundred days. The offence can result in either (i) through payment of fine or (ii) through payment of fine as well as imprisonment of the offender.

Answer 2(c)

Joint ventures can be very effective for growth and success of a business. Their chances for failure can be reduced to a great extent if the following strategies are formed:

- (a) Joint Venture Partner should never be weak or untrustworthy partner, as it would definitely lead to failure of the joint venture. On the other hand, JV with strong and trustworthy partner would generate enormous benefits for both the partners and Joint Venture entity.

- (b) *Development of Strong Joint Venture Relationship* : Partners must strive to develop joint venture relationships that are easy to maintain, financially profitable, intellectually rewarding, and long-lasting. After a necessary period of negotiation and implementation, the Joint Venture relationship should grow well and quickly and painlessly.
- (c) *Equal Contribution* : Joint Venture Partners must make sure that all the partners have equal contribution in the Joint Venture entity in terms of skills, intellectual resources, marketing resources, capital, and so on. Unbalanced or unequal contributions are never healthy for the success of a Joint Venture entity.
- (d) *Written Agreement* : The agreement between two or more parties always be written and must clearly define all the terms, relates to rights and responsibilities of each partner. The language of the agreement must be simple and there should be no ambiguity, also there should be no clashing of interest.
- (e) *Well defined business model* : The firms in a JV must clearly define the nature of the new venture including the proposition to the customer, the channels and relationship management, the value chain, the structure and roles, investments, income, costs and payments, success factors and the timetable for delivery. A well-defined business model provides a base for the legal and financial frameworks.
- (f) *Establishment of Exit Routes* : JV Partners much establish clear protocols in the beginning itself for amending or unwinding the relation if it fails to meet the expectations or in case there arises any dispute.

Answer 2(d)

As per RBI Notification No. DNBS.2/CGM (CSM)-2003, dated April 23, 2003, Asset Reconstruction Company (ARC) performs the following functions:

- (i) Acquisition of financial assets
- (ii) Change or takeover of management / sale or lease of business of the borrower
- (iii) Rescheduling of debt
- (iv) Enforcement of security interest
- (v) Settlement of dues payable by the borrower

Benefits of incorporating an ARC are as under:

- (i) Banks can focus better on managing the core business including providing new business opportunities for the ARC.
- (ii) Restoration of depositor and investor confidence by ensuring the lender's financial health.
- (iii) It will help in building industry expertise in loan resolution and restructuring management besides serving as a catalyst for important legal reforms in bankruptcy procedures and loan collection.
- (iv) ARCs play an important role in developing capital markets through secondary asset instruments.

Answer 2(e)

The recognition of the startups in India is regulated vide notification G.S.R. 127(E) issued by the Department for Promotion of Industry and Internal Trade (DPIIT) dated 19th February, 2019. The entity shall be considered as a Startup:

- (i) Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
- (ii) Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded one hundred crore rupees.
- (iii) Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

The process of recognition of an eligible entity as startup shall be as under:

- (i) A Startup shall make an online application over the mobile app or portal set-up by the DPIIT.
- (ii) The application shall be accompanied by — (a) a copy of Certificate of Incorporation or Registration, as the case may be, and (b) a write-up about the nature of business highlighting how it is working towards innovation, development or improvement of products or processes or services, or its scalability in terms of employment generation or wealth creation.

The DPIIT may, after calling for such documents or information and making such enquires, as it may deem fit, — (a) recognise the eligible entity as Startup; or (b) reject the application by providing reasons.

Answer 2A(i)

An application in Form-1 (under sub-rule (1) of rule 3 of the Multi-State Cooperative Societies Rules, 2002) should be filed with the Central Registrar of Cooperative Societies, New Delhi along with the following enclosures:

1. A certificate from the bank stating credit balance there in favour of the proposed multi-state co-operative society.
2. A scheme explaining how the proposed multi-state co-operative society has reasonable prospects of becoming a viable unit.
3. Four copies of bye-laws in original.
4. Proposed area of operation for registration shall initially be permitted for two contiguous States only.
5. List of at least 50 members from each State. The list has to be submitted in the format annexed with the Multi-State Cooperative Societies Act, 2002 (MSCS Act, 2002) along with the copies of ID proofs of the members duly attested by Chief Promoter.

6. Certified copies of the resolutions passed by the proposed society along with the certified copy of the resolution of the promoters which shall specify the name and address of one of the applicant(s) to whom the Central Registrar may address correspondence under the rules before registration and dispatch or hand over of registration documents.
7. Contact number and e-mail address of the Chief Promoter or Society on cover page.

For societies having objects related to thrift and credit and for multi-purpose societies following additional documents are required to be submitted along with documents mentioned above:

1. No Objection Certificate from the Registrar of Cooperative Societies of the States/ UT where the area of operation of the society is proposed to be confined.
2. A certificate to the effect that the credentials of the Chief Promoter/Promoters have been verified by the Registrar of Co-operative Societies of the State where the head office is proposed to be located.

All documents to be submitted in original with the signatures of the Chief Promoter/Promoters on each page.

Answer 2A(ii)

NABARD has defined microfinance as “provision of thrift, credit and other financial services and products of very small amounts to the poor in rural, semi-urban and urban areas provided to customers to meet their financial needs; with only qualification that (1) transactions value is small and (2) customers are poor.”

- (1) Microfinance provides financial services to those whose income is small and unstable. These people are in need of credit facilities for several reasons, some of which are listed below:
 - (a) their needs are small and arise suddenly.
 - (b) the institutional providers of finance, namely, the banks demand collateral security which they cannot provide.
 - (c) most of the time, they are in urgent need of funds to meet their consumption demands, for example, to meet expenses related to education, illness, funerals, weddings for which it is difficult to obtain institution finance.
 - (d) For purpose of investment in income generating activities.
- (2) Concept of Self Help Groups (SHGs) is the most exciting discovery in the context of microfinance. The Indian microfinance scene is dominated by SHGs and their linkage with banks. This has helped in empowerment of women and eradication of poverty among people with low income.
- (3) Microfinance provides a greater menu of options whereby the small loan can be garnered not just from the external sources but also through self-mobilization, by way of saving and sale of assets.
- (4) The biggest flexibility in the case of microfinance is the lack of any physical collateral, even in case of loan from the bank.

Answer 2A(iii)

Investment (or financial commitment) in an overseas Joint venture (JV) / Wholly Owned Subsidiary (WOS) may be funded out of one or more of the following sources:

- (i) drawal of foreign exchange from an AD bank in India;
- (ii) capitalization of exports;
- (iii) swap of shares;
- (iv) proceeds of External Commercial Borrowings (ECBs) / Foreign Currency Convertible Bonds (FCCBs);
- (v) in exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued there under from time to time by the Government of India;
- (vi) balances held in EEFC account of the Indian Party and
- (vii) proceeds of foreign currency funds raised through ADR / GDR issues.

In respect of (vi) and (vii) above, the limit of financial commitment vis-à-vis the net worth will not apply.

However, all investments (or financial commitment) made in the financial sector will be subject to compliance with Regulation 7 of the Master Direction – Direct investment by resident in Joint venture (JV) / Wholly Owned Subsidiary (WOS) abroad irrespective of the method of funding.

Answer 2A(iv)

There are basically two types of rights that are enjoyed by the members of the company. One is the personal right and the other is the corporate right.

In the landmark case of *C.L Joseph v. Jos and Anr* the Kerela High Court observed that:

There are two kinds of rights for a member of a company, on the individual membership rights and the other the corporate membership right. So far as the corporate membership rights are concerned a shareholder can assert those rights only in conformity with the decision of the majority of the shareholders. An individual membership is a right to maintain himself in full membership with all the rights and privileges appertaining to that status. The right implies that the individual shareholder can insist on the strict observance of the legal rules, statutory provision and provisions in the memorandum and articles cannot be waived by the majority shareholders.

In certain circumstances an individual member may bring an action to remedy a wrong done to his company or to compel his company to conduct its affair in accordance with the constitution and the rules of law governing it, even though no wrong has been done to him personally, even though the majority of his fellow members do not wish the action to be brought.

It should be carefully noted that the rule in *Foss v. Hartbottle* to cases when corporate

membership is involved provided that the case is not of an exception of the rule derived in the above case or for example if the acts are done ultra vires.

Also section 241 of the companies Act, 2013 says that any member of a company who complains that the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company can apply to the tribunal for relief.

Hence, the law allows intervention by the individual member in case of wrong done to him personally or any act done by the company that is illegal or ultra vires.

Answer 2A(v)

The Public Interest Litigation (PIL) of X, an employee of BG Ltd. regarding shifting of registered office is not tenable.

The facts are similar to the case of *Bharat Commerce and Industries Ltd., Re, (1973) 43 Com Cases 162 (Cal.)*, where it was held that employees' union, which was a registered body and which represented quite a number of the employees at the registered office of the company, would have the legal standing to appear before the court and oppose the application on the ground that their interests are likely to be prejudicially affected if the resolution for shifting the registered office of the company from one State to another is confirmed by the court. However, it was held that the employees' union cannot oppose on the ground that there would be loss of revenue or unemployment in the State or that the meeting at which the special resolution was passed was itself not valid.

So long as interest of none of the employee at the registered office is prejudiced by retrenchment or otherwise, the argument of X is not tenable.

PART B

Question 3

- (a) *Aravind has recently completed Telecommunications engineering and he is keen in starting his own venture for Telecommunication support services. He has heard about OSP License and approached you to get more information on it. Brief him, on the purpose, authority authorised to issue such license, documents necessary for making application and compliance after registration.*
- (b) *State the circumstances under which an employee is not liable for Compensation under Employees Compensation Act, 1923.*
- (c) *Saravan is carrying out building contract works for industrial and commercial customers. He engages 25 workers on regular basis, wants to know about the applicability of Contract Labour (Regulation and Abolition) Act, 1970 to him and licensing requirement if any for his business. Also brief him the details regarding the Registers to be maintained by Principal Employer and the contractor.*
- (d) *Bhaskar is presently running a business of finance. He has planned to promote an Infrastructure Finance Company along with his friends. He seeks your advice to know whether it is a Non-Banking Finance Company requiring Reserve Bank*

of India's registration and criteria to be satisfied by such Company. Also clarify on how Net owned Fund is calculated. (5 marks each)

Answer 3(a)**OSP Registration**

According to the New Telecom Policy (NTP) 1999, service providers in India involved in providing services like tele-banking, tele-medicine, tele-education, tele-trading, e-commerce, call center, network operation center and other IT Enabled Services, using telecom resources are termed as "Other Service Providers" (OSP). These OSP's are required to obtain an OSP Registration from the Department of Telecommunication (DoT).

If Aravind is keen on starting his own venture for telecommunication support services, he has to know about the OSP License procedures which are as follows:

To obtain an OSP Registration in India, it is mandatory for the entity to be a Private Limited Company. Therefore, entrepreneurs having plans for starting a call center or BPO or e-commerce or other IT Enabled Services must incorporate a Private Limited Company.

The following are the documents necessary for OSP Registration in addition to the application in the prescribed format:

- Certificate of Incorporation of Private Limited Company
- Memorandum of Association (MOA) and Articles of Association (AOA)
- Board Resolution or Power of Attorney authorizing the authorized signatory
- Name of business and activities proposed
- List of directors
- Present shareholding

The above documents must be certified with seal by a Company Secretary, or director of the company or statutory auditor or public notary.

The compliances after registration are:

- (a) OSPs are required to submit an "Annual Return" to the DOT mentioning the activities undertaken and the present status of the OSP. The annual return for OSP License renewal must be submitted within 6 months of completion of financial year.
- (b) Maintaining compliance with the terms and conditions prescribed by the DOT for OSP.

Answer 3(b)

Circumstances where an employee is not liable for compensation under the Employees Compensation Act, 1923:

- (i) In respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days.

- (ii) In respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to -
- (a) The workman having been at the time thereof under the influence of drink or drugs; or
 - (b) Wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workman; or
 - (c) Wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

Answer 3(c)

Applicability of Contract Labour (Regulation and Abolition) Act, 1970

Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labor.

Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

Licensing of Contractor

- Engaging 20 or more than 20 workers and on deposit of required fee in Form IV.
- Valid for specified period.

Registers of Contractors to be maintained by,

Principle Employer

- To maintain a register of contractor in respect of every establishment in Form XII.

Contractor

- To maintain register of workers for each registered establishment in Form XIII.
- To issue an Employment card to each worker in Form XIV
- To issue service certificate to every workman on his termination in Form XV.

Answer 3 (d)

Infrastructure Finance Company

Yes, the proposed Infrastructure Finance Company is a non-banking finance company that

- (a) deploys at least 75 percent of its total assets in infrastructure loans
- (b) has a minimum net owned funds of Rs.300 crore
- (c) maintains a minimum credit rating of 'A' or equivalent
- (d) and has a capital to risk assets ratio (CRAR) of 15% It requires registration with the Reserve Bank of India.

Net Owned Fund Formula

The net owned fund would be calculated based on the last audited balance sheet of the company. Net owned fund will consist of paid-up equity capital, free reserves, balance in share premium account and capital reserve representing surplus arising out of sale proceeds of assets but not reserve created by revaluation of assets. From the aggregate of items it will be deducted, accumulated loss balance and book value of intangible assets, if any, to arrive at owned funds. Further, investment in shares of other NBFCs and in shares, debentures of subsidiaries and group companies in excess of 10% of the owned funds mentioned above will be deducted to arrive at the Net Owned Fund.

In terms of section 45-IA of the Reserve Bank of India Act, 1934, a non-banking financial company can commence or carry on business of a non-banking financial institution only after obtaining a certificate of registration from the Reserve Bank of India.

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

(a) A factory has 100 male employees and 50 female employees. Factory Manager is keen to know whether the factory has to provide following welfare to the workers employed as per Factories Act :

(i) First aid appliances

(ii) Canteens

(iii) Creches.

(3 marks)

(b) Harpreet is doing Masters Degree and he is studying about environmental legislations.

He is enquiring about 'Green Tribunal'. Brief him about Green Tribunal and its objectives.

(3 marks)

(c) Tony Singh is a popular stage performer and M/s Pon Sun Studios, Chandigarh is having all the rights, titles and interests in the personality of the artist along with the trade. A company started selling miniature toys of Tony Singh to encash his popularity. In the light of statutory provision, examine the remedy available against company for infringing Tony Singh's right to publicity.

(3 marks)

(d) Public Liability Insurance intends to provide protection to the general public against any unforeseen industrial accident. Elucidate.

(3 marks)

(e) Prabhat is proposing to start a new business wants to know from you the mandatory annual compliances for an LLP and a partnership firm.

(3 marks)

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

(i) One of the objectives of the Design Rules, 2001 is to enable protection of newly created designs applying to an article manufactured by a particular industrial process ? Elucidate.

(3 marks)

- (ii) *Preerna has taken some books from Library and she wants to reproduce “Verbatim” some pages from the book of her Ph.D. thesis. She would like to know from you whether she will be violating any Copyright protection in doing so. Also brief her exceptions available to protect the interest of the users under Copyright law. (3 marks)*
- (iii) *Sukrit is running small fabrication unit with 5 workers. He is planning for expansion and it may require addition of 10-15 employees. He is planning to register his business under Employees State Insurance (ESI) and extend the benefit to all his employees. He is keen in knowing from you the benefits available to him as an employer in extending the ESI facilities to his employees. (3 marks)*
- (iv) *What are the circumstances under which RBI may cancel the license granted to a banking company regulated under the Banking Regulation Act, 1949. (3 marks)*
- (v) *TPS Pvt. Ltd. incorporated on 1st August, 2017 having its registered office at Saket, New Delhi. Management of the Company kept some of the statutory records in the other branch of the Company in Janakpuri, New Delhi. Explain whether Company is eligible to keep its statutory records at place other than its registered office under the Companies Act, 2013. (3 marks)*

Answer 4(a)

Factories Act, 1948 provides for the following welfare to the workers:

- First-aid appliances – one first-aid box not less than one for every 150 workers
- Canteens when there are 250 or more workers
- Crèches when there are 30 or more women workers.

In the given case,

- (i) Since a total of 150 workers are employed in the factory, it has to provide first aid appliances.
- (ii) The canteen facility need not be provided, as it applies to factories employing more than 250 workers.
- (iii) Since the factory has 50 female workers, it has to provide for crèche facility.

Answer 4(b)

The National Green Tribunal (NGT), 2010 was established keeping in mind The Rio Conference of 1992 and based on the international environment principles of ‘polluter pays principle’ and ‘sustainable development’.

This legislation was established to deal with environment related disputes, a speedy disposal of these cases and giving relief and compensation for damages to persons and property and for matters connected or incidental thereto

NGT was established for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

Objectives of NGT

- The effective and speedy disposal of the cases relating to environment protection and conservation of forests and other natural resources. All the previous pending cases will also be heard by the Tribunal.
- It aims at enforcing all the legal rights relating to the environment
- It also accounts for providing compensation and relief to effected people for damage of property

Answer 4(c)

Tony Singh, being the lawful owner of the trade mark, M/s Pon Sun Studies can institute a civil suit seeking a restraint on infringement of the trade mark.

The facts are similar to the decided case Daler Mehndi Entertainment v. Baby Gift House & org. In that case, court held that passing off would occur when the mark is being used to create confusion in the minds of the consumer that results in the damage or loss of business for the person or company who are the lawful owner of the trademark.

Answer 4(d)

Public Liability Insurance Act, 1991 provide the compensation for damages to victims of an accident of handling any hazardous substance or, to save the owner of production/ storage of hazardous substance from hefty penalties. This is done by providing compulsory insurance for third party liability.

The owner shall buy one or more insurance policies before he/she starts handling any hazardous substance. When any accident comes to the knowledge of the Collector, then he/she shall verify the occurrence of accident and order for relief as he/she deems fit.

Answer 4(e)**Mandatory annual compliances for LLP**

Annual returns are filed in Form 11. This form is a summary of the management of affairs of the LLP, such as number of partners and their names. Form 11 needs to be filed with the Registrar within 60 days of the closure of the financial year. Hence this Annual Return should be filed on or before 30th May every year by the LLP.

In case the annual turnover of the LLP crosses Rs.5 crore or the capital contribution from Partners exceeds Rs.50 lakh, the Annual return should be accompanied by a Certificate from Practicing Company Secretary

All LLPs are required to maintain their books of accounts in Double Entry System. They also need to prepare a Statement of Solvency (Accounts) every year ending on 31st March. For this purpose, LLP Form 8 should be filed with the Registrar of Companies on or before 30th October every year.

It should be noted that LLPs whose annual turnover exceeds Rs.40 lakh or whose contribution exceeds Rs.25 lakh are required to get their accounts audited by a qualified Chartered Accountant mandatorily.

Maintenance of book of account is mandatory for LLP, irrespective of annual turnover.

In partnership there is no requirement for filing Annual Return. There is no requirement for certificate from company secretary.

Answer 4A(i)

A design registration protects the aesthetic aspect of a product. Registration confers protection on the features of shape, configuration, pattern, ornament or composition of lines or colours as applied to an article of manufacture. Since manufacturing has to be achieved through one or more industrial process the object of rules provides for the particular objective.

Functional or technical features of articles are not protected under the Design Act, 2000. An 'article' includes, among other things, any substance – artificial or partly artificial and partly natural – and any part of an article which is capable of being manufactured and sold independently.

Answer 4(A)(ii)

Verbatim reproduction of pages of the book for the Ph.D. thesis is not protected under the fair use doctrine of the Copyright Act, 1957. The case of *Fateh Singh Mehta v. OP Singhal* decided by the Rajasthan High Court deals with similar set of facts whereby research thesis submitted by the respondent was copied verbatim to large extent by the appellant for preparing his Ph.D. thesis. It was held to be infringement on part of the appellant.

In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. It includes:

- for the purpose of research or private study,
- for criticism or review,
- for reporting current events,
- in connection with judicial proceeding,
- for the purpose of education and religious ceremonies

Section 52 of the Copyright Act, 1957 provides for various other purposes which will constitute fair use of copyrighted material.

Answer 4(A)(iii)

Benefits for employers in extending the ESI facilities to employees

- Employers are absolved of all their liabilities of providing medical benefits to their employees and their family members or dependents in kind or in the form of fixed cash allowance.
- Employers are granted exemption pertaining to the applicability of Maternity Benefit Act, 1961, Employees Compensation Act, 1923, etc. in respect of employees covered under the ESIC Scheme. This results in employers possessing a productive and well-secured workforce, at their disposal which is an essential ingredient for better productivity of an organization.

- Employers are absolved of any responsibility in times of physical distress of their employees or workers such as employment injury, sickness or physical disablement thereby resulting in loss of wages since the responsibility of paying cash benefits shifts from the employer to the ESIC Corporation in respect of insured employees.
- Any amount or sum paid by way of contribution under the Employees' State Insurance Act, 1948 is deducted in computing 'Income' under the Income Tax Act, 1961.

Answer 4(A)(iv)

The Reserve Bank of India may cancel a license granted to a banking company under section 22(4) of the Banking Regulation Act, 1949 -

- if the company ceases to carry on banking business in India; or
- if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1) of section 22; or
- if at any time, any of the conditions referred to in sub-section 3(15) and sub-section (3A) is not fulfilled.

Provided that before cancelling a license under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfill any of the conditions referred to therein, the Reserve Bank of India, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

Answer 4(A)(v)

Unless otherwise notified, it is assumed that statutory records are kept at the registered office address of the company. If it is inconvenient to make certain records available for inspection at the registered office, you may keep some or all of them at the other nearby premises under the jurisdiction of the company. It must be notified, if any statutory records are kept at any other place other than the registered office of the company.

Further, one must notify if they move any records, and the company is expected to confirm their location whenever you file an annual confirmation statement.

Hence, in this case TPS Pvt. Ltd. is eligible to keep its statutory record in their branch at Janakpuri, New Delhi.

PART C

Question 5

- ABC Ltd., has initiated insolvency proceedings against RS Ltd., for recovery of debt of ₹2.86 crore. ABC Ltd. intends to appoint Rahul, one of the employees of its statutory auditors, M/s ASA & Associates, Chartered Accountants, as its resolution professional. In the light of the statutory provisions, examine whether Rahul can be appointed as a resolution professional. (3 marks)*

- (b) Describe the procedure mentioned under Section 53 of Insolvency and Bankruptcy Code (IBC), 2016 for distribution of assets in case of liquidation. (3 marks)
- (c) Preetha has recently become Director of a Company. She wants to know about 'active' and 'inactive' status shown in MCA website. Explain the concept of 'Inactive Company' to her referring the relevant provisions of the Company Law and also brief her under what circumstances a company can make application for obtaining 'dormant' status. (3 marks)
- (d) National Company Law Tribunal (NCLT) has passed order for Commencement of Corporate Insolvency Resolution Process (CIRP) of Dora Travels Ltd., one of its director has approached you to know the effects of "Moratorium" upon the commencement of CIRP. (3 marks)
- (e) Mithali sports LLP has been struck off by Registrar of Companies. One of its unsecured creditors has approached you to know his eligibility in making application for revival of struck off LLP. Also brief with the procedures for the revival of struck off LLP. (3 marks)

Answer 5(a)

Rahul being one of the employees of statutory auditors of the debtor company is not independent of the debtor and as such his appointment as Resolution Professional is not valid.

As per IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible to be appointed as a resolution professional if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Answer 5(b)

Section 53 of the Insolvency and Bankruptcy Code, 2016 provides for the manner of distribution of assets in case of liquidation and order of priority of distribution. This order of providing is known as the 'waterfall Arrangement'. Each category of persons comes in priority after the previous one. It is pertinent to note that this order of priority is notwithstanding anything which is contained in any other Central or State law.

Answer 5(c)

'Inactive company' means a company which,

- (a) has not been carrying on any business or operation, or
- (b) has not made any significant accounting transaction during the last two financial years, or
- (c) has not filed financial statements and annual returns during the last two financial years.

'Dormant company' is formed and registered for a future project to hold an asset or intellectual property and has no significant accounting transaction. Such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Answer 5(d)

On commencement of the CIRP, the adjudicating authority passes an order declaring moratorium for prohibiting all of the following by virtue of section 14 of the Insolvency and Bankruptcy Code, 2016:

- (a) Institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under SARFAESI Act, 2002.
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor

The order of moratorium shall have effect from the date of order till the completion of CIRP or date of approval of resolution plan or order of liquidation as the case may be.

Answer 5(e)

Unlike procedure for revival of a company enumerated in section 252 (1) and (3) of the Companies Act, 2013, there is no corresponding provision for the revival of LLPs in the Limited Liability Partnership Act, 2008.

Therefore, in the case of strike-off of LLPs the ultimate remedy for revival is to file the Writ Petition before the High Court of appropriate jurisdiction.

However, in the recent matter of Lawns Hospitality LLP, the NCLT Chennai Bench has allowed revival of the struck off LLP on the same parallel lines as that of companies under section 252(3) of the Companies Act, 2013.

Question 6

- (a) *Yogendra is an allottee of a flat in a real estate project promoted by the company, but he has not been delivered flat as per Agreement. He has approached you to know, whether he can make application under Insolvency and Bankruptcy Code, 2016 and in what status he can make application. Also brief the timelines for Corporate Insolvency Resolution Process.*
- (b) *Yuvan Infra Ltd. is continuously making losses and the Directors of the Company are planning to voluntarily wind up the Company. As a Company Secretary advise on conditions and also advise them briefly on procedures for voluntary liquidation. (5 marks each)*

Answer 6(a)

Yogendra, allottee of the flat can be treated as financial creditor.

As per amendments made to the definition of 'financial debt' under section 5(8) of the Insolvency and Bankruptcy Code, 2016, 'financial debt' means a debt along with

interest, if any, which is disbursed against the consideration for the time value of money and includes any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.

Explanation: for the purpose of sub-clause (f) of section 5(8), any amount raised from an allottee under real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and the expressions, 'allottee' and 'real estate project' shall have the meanings respectively assigned to them in clauses (d) and (zb) of Section 2 of Real Estate (Regulation and Development) Act, 2016.

Timeline for completion of CIRP increased to an overall limit of 330 days by the Insolvency and Bankruptcy Code (Amendment) Act, 2019 w.e.f. 5th August, 2019. Prior to the Amendment, the Code required that the CIRP should be concluded within a maximum period of 180 days (with a maximum one-time extension of 90 days) from the insolvency commencement date.

Answer 6(b)

Section 59(3) of the Insolvency & Bankruptcy Code prescribes following conditions for voluntary liquidation.

1. A declaration by majority of the directors of the company (in an affidavit) stating that they have made a full inquiry into the affairs of the company and formed an opinion that either the company has no debt or it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation.
2. Company is not being liquidated to defraud any person.

Brief procedure of voluntary liquidation of a corporate person under IBC includes:

1. Submission of declaration that the company will be able to pay its dues and is not being liquidated to defraud any person to ROC
2. Passing special resolution for approving the proposal of voluntary liquidation and appointment of liquidator
3. Public announcement inviting claims of all stakeholders
4. Intimation to the ROC and the Board about the approval
5. Preparation of preliminary report about the capital structure, estimates of assets and liabilities, proposed plan of action
6. Verification of claims
7. Opening of a bank account in the name of the corporate person followed by the words 'in voluntary liquidation' in a scheduled bank
8. Sale of assets, recovery of monies due to corporate person, realization of uncalled capital or unpaid capital contribution
9. Distribution of the proceeds from realisation
10. Submission of final report by the liquidator to the corporate person, ROC and the Board and application to the National Company Law Tribunal (NCLT)
11. Submission of NCLT order regarding the dissolution.

TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

Total number of Questions : 100

Note : All questions in Part-I relate to the Income Tax Act, 1961 and Assessment Year 2019-20, unless stated otherwise.

PART I

1. The Central Board of Direct Taxes (CBDT) is headed by Chairman and also comprises of six members. The Chairman and all the Members of the CBDT are being selected :
 - (A) By Finance Minister
 - (B) From IRS
 - (C) By Prime Minister
 - (D) By Chief Justice of India

2. The Central Board of Direct Taxes (CBDT) provides essential inputs for policy and planning of direct taxes in India and is a functioning under the Central Board of Revenue Act, 1963.
 - (A) Constituted Authority
 - (B) Revenue Administration Authority
 - (C) Statutory Authority
 - (D) Central Authority

3. A person is deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in
 - (A) India
 - (B) India other than J & K
 - (C) Undivided India
 - (D) Greater India

4. Central Board of Direct Taxes (CBDT) vide Circular No. 8 of 2017 dated 23rd February, 2017 has clarified that the Place of Effective Management (POEM) provisions shall not apply to a company having turnover or gross receipts in a financial year of
 - (A) ₹30 crore or less
 - (B) ₹10 crore or less

- (C) ₹50 crore or less
(D) ₹5 crore or less
5. Thomas, an Indian citizen is living in Kerala since birth in 1954 and left for UAE on 13th June, 2014 for a salaried employment contract for 4 years and came back on 7th July, 2018 to India and settled at Kerala.
His residential status for the Assessment Year 2019-20 shall be :
- (A) Resident
(B) Non-Resident
(C) Resident & Not Ordinary Resident
(D) Resident & Ordinary Resident
6. The Apex Court in the case of *CIT-Gujarat Vs. Saurashtra Cements Ltd. (2010) 233 CTR 209* has held that liquidated damages received from the supplier on account of delay in the supply of plant and machinery shall be treated in the nature of :
- (A) Capital Receipt
(B) Revenue Receipt
(C) Not a receipt but to be reduced from the cost of Plant & Machinery
(D) Compensation
7. XYZ Pvt. Ltd. had distributed income of ₹6 lakh to Rajesh for the reason of buyback of its shares (Not being listed on a recognized stock exchange) from him on 1st February, 2019. The amount of ₹6 lakh received by Rajesh in the A.Y. 2019-20 shall be
- (A) Taxable in full
(B) Exempt u/s 10(34A)
(C) Taxable @ 20%
(D) Taxable at normal rate of tax
8. The maximum amount of any death-cumretirement gratuity received by an employee not covered under the payment of Gratuity Act, 1972 on Superannuation from the employer exempt from tax is of
- (A) ₹20 Lakh
(B) ₹10 Lakh
(C) ₹5 Lakh
(D) ₹15 Lakh

9. What will be the amount of gross salary which shall be required to be declared in the return of income to be filed for the previous year 2018-19 by Harun, who joined services as Manager Accounts on the salary of ₹17,000 p.m. in XYZ Ltd. on 1st April, 2016 in the grade of 15,000 – 2000 — 19,000 – 3000 — 28,000 ?
- (A) ₹3,00,000
(B) ₹2,28,000
(C) ₹2,64,000
(D) ₹2,52,000
10. Total income of Nand Kishore under the head 'Salary' for the financial year 2018-19 of whose basic salary and DA per month was of ₹40,000 and ₹3,000 respectively and who was also paid leave salary of ₹6,000 and ₹1,000 of professional tax by the employer shall be
- (A) ₹4,82,000
(B) ₹4,76,000
(C) ₹5,23,000
(D) ₹5,16,000
11. A Central Government Officer received during the year 2018-19 salary excluding all allowances of ₹9,00,000 and amount of entertainment allowance of ₹12,000 @ ₹1,000 p.m. The maximum amount of entertainment allowance so received by him being exempt under section 16(ii) of the Act is
- (A) 1/5th of salary
(B) ₹1,000 p.m.
(C) ₹5,000
(D) ₹10,000
12. Rajendra a non-resident Indian in the previous year 2018-19 was in receipt of rent of house property located in Dubai of ₹27,50,000. The amount of rent was transferred and credited in the bank account of Rajendra maintained with SBI, Vadodara by the tenant quarterly. The Annual Letting Value (ALV) of the house located in Dubai subject to tax under the head Income from house property in A.Y. 2019-20 shall be
- (A) ₹16,50,000
(B) ₹19,25,000
(C) ₹27,50,000
(D) Not taxable as property is in Dubai and he is non-resident
13. What will be the Gross Annual Value (GAV) of a house owned by Ramesh covered by Rent Control Act remained let out during the year 2018-19 of which;
- (i) Municipal value is ₹3,50,000

- (ii) Actual (De Facto) Rent is ₹3,20,000
- (iii) Fair Rent is ₹3,00,000, and
- (iv) Standard Rent is ₹3,60,000
- (A) ₹3,60,000
- (B) ₹3,20,000
- (C) ₹3,50,000
- (D) ₹3,00,000
14. Santhnam purchased in October, 2017 with the financial assistance by way of housing loan provided by PNB Housing Finance Ltd. a flat in Chennai to be used exclusively for his own residential purposes. Interest on the housing loan till March, 2019 paid by him was of ₹2,18,780. He wants to know the amount of deduction to be available to him in respect of interest so paid on the housing loan while computing his income for A.Y. 2019-20.
- (A) ₹30,000
- (B) ₹2,18,780
- (C) ₹1,50,000
- (D) ₹2,00,000
15. House owned by Suresh was sold on 1st January, 2019 and till the date of sale, the house was on rent of ₹7,000 p.m. The other relevant details of this house are (i) municipal value ₹72,000 p.a. (ii) fair rent ₹66,000 p.a. and standard rent ₹60,000 p.a. The income chargeable under the head House Property in A.Y. 2019-20 of this house shall be :
- (A) ₹63,000
- (B) ₹50,400
- (C) ₹46,200
- (D) ₹44,100
16. Assets put to use in business for more than 180 days during the previous year consisting (i) Factory Building, (ii) Computers, (iii) Motor Vehicles used for Commercial Purposes and (iv) Intangible Assets shall be depreciated at the rate of respectively.
- (A) 5%, 15%, 30%, 25%
- (B) 10%, 40%, 30%, 25%
- (C) 10%, 15%, 25%, 25%
- (D) 5%, 40%, 15%, 25%

17. The WDV of the block of asset of plant & machinery depreciated @ 15% as on 1st April, 2018 was of ₹13,50,000. Out of this block, one machine was sold 1st July, 2018 for ₹4,50,000 and a new machine of ₹7,50,000 was purchased on 1st August, 2018 which could be put to use from 1st March, 2019. The amount of depreciation to be claimed on the block of plant & machinery in the computation of income for A.Y. 2019-20 shall be :
- (A) ₹1,35,000
(B) ₹2,47,500
(C) ₹1,91,250
(D) ₹2,53,125
18. A machine owned by AB & Co. was transferred to XYZ & Co. on 1st January, 2019 for ₹5 lakh of which actual cost and WDV was of ₹3 lakh and 2 lakh respectively. However, the fair market value on the date of transfer of machine was of ₹4 lakh. XYZ & Co. will be allowed depreciation on such machine by taking value thereof at ₹.....
- (A) 5 lakh
(B) 2 lakh
(C) 3 lakh
(D) 4 lakh
19. Any asset, on which depreciation is claimed on the basis of Straight Line Method (SLM) is sold and the amount by which money payable together with scrap value, fall short of the Written Down Value (WDV) of such asset, the amount of such deficiency in value of asset is allowed to be written off in the year of sale as
- (A) Balancing charge
(B) Terminal depreciation
(C) Loss on sale of asset
(D) Residual value of asset
20. Anirudh had made payment of (i) ₹30,000 to IIT, Kanpur for an approved scientific research programme (ii) ₹45,000 revenue expenditure on in house R&D facility as approved by prescribed authority and (iii) ₹1,00,000 to Indian Institute of Science, Bengaluru for scientific research, wants to know about the deduction available while computing the income under "Profits and gains from business" in the Assessment Year 2019-20.
- (A) ₹2,40,000
(B) ₹1,75,000
(C) ₹2,62,500
(D) ₹2,65,000

21. XAB Ltd. has incurred amount of ₹4,00,000 towards capital expenditure and ₹1,50,000 towards bona fide revenue expenditure for the purpose of promoting family planning amongst its employees during the year 2018-19. Company can claim deduction of an amount of ₹..... for such expenses in the return to be filed for A.Y. 2019-20.
- (A) 50% of ₹5,50,000
(B) ₹2,30,000
(C) Such expenses are not allowed
(D) 20% of ₹5,50,000
22. Ping Pong is a Proprietorship firm of Pinga, resident in India having turnover from manufacturing and sale of Steel balls for the year 2018-19 of ₹148 lakh which is inclusive of amount of ₹42 lakh received through electronic clearing system/RTGS/NEFT. The accounts are not properly maintained by Pinga and therefore he wants to pay tax on the income computed under section 44AD of Act. Advise Pinga, how much income he will be required to pay tax for A.Y. 2019-20 as per section 44AD :
- (A) ₹11,84,000
(B) Not allowed to opt 44AD being turnover above ₹100 lakh
(C) ₹11,00,000
(D) ₹8,88,000
23. Mr. Ramanad, engaged in the business of plying, hiring or leasing of goods carriers as on 1st April, 2018 was having 3 trucks of gross vehicles weight of less than 12,000 kgs each. One truck out of these 3 trucks was sold by him on 23rd July, 2018 and after its sale, 2 more trucks (1 of less than 12,000 kgs. and 1 of 16,900 kgs) were purchased on 5th September, 2018. He wants to declare the income of trucks as per provisions of section 44AE of the Act and be required to declare such income at ₹..... in the return for A.Y. 2019-20 from plying of these vehicles during the previous year ended on 31st March, 2019.
- (A) ₹3,54,500
(B) ₹3,81,500
(C) ₹3,15,000
(D) ₹3,74,000
24. Indexed cost of acquisition of the house property purchased for ₹80 lakh in June, 1998 and was sold in December, 2018 will be of ₹..... (worked out by taking the CII of 1998-99 as 351; of the year 2001-02 as 100; of the year 2018-19 as 280) and FMV of the house property as on 1st April, 2001 of ₹90 lakh.
- (A) ₹63,81,766

- (B) ₹90 lakh
(C) ₹252 lakh
(D) ₹71,79,487
25. Chirag entered into an agreement for sale of his house property located at Jaipur to Yash on 1st August, 2017 for a total sale consideration of ₹95 lakh. Yash paid an amount of ₹20 lakh by account payee cheque to Chirag on 1st August, 2017 and balance was agreed to be paid at the time of registration of the Conveyance Deed which could only be executed by Chirag on 1st September 2018. The Stamp Valuation Authority determined the value of the house property on the date of registration of deed at ₹140 lakh. However, the value determined by the Stamp Valuation Authority of the house on the date of agreement (1st August, 2017) was ₹110 lakh. The sale value for the purpose of computing the capital gain of the property in A.Y. 2019-20 to be taken by Chirag shall be :
- (A) ₹95 lakh
(B) ₹110 lakh
(C) ₹140 lakh
(D) ₹120 lakh
26. Rohit is working as Company Secretary in Raj Chem Pvt. Ltd. on a salary of ₹20,000 p.m. He got married to Pooja who holds 25% shares of this Company. What will be the impact of salary paid to Rohit by the company in the hands of Pooja ?
- (A) No amount to be clubbed
(B) Club 50% salary
(C) Club 100% salary
(D) 25% salary be clubbed
27. Transfer of income is revocable in the following cases :
- (A) Sale with a condition of re-purchase
(B) Power to change beneficiary or trustees
(C) Both (A) and (B)
(D) Neither (A) nor (B)
28. Ram has gifted on 11th May, 2018 an amount of ₹10,00,000 to his wife Sita without consideration and also for not to live apart. The gifted amount was invested by his wife in interest bearing security on which she earned interest of ₹1,00,000 on 1st January, 2019. The amount of interest of ₹1,00,000 was further invested by her in the business from which she earned a profit of ₹15,000 for the period ended on 31st March, 2019. Specify the income which is to be included in the hands of Ram in A.Y. 2019-20.
- (A) ₹1,15,000
(B) ₹1,00,000

- (C) ₹15,000
(D) Nil
29. ABC Limited fulfilling all the conditions of operating different infrastructure facilities for claiming deduction u/s 80-IA. Find which are being not covered under infrastructure facility out of the following :
- (A) Developing of Toll-Road
(B) Operating and maintaining of Highway Project
(C) Operating and maintaining of an Airport
(D) Developing of industrial park
30. The profits of a Co-operative Society engaged in (i) Carrying out the business of banking, (ii) A cottage industry and (iii) Collective disposal of labour of its members are exempt from tax as per section 80P up-to :
- (A) 75% of the profits
(B) 100% of the profits
(C) 50% of the profits
(D) 40% of the profits
31. Ram & Co., a partnership firm worked out total book profits for the year ended 31st March, 2019 of ₹6,00,000 and has made payment of salary of ₹4,60,000 authorized by the partnership deed to the working partners. Firm wants to know that how much amount of salary paid to partners be allowable as deduction in A.Y. 2019-20.
- (A) ₹4,60,000
(B) ₹3,90,000
(C) ₹2,70,000
(D) ₹4,50,000
32. A charitable trust registered as per section 12AA of Income Tax Act, having capital asset purchased in June, 2015 for ₹1,00,000 and used for the charitable purposes till the same was sold in December, 2018 for ₹1,50,000. The Trust, after sale of capital asset purchased a new capital asset for ₹1,20,000 which was also used for charitable purposes of the Trust. The amount of capital gain utilized in purchase of new capital asset by Trust shall be
- (A) ₹20,000
(B) ₹50,000
(C) ₹30,000
(D) Nil

33. Samode Charitable Trust formed under the Trust Deed on 1st May, 2018 filed an application for grant of registration u/s 12AA of the Act to the CIT (Exemption) on 13th May, 2018. The CIT (Exemption) did not pass any order as to Registration of the Trust, till 31st March, 2019. The trust shall be deemed to have the registration as per provisions of Act under section 12AA effective from
- (A) 1st May, 2018
 - (B) 1st December, 2018
 - (C) 13th May, 2018
 - (D) 13th November, 2018
34. ABC Ltd., a domestic company having a turnover of ₹350 crore has computed its total income for the year 2018-19 of ₹102 lakh. The tax payable by the company on such income in A.Y. 2019-20 shall be :
- (A) ₹34,05,168
 - (B) ₹29,70,240
 - (C) ₹33,28,000
 - (D) ₹33,30,968
35. Provisions of Minimum Alternate Tax (MAT) are applicable to the companies which are;
- (i) Indian companies
 - (ii) Foreign companies
 - (iii) LLP
- (A) (i) & (iii)
 - (B) (i) & (ii)
 - (C) All the three
 - (D) None of the above
36. Total income of XYZ Limited includes the income of dividend of ₹10 lakh paid by a U.K. base foreign company in which XYZ Limited holds 30% of the equity share capital. The dividend income so received by the company from the U.K. base foreign company in A.Y. 2019-20 shall be :
- (A) Taxable @ 15% of such income
 - (B) Not taxable being exempt u/s 10(34)
 - (C) Taxable at the normal rate applicable on domestic company
 - (D) Taxable @ 10% of such income

37. RAJA Ltd. has earned income of ₹150 lakh inclusive of income of ₹50 lakh from the transfer of Carbon Credit during the year 2018-19. The company had incurred an amount of ₹5 lakh as transfer expenses on transfer of Carbon Credit. The income received from transfer of Carbon Credit in the A.Y. 2019-20 shall be taxed as per section 115BBG of the Act and the amount of tax on such income payable shall be :
- (A) ₹5,82,400
 - (B) ₹5,56,400
 - (C) ₹13,00,000
 - (D) ₹5,00,000
38. Every person being resident Indian who carries-out the business/profession or a non-resident who has a permanent establishment in India shall deduct equalization levy from the amount paid/payable to a non-resident in respect of specified services @ whereas the aggregate amount of consideration for specified services in the previous year exceeds ₹..... .
- (A) 8%, ₹10,00,000
 - (B) 8%, ₹1,00,000
 - (C) 6%, ₹1,00,000
 - (D) 10%, ₹1,00,000
39. A transfer of capital asset by a private company or unlisted public company shall not be treated as transfer u/s 47 (xiiib) of the Act on Conversion into LLP on fulfillment of the conditions which inter-alia include that the total value of assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion took place does not exceed
- (A) ₹5,00,00,000
 - (B) ₹10,00,00,000
 - (C) ₹20,00,00,000
 - (D) ₹1,00,00,000
40. Rakesh entered into a Joint Development Agreement with Reality Builders Pvt. Ltd. for developing a project on the land owned by him during the previous year 2018-19 and the builder who agreed to make the payment of ₹50 lakh to Rakesh paid the same to him on execution of the Joint Development Agreement. The amount of TDS u/s 194-IC required to be deducted on the amount of ₹50 lakh shall be
- (A) ₹50,000
 - (B) ₹2,50,000
 - (C) ₹5,00,000
 - (D) ₹10,00,000

41. Wealth Maximization Fund Limited had paid an amount of interest of ₹20 lakh in respect of money borrowed outside India on rupee denominated bonds to a foreign Institutional Investor. Wealth Maximization Fund Limited is required to deduct tax at source out of such payment of interest on these bonds at the rate of
- (A) 10%
 - (B) 15%
 - (C) No TDS
 - (D) 5%
42. A house property owned by Nitin, a nonresident, at Delhi was agreed to be sold to Ramesh for a consideration of ₹70,00,000. Ramesh has stated to Nitin that the payment of sale consideration shall be subject to TDS and the amount of TDS on the sale consideration will be @ as per section of the Income Tax Act, 1961.
- (A) 34.32%, 195
 - (B) 10%, 194-IC
 - (C) 5.72%, 194-LBA
 - (D) 1%, 194-IA
43. The quarterly return of TDS relating to payments made to non-resident and the foreign company being a unit holder of mutual funds is to be filed in return form number :
- (A) 24Q
 - (B) 27Q
 - (C) 26Q
 - (D) 22Q
44. Wherever any tax, interest, penalty or other sum under the I.T. Act is payable, the Assessing Officer has to serve upon the assessee a notice of demand as per Rule 15 and 38 under section of the I.T. Act, 1961.
- (A) 156
 - (B) 143(3)
 - (C) 153
 - (D) 220
45. Where the advance tax paid on or before March, 2019 is less than 100% of the tax due on the total income declared in the return as reduced by the amount of tax deducted at source, the assessee shall be making payment of interest on the amount of shortfall for the tax due on the returned income so declared per month at the rate of
- (A) 2%

- (B) 1%
 - (C) Nil
 - (D) 1.5%
46. The premises of an assessee within the jurisdiction of an Assessing Officer can be surveyed during business hours by such Income -Tax Authority.....
- (A) After sunset and before sunrise
 - (B) After sunrise but before sunset
 - (C) Any time during 24 hours
 - (D) After 11 A.M.
47. The Assessing Officer can complete the assessment under section 144 of the Act even though there is no failure on the part of assessee under section 139(1), 139(4), 139(5), 142(1), 142(2A) or 143(2) of the Act. Such powers by the A.O. may be exercised in which of the following situations :
- (A) Where the A.O. is not satisfied about the correctness or completeness of the accounts of the assessee
 - (B) Where the method of accounting has not been regularly followed by the assessee
 - (C) Where the income has not been computed in accordance with "ICDS" notified by the Central Government u/s 145(2)
 - (D) Any of above three or in all the three above situations
48. The Commissioner of Income Tax can call for the records of an assessee and by virtue of powers conferred under the Act can make the revision of the order passed by the Assessing Officer after giving an opportunity of being heard to the assessee. Such powers can be invoked by the CIT, when :
- (A) The order is erroneous
 - (B) The order is prejudicial to the interest of revenue
 - (C) When the return has not been filed by the assessee
 - (D) When both the conditions of (A) and (B) exist.
49. As per section 9A, an eligible off-shore investment fund shall furnish within 90 days from the end of the financial year, a statement containing information relating to fulfillment of specified conditions and such other information or documents as may be prescribed. Penalty of to be levied, if investment fund failed to comply with the requirements as per section 271FAB.
- (A) ₹1,00,000
 - (B) ₹500 per day
 - (C) ₹5,00,000
 - (D) ₹10,00,000

50. The Assessing Officer while scrutinizing the return of an assessee find under reporting of income for the reason of misreporting of facts of such income and thus levied penalty on such under reported income resulting from misreporting of income. The penalty to be imposed by the A.O. shall be at the rate of tax payable on such misreported income.
- (A) 50%
 - (B) 100%
 - (C) 200%
 - (D) 300%

PART—II

51. Every decision of the Goods and Service Tax Council shall be taken at a meeting, by majority of not less than of the weighted votes of the members present and voting. The vote of the Central Government shall have the weightage of of the total votes cast and the votes of all the State Government taken together shall have a weightage of of the total votes cast in that meeting.
- (A) 2/3, 1/3, 3/4
 - (B) 3/4, 1/3, 2/3
 - (C) 2/3, 2/3, 1/3
 - (D) 3/4, 1/2, 2/3
52. The Goods and Service Tax Council shall establish a mechanism to adjudicate any dispute
- (A) Relating to any defect in the appointment of a person as a Member
 - (B) Relating to any procedural irregularity of the Council
 - (C) Between the Government of India and one or more States
 - (D) Relating to weightage of vote for taking decision
53. Administration and procedural aspects of Goods and Service Tax are to be administered by the which is under the control of the Department of Revenue, Ministry of Finance, Government of India.
- (A) Central Board of Indirect Taxes and Customs
 - (B) Central Board of Indirect Taxes
 - (C) Central Board of Direct Taxes
 - (D) GST Council
54. GST is a comprehensive tax regime covering both Goods and Services and be

collected on value added at each stage of the supply chain. GST is thus levied on the basis of

- (A) Consumption principle
 - (B) Destination principle
 - (C) Set-off against that payable principle
 - (D) Both consumption and destination base principle
55. Most of the countries in the world follow a uniform GST System whereas considering to the federal nature of Indian Constitution, Model of GST proposed and implemented in India from 1st July, 2017 is
- (A) Unilateral Model
 - (B) Bilateral Model
 - (C) Dual Model
 - (D) None of the above
56. Section 7 of the CGST Act, 2017 defines the term 'supply' which are further being enumerated in the various schedules as specified in that section. The section includes certain transactions which are even without consideration but being construed as supply and also known as deemed supply. Such transactions are being specified in
- (A) Schedule - II
 - (B) Schedule - I
 - (C) Schedule - III
 - (D) Schedule - IV
57. Permanent transfer or disposal of goods forming part of business asset by or under the directions of the person carrying on the business whether or not for consideration as well as transfer of title in goods under an agreement where property in goods passes at a future date on payment of full consideration as per Schedule - II of the CGST Act, 2017 to be treated as
- (A) Supply of Goods
 - (B) Supply of Services
 - (C) Deemed supply
 - (D) Both, supply and deemed supply
58. Construction of a complex, building, civil structure or the part thereof including a complex or building intended for sale to a buyer, wholly or partly except where the entire consideration has been received after issuance of completion certificate, where required, by a competent authority or after its first occupation, whichever is earlier as per section - 7 of the CGST Act, 2017 read with item specified in schedule is known as
- (A) Goods
 - (B) Both Goods and Services

- (C) Services
 - (D) Contract work
59. Which of the categories of registered persons who are being eligible for the composition scheme under the CGST Act, 2017 :
- (A) Supplier of the Restaurant Services
 - (B) Manufacturer of notified goods
 - (C) Non-resident taxable persons
 - (D) Casual taxable person
60. The composition levy payable by a registered person whose aggregate turnover in the preceding Financial Year did not exceed One Crore and fifty lakh rupees making supply by way of or as part of any services or in any other manner whatsoever of goods being food or any other article for human consumption or any drink (other than Alcoholic Liquor for human consumption) where such supply or service is for cash or defer payment or other valuable consideration shall be at of the turnover.
- (A) 0.5%
 - (B) 1%
 - (C) 2.5%
 - (D) 5%
61. The liability to pay GST would depend on the mechanism the transaction aligns to the supplier who is registered with GST, issues a tax invoice, collects the GST and pays it to the Government. This mechanism under GST is known as..... .
- (A) Forward charge mechanism
 - (B) Reverse charge mechanism
 - (C) Composition levy mechanism
 - (D) Taxable supply mechanism
62. The exempt supply has been defined as supply of any goods/services/both, which attract a Nil rate of tax, or which may be wholly exempt from tax, and therefore, includes non-taxable supplies. Which of the following is covered as an exempt supply under GST ?
- (A) Branded Aata/Basin/Maida
 - (B) Services by IRDA, SEBI, RBI, EPFO
 - (C) Services by Post Office
 - (D) Services by the Government for transportation of passenger

63. The supply of Goods/Services/both, where location of supplier and the place of supply are in the same State or same Union Territory under CGST Act, 2017 and UTGST Act, 2017 is known as a
- (A) Inter-state supply
 - (B) Export supply
 - (C) Intra-state supply
 - (D) Not Intra-state supply
64. Ram & Company of Delhi has taken a contract to supply of food in New Delhi-Mumbai Rajdhani Express and the supplies of food in the train are being taken on board at Kota in Rajasthan from Agarwal Food & Caterers. The place of supply in such case shall be
- (A) Delhi
 - (B) Kota
 - (C) Mumbai
 - (D) None of the above
65. Mr. Ravi Raj a registered person based in Ahmedabad solicits the services of an Event Management Company based in Mumbai for his daughter's marriage planned as a destination wedding at a Palace located in Udaipur. The place of supply in this case shall be and tax to be charged under.....
- (A) Ahmedabad, IGST
 - (B) Mumbai, IGST
 - (C) Udaipur, IGST
 - (D) Ahmedabad, SGST
66. ABC Ltd., supplied goods to XYZ Ltd. under a contract for the goods to be delivered to the factory of XYZ Ltd. The goods were removed from the factory of ABC Ltd. on 9th September, 2018 and the goods were delivered to the factory of XYZ Ltd. on 15th September, 2018.
- The invoice was issued on 18th September, 2018 and the payment was credited to ABC's account on 20th Oct., 2018 although the entry in the books was made on 19th Sept., 2018 when the cheque was received. The time of supply in this case will be :
- (A) 18th September, 2018
 - (B) 9th September, 2018
 - (C) 15th September, 2018
 - (D) 20th October, 2018

67. What will the value of supply of the mobile phone sold by Micromax to Anil Kumar for ₹35,000 in exchange with of his old mobile phone. The sale price of the new mobile phone without exchange is ₹40,000. The value of old mobile phone so exchanged was of ₹7,000.
- (A) ₹35,000
(B) ₹40,000
(C) ₹42,000
(D) ₹33,000
68. Mishra Enterprises had made supplies of ₹5,50,000 to Bee Kay Enterprises. Municipal Authorities of Jaipur on such supplies levied the tax @ 10% of ₹55,000. CGST and SGST chargeable on the supply was of ₹66,000. Packing charges not included in the price of ₹5,50,000 amounted to ₹15,000. Subsidy of ₹25,000 was received from an NGO on the sale of such goods and the price of ₹5,50,000 is after taking in to account the amount of subsidy so received. Discount offered is @ 1% which was mentioned on the invoice. The value of supply in this case shall be
- (A) ₹6,45,000
(B) ₹6,39,500
(C) ₹6,20,000
(D) ₹6,38,550
69. Babbur Automobiles of Jaipur has supplied the goods of ₹2,66,090 to Goel Automobiles of Ajmer in the month of March, 2019. The supply so made was inclusive of tax charged as CGST and SGST which on the products so sold as per rates prescribed under CGST Act, 2017 is @ 18% The value of supply as per Rule 35 of the CGST Rule, 2017 of such supply shall be
- (A) ₹2,66,090
(B) ₹2,25,000
(C) ₹3,13,986
(D) ₹2,25,500
70. Section 2(62) of CGST Act, 2017 specify input tax in relation to a registered person, means the Central Tax, State Tax, Integrated Tax or Union Territory Tax charged on any supply of goods or services or both made to him but does not include :
- (A) Integrated goods and service tax charged on import of goods
(B) Tax under the provisions of section 9(3) and 9(4)
(C) Tax paid under composition levy
(D) Tax under Union Territory Goods & Service Tax Act

71. A registered taxable person is eligible to obtain Input Tax Credit (ITC) as per section 16 of the CGST Act, on fulfilling of certain conditions which consist of that such person should :

- (i) Be in possession of tax invoice
- (ii) Have received the goods
- (iii) Supplier have not paid the tax charged
- (iv) Supplier have furnished the return u/s 39
- (A) (i), (ii) & (iv)
- (B) (i), (iii) & (iv)
- (C) (i), (ii) & (iii)
- (D) (i), (ii), (iii) & (iv)

72. Availability of Input Tax Credit in special cases as per section 18(1) of the CGST Act, 2017 is available where a registered person is having tax invoice relating to such supply issued not after expiry of from the date of issue of tax invoice.

- (A) 3 months
- (B) 6 months
- (C) 1 year
- (D) 9 months

73. ABC Ltd. is engaged in manufacture of electrical appliances supply following details relating to GST paid on various items by them :

Item	GST Paid (₹)
Electrical Transformers utilized in the manufacturing process	1,20,000
Trucks used for transporting materials	80,000
Cakes and Pastries for consumption within factory	12,500

The amount of Input Tax Credit (ITC) available to ABC Ltd. shall be

- (A) ₹2,00,000
- (B) ₹2,12,500
- (C) ₹52,500
- (D) ₹1,00,000

74. The Input Tax Credit (ITC) is being credited to of a person which may be used by the person to pay his out-put tax liability.

- (A) Electronic Cash Ledger

- (B) Electronic Credit Ledger
 - (C) Electronic Tax Ledger
 - (D) Electronic Tax Credit Ledger
75. Zebra, a supplier of goods located at Jaipur paid GST under regular scheme both Interstate and Intra-state. The supplies are chargeable to GST @ 18% The outward taxable supply in the month of February, 2019 made by him of Intra-state ₹12,00,000 and Inter-state ₹5,00,000. The total tax liability under GST Act on both these supplies shall be, if he is having the Opening Balance of ITC available of ₹45,000 each under CGST and SGST and of ₹55,000 under IGST.
- (A) ₹3,06,000
 - (B) ₹2,16,000
 - (C) ₹1,61,000
 - (D) ₹1,71,000
76. The registration under GST is based with State specific number and is known as GST Identification Number (GSTIN) which is a digit number under the CGST Act, 2017.
- (A) TAN, 12
 - (B) PAN, 15
 - (C) TAN, 15
 - (D) PAN, 12
77. Every supplier as per section 22 of the CGST Act, 2017 shall be liable to be registered under this Act in the State where he makes taxable supplies of goods or services or both, if his aggregate turnover in the Financial Year exceeds..... .
- (A) ₹20,00,000
 - (B) ₹40,00,000
 - (C) ₹30,00,000
 - (D) ₹60,00,000
78. Section 22 of the CGST Act, 2017 refers to the expression "Special Category States" and there are total special category States as per sub-clause (2) of Clause (4) of Article 279A of the Constitution. However, special category States for the purpose of registration under the CGST Act, 2017 out of which are
- (A) 7, 2
 - (B) 7, 4
 - (C) 11, 4
 - (D) 11, 7

79. Section 2(77) of CGST Act, 2017 defines “non-resident taxable person” who has the business outside India, comes to India for a temporary business purpose. Such person would need to register as a non-resident taxable person in the State and he will be granted registration for a maximum period of under the Act.
- (A) 90 days
 - (B) 45 days
 - (C) 60 days
 - (D) 30 days
80. The application for registration filed as per Rule 8, prior to grant of registration be examined and if found to be deficient, a notice to the applicant in Form..... be issued within a period of days from the date of submission of application.
- (A) GST REG-03, 7
 - (B) GST REG-03, 3
 - (C) GST REG-05, 7
 - (D) GST REG-01, 3
81. Any person required to deduct tax or required to collect tax at source under GST as per Rule 12 shall electronically submit an application for the grant of registration in Form and after verification of the application the proper officer may grant the registration and issue the certificate of registration in Form
- (A) GST REG-5, GST REG-4
 - (B) GST REG-8, GST REG-7
 - (C) GST REG-7, GST REG-6
 - (D) GST REG-10, GST REG-9
82. The proper officer, if has reasons to believe that the registration of a person is liable to be cancelled under section 29 of CGST Act, then he shall issue a notice to such person in Form and after considering the reply furnished by such person shall pass on order to drop proceedings in Form.....
- (A) GST REG-16, GST REG-17
 - (B) GST REG-17, GST REG-18
 - (C) GST REG-17, GST REG-19
 - (D) GST REG-17, GST REG-20

83. Mundra Manufacturing Company of Jaipur on the order placed by Dheeraj Enterprises of Noida for supply of goods despatched the goods from the factory located at Jaipur on 1st March, 2019. The tax invoice for such supply by Mundra Manufacturing Company must be issued on Dheeraj Enterprises on or before
- (A) 30th March, 2019
 - (B) 1st March, 2019
 - (C) 15th March, 2019
 - (D) 7th March, 2019
84. A draft template of invoice to be raised by a registered person liable to pay tax under Reverse Charge Mechanism (RCM) under GST is known as
- (A) GST INV-1
 - (B) GST INV-2
 - (C) GST INV-3
 - (D) GST INV-4
85. Tax invoice referred to in Rule 46 of CGST Rules 2017, in case of taxable supply of services shall be issued under Rule-47 of CGST Rules 2017, within a period of from the date of supply of service.
- (A) 7 days
 - (B) 15 days
 - (C) 30 days
 - (D) on the same day
86. Section 35(5) of Central Goods & Services Tax (CGST) Act, 2017 mandates that every registered person must get his accounts audited by a if his aggregated turnover during a financial year exceeds ₹
- (A) Chartered Accountant or Company Secretary, 2 Crore
 - (B) Chartered Accountant or Cost Accountant, 2 Crore
 - (C) Chartered Accountant or Company Secretary or Cost Accountant, 3 Crore
 - (D) Chartered Accountant, 3 Crore
87. Every registered person as per section 68 of CCST Act, 2017 who causes movement of goods of consignment value greater than whether for supply or otherwise or due to the inward supply from an unregistered person, shall before commencement of such movement, furnish the necessary information electronically on the portal in the prescribed form.
- (A) ₹50,000
 - (B) ₹25,000

- (C) ₹1,00,000
(D) ₹5,000
88. The Electronic Liability Register specified under section 49(7) of the CGST Act, 2017 as per Rule 85 of the CGST Rules 2017 shall be maintained in Form..... for each person liable to pay tax, penalty, late fees or any other amounts payable by him on the common portal which shall be debited to the said register.
- (A) GST PMT-10
(B) GST PMT-01
(C) GST PMT-05
(D) GST PMT-02
89. Section 56 of the CGST Act, 2017 states that claim of refund arising from an order passed by an adjudicating authority or Appellate Authority or an Appellate Tribunal or Court which is not being refunded within..... days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding per annum, shall be payable in respect of such refund.
- (A) 30 days, 6%
(B) 30 days, 9%
(C) 60 days, 9%
(D) 60 days, 6%
90. Tax on inter-state supplies, import into India, supplies made outside India and supplies made in SEZ shall be charged under
- (A) CGST & SGST
(B) CGST & UTGST
(C) CGST & IGST
(D) IGST
91. Provision for levy and collection of tax on intra-state supply of goods or services or both by the Union Territory and for matters connected therewith or incidental thereto are being enumerated in :
- (A) CGST Act, 2017
(B) IGST Act, 2017
(C) UTGST Act, 2017
(D) None of the above

92. Integrated tax credit as per section 9A of UTGST Act, 2017 on account of Union Territory Tax shall be utilized towards payment of only after the input tax credit available on account of has first been utilized towards such payment.
- (A) Integrated Tax and Union Territory Tax, Integrated Tax
 - (B) Union Territory Tax, Input Tax
 - (C) Integrated Tax or Union Territory Tax, Union Territory Tax
 - (D) Integrated Tax or Union Territory Tax, Integrated Tax
93. Advance ruling means a decision provided by the to an applicant on the matter or a question specify u/s 97(2) and 100(1) of the CGST Act, in relation of the supply of goods or services or both being undertaken by the applicant.
- (A) Commissioner (Appeals)
 - (B) Authority or Appellate Authority
 - (C) Appellate Tribunal
 - (D) Adjudicating Authority
94. Section 22 of the UTGST Act, 2017 lays down the power of Central Government to make rules on the recommendation of the Council. Any rule made under sub-section-1 of section 22 may provide that a contravention thereof shall be liable to a maximum penalty of
- (A) ₹10,000
 - (B) ₹1,000
 - (C) ₹5,000
 - (D) ₹2,500
95. Total proceeds of the cess levied under section 8 of GST (Compensation to States) Act, 2017 as per section 10 shall be credited to a fund which is known as and shall form part of the public account of India to be utilized for the purposes specified and shall be a non-lapsable Fund.
- (A) GST Cess Fund
 - (B) GST Cess Compensation Fund
 - (C) GST Compensation Fund
 - (D) GST Fund
96. Section 110 of Finance Act, 2018 w.e.f. 2nd February, 2018 have levied on imported goods which is a duty of customs levied for the purpose of the union on the goods specified in the first schedule with the Customs Performing Act, 1975 being goods imported into India.
- (A) Anti Dumping Duty

- (B) Paid Command Duty
 - (C) IGST and GST Compensation Cess
 - (D) Social Welfare Surcharge
97. Find from the following list which are treated as Port under the provisions of the Customs Act, 1962 :
- (A) Land Station
 - (B) Land Customs Stations (LCS)
 - (C) Container Freight Stations (CFS) not attached to Port
 - (D) None of the above
98. Duty Drawback under the Customs Act, 1962 shall be allowed on the imported goods, where such imported goods are being used for a period of eight months before the same were re-exported @
- (A) 85%
 - (B) 70%
 - (C) 60%
 - (D) 40%
99. Self-assessment of duty as per section 17 of the Customs Act, 1962 is being done by Importer and Exporter relating to the goods subject to duty and after final assessment of duty if any, amount refundable is not refunded within from the date of assessment of duty finally there shall be paid an interest on such un-refunded amount by Central Government.
- (A) 1 month
 - (B) 2 months
 - (C) 6 months
 - (D) 3 months
100. The offences committed under the Customs Act, 1962 are having the criminal liability as well as civil liability. However, the offences involving duty evasion of more than ₹..... or/and of are non bail able offences under criminal liabilities.
- (A) 50 lakh, Prohibited goods
 - (B) 50 lakh, Smuggled goods
 - (C) 100 lakh, Smuggled goods
 - (D) 100 lakh, Prohibited goods

ANSWER KEY
TAX LAWS - SELECT SERIES

Q.no.	Ans	Q.no.	Ans	Q.no.	Ans
Part I					
1	B	37	B	69	D
2	C	38	C	70	C
3	C	39	A	71	A
4	C	40	C	72	C
5	D	41	D	73	A
6	A	42	A	74	B
7	B	43	B	75	A/C*
8	A	44	A	76	B
9	C	45	B	77	A
10	A	46	B	78	C
11	C	47	D	79	A
12	B/C *	48	D	80	B
13	C	49	C	81	C
14	*	50	C	82	D
15	D	Part II		83	B
16	B	51	B	84	*
17	C	52	C	85	C
18	D	53	A	86	B
19	B	54	B	87	A
20	A	55	C	88	B
21	B	56	B	89	C
22	C	57	A	90	D
23	B	58	C	91	C
24	C	59	A	92	D
25	B	60	D	93	B
26	A	61	A	94	A
27	C	62	B	95	C
28	B	63	C	96	D
29	D	64	B	97	B
30	B	65	A	98	B
31	D	66	B	99	D
32	A	67	B	100	A
33	B/D *	68	B		
34	C				
35	B				
36	A				

Notes*

- Q .No. 12 Both options B/C are correct. The question is not clear as to compute the net annual value of the house property or the Income chargeable to tax under the head house property. Option B is correct (Income taxable under the head house property) . Options C is correct (Net Annual Value).
- Q. No. 14 As per section 24(b) of the Income Tax Act, 1961, the deduction in case of self occupied property is Rs. 200000 or interest during the current financial year whichever is lower. The bifurcation of the interest payment on housing loan during the current year is not mentioned separately in the question.
- Q. No. 33 Both options B/D are correct. Option B: As per section 12AA(2), Every order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which the application was received. If no order has been passed, then it is considered as deemed registration has been granted. Option D: in the case of CIT v/s Society for the Promotion of Education, it has been held that If no order has been passed, then it is considered as deemed registration has been granted after the expiry of 6 months from the date of application.
- Q. 75 Both option A and C are correct as the question says total tax liability which can be interpreted differently by different people.
- Q. 84 None of the options are correct as correct answer is self invoicing or GSTR - 1.
